

V. Comments and Technical Documents Submitted

A. Transcripts

Index to Rulemaking File Underground Storage Tank Regulations Title 23, Waters
Division 3, Water Resources Control Board Chapter 16, Underground Storage Tank
Regulations 1985

1. October 23, 1984 Public Hearing

Public Hearing
STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

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In the matter of:)
)
Proposed Regulations Governing)
Underground Storage of Hazardous)
Substances to be Codified in)
Subchapter 16 of Chapter 3, Title)
23, California Administrative)
Code)
)
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Held in
Resources Building
Sacramento, California

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Tuesday, October 23, 1984
10:00 a.m.

ALICE BOOK
CERTIFIED SHORTHAND REPORTER
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A P P E A R A N C E S

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A G E N D A

| | <u>Page</u> |
|----------------------------------------|-------------|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |
| 16 | |
| 17 | |
| 18 | |
| 19 | |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | |
| 25 | |
| 26 | |
| Opening statement - Chairwoman Onorato | 1 |
| Public Statements: | |
| Tom Robinson | 6 |
| Richard Zipp | 13 |
| J. W. Colin | 33 |
| Kip Lipper | 41 |
| Robert Short | 48 |
| Bert McCormack | 57 |
| Bob Shuster | 63 |
| Rick Jirsa | 68 |
| Michael Bouton | 78 |
| Carl W. Sjoberct | 82 |
| Wayne Kruse | 86 |
| Frank Melone | 91 |
| Wendell Suyama | 93 |
| Reinhard Hurselka | 96 |
| Tom Wedegaertner | 101 |
| Bob Johnson | 103 |
| Robert French | 107 |
| Noel Fletcher | 111 |
| William Stead | 130 |
| Gerry Hagy | 134/156 |
| Pat Dennis | 137 |
| Eric Lappala | 149 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Statements (continued):

Page

| | |
|---------------------------|------------|
| Kenneth Flaks | 163 |
| Armando Figueroa | 170 |
| Richard Fahey | 176 |
| Ron Duncan | 180 |
| Margaret Allender | 196 |
| Paul Stephany | 206 |
| Jack Elgin | 208 |
| Hank Martin | 216 |
| Jim Campbell | 217 |
| Fred Naglestad | 233 |
| Richard Gray | 239 |
| Richard Casagrande | 242 |
| Bob Meacham | 254 |
| Dick Davis | 255 |

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1 TUESDAY, OCTOBER 23, 1984

2 ----000----

3 MS. ONORATO: Good morning. I would like to call
4 the meeting to order.

5 I am Carole Onorato, Chairwoman of the State Water
6 Resources Control Board. With me is Vice Chairman, Doug
7 Noteware, and Board Members, Ted Finster and Ken Willis.

8 The State Board staff is represented by Ed Anton,
9 Chief of the Division of Technical Services; Roger ^{JOHNSON} Anderson,
10 Assistant Division Chief of the Division of Technical Ser-
11 vices; John Richards, our staff counsel for these regula-
12 tions; and Harold Singer, who headed the work group who
13 drafted the regulations.

14 This is the time and place for the formal public
15 hearing on the proposed regulations governing the stored
16 hazardous substances in underground tanks. This hearing
17 is to allow interested persons to comment on the proposed
18 regulations which have been developed as required by Sec-
19 tion 25288.2 of the Health and Safety Code which took effect
20 on January 1, 1984.

21 All written comments must be received by the State
22 Board no later than five p.m. today in order to be con-
23 sidered as part of the record.

24 I would like to hold all comments to a maximum
25 of ten minutes per individual and we would also like to
26 limit group presentations that involve multiple persons

1 to 20 minutes. Group presentations representing numerous
2 interests may be allowed up to 30 minutes.

3 Following receipt of all comments today, staff will
4 be reviewing those comments and preparing a summary of
5 the issues raised by the comments, together with recommenda-
6 tions for appropriate changes to the regulations or reasons
7 for rejecting the comments.

8 The State Board will discuss the issues raised and
9 possible responses at an informal workshop currently
10 scheduled for ten a.m. on November 2, 1984, in State Board
11 Hearing Room, 901 P Street, across the street.

12 The State Board will consider adoption of the re-
13 vised regulations at a meeting currently scheduled for
14 ten a.m. on November 27, 1984, also in the State Board
15 Hearing Room.

16 At this meeting, the Board will also include the
17 response to all official comments received and the final
18 statement of reasons.

19 Groundwater contamination problems have become the
20 most serious environmental concern of the eighties.
21 Groundwater contamination can be from many sources including
22 landfills, surface impoundments, septic tanks,
23 disposal activities and leaking underground storage tanks.

24 In California we have seen municipal water supplies
25 contaminated by leaking underground storage tanks and num-
26 erous examples of groundwater supplies threatened by leaking

1 underground storage tanks.

2 The Legislature and Governor Deukmejian have
3 addressed these problems by adopting laws which require
4 local governments to issue permits to all person who store
5 hazardous substances in underground tanks. These permits
6 must implement containment monitoring and reporting re-
7 quirements in Sections 25284, 25284.1, 25284.3, 25284.4,
8 25284.5, 25285 and 25288.3 of the Health and Safety Code.

9 The State Board has been directed to develop on
10 January 1, 1985, regulations implementing those provisions
11 of law.

12 The proposed regulations cover the following speci-
13 fic topics:

- 14 Construction and monitoring standards for
15 new tanks.
- 16 2. Monitoring standards for existing tanks.
 - 17 3. Repair standards.
 - 18 4. Closure standards.
 - 19 5. Release reporting requirements; and
 - 20 6. Variance procedures.

21 State Board staff has had six informal workshops
22 with numerous tank owners and with local agencies who will
23 be issuing permits. Based on these workshops, a number
24 of issues have surfaced and we are particularly interested
25 in receiving comments on the following specific areas of
26 the draft regulations:

- 1 1. Reliability of monitoring methods for
- 2 existing tanks and their application as
- 3 a part of a monitoring system.
- 4 2. The need for baseline monitoring for
- 5 existing tanks to demonstrate the applica-
- 6 bility of proposed monitoring methods.
- 7 3. The proposed leak interception direction
- 8 system for new motor vehicle fuel tanks.
- 9 4. The use of alternative monitoring
- 10 methods for the monitoring of existing
- 11 tanks.
- 12 5. The economic impact of the application
- 13 of these regulations.

14 We will, of course, take comments that you wish
15 to make about the regulations.

16 Before we start the comments, I would indicate we
17 will not accept comments on the law which requires these
18 regulations. As many of you know, that law is quite speci-
19 fic on certain issues and we cannot deviate from those
20 specifics in these regulations.

21 Finally, these regulations implement only those
22 provisions of the Health and Safety Code which took effect
23 on January 1, 1984, pursuant to Chapter 1040 of the Statutes
24 of 1983, formerly AB 1362 by Sher.

25 Several bills passed by the Legislature in 1984
26 and recently signed into law by Governor Deukmejian will

1 amend these provisions and may necessitate changes in these
2 regulations. These statutes will not take effect until
3 January 1, 1985, and the potential changes in the regula-
4 tions would not be within the scope of the notice published
5 in the California Administrative Notice Register on August
6 24, 1984.

7 Staff will propose the appropriate modifications
8 at some future date. Such a proposal will include an oppor-
9 tunity for public comments lasting at least 45 days.

10 And I have been asked to announce that anyone sign-
11 ing up today will get a copy of the revisions that will
12 be proposed as a result of this hearing. There is a sign-
13 up sheet in the back.

14 The hearing notice said you had to come in and ask
15 for it, but in the interest of so many people who are inter-
16 ested in those proposed revisions, you just sign up today
17 and we will be certain that you get that, and I would also
18 like to note in the record to reflect we have been joined
19 by Board Member Darlene Ruiz.

20 Now, will the staff be making comments at this
21 time?

22 MR. ANTON: No.

23 MS. ONORATO: At this time, I would like to call
24 on Tom Robinson, Chairman of the ad hoc committee of the
25 California Independent Oil Marketers Association from San
26 Jose. Good morning.

1 MR. ROBINSON: Good morning. Thank you for the
2 opportunity to present testimony today on the proposed
3 regulations governing the underground storage of hazardous
4 materials.

5 I am Tom Robinson, Vice President of the Robinson
6 Oil Company. Robinson Oil Company is based in San Jose
7 and markets petroleum products in the greater San Francisco
8 Bay area.

9 I have been in the oil business for almost 20 years
10 starting on a part-time basis while still in high school.
11 My father was president of the business since the early
12 1950's when we bought the company from my grandfather,
13 who founded the company in the 1930's. I'm a third-genera-
14 tion independent petroleum marketer representing California
15 Independent Oil Marketers Association, CIOMA for short.

16 CIOMA, as the name indicates, is the state associa-
17 tion of independent oil marketers. CIOMA members purchase
18 petroleum products from both major and independent refiner-
19 ies and sell those products to agricultural, commercial,
20 industrial and governmental customers as well as independ-
21 ent service station operators.

22 CIOMA members also own and/or operate their own
23 service stations.

24 I have given you this brief background of my com-
25 pany and of CIOMA so you might better understand what the
26 financial applications this bill will have on my company

1 and other independent petroleum marketing companies who
2 are members of CIOMA.

3 There is no group of businesses which will be so
4 drastically affected by these regulations as the group
5 I am here today representing. What percentage of our mem-
6 bers will be driven out of business by the regulations
7 as they are presently drafted is difficult to guess.

8 With this concern of economic ruin in mind, I hope
9 the Board will understand my fear for the continued exist-
10 ence of my 50-year-old family business as well as my CIOMA
11 members' fear for their companies.

12 We truly agree with the intent of the regulations.
13 We live and are raising our families in this state. We
14 believe in the need to preserve our groundwater, but we
15 also believe the Water Board staff in their zeal to remove
16 any possibility of groundwater contamination have not only
17 gone beyond the authority granted by the law, but have
18 totally ignored any cost-benefit analysis these regulations
19 impose.

20 It is important to understand how these overly
21 burdensome costs will be paid for. As you are well aware,
22 any business or industry group to survive in the long run
23 must make a profit. To make a profit a business has to
24 have greater revenues than expenses. So, if a business
25 is to survive, it must be able to pass along its costs
26 to its consumers. If it can't, they don't survive.

1 So the consumer ultimately pays for these regula-
2 tions; that is, in the long run, but in the short run,
3 you will see major changes in the way petroleum products
4 are distributed.

5 In the short run marketers will not be able to
6 pass these tremendous costs on to the customers. The short
7 run will be a perilous time for CIOMA members for three
8 reasons:

9 The first reason is the most obvious. If
10 business can't financially afford to imple-
11 ment all the proposed monitoring require-
12 ments, that business will not survive.

13 From the staff's own estimate, which I might add,
14 based on the analysis CIOMA has done, appears likely under-
15 stated. It will cost on the average \$9,000 per tank to
16 implement monitoring on existing tanks with an ongoing
17 average annual cost of over \$2500 per tank. These are
18 per-tank costs.

19 A typical service station has at least three tanks
20 and a typical commercial facility has two tanks. These
21 are astronomical sums in comparison to the value of the
22 average CIOMA member's business.

23 The second point is that almost all CIOMA
24 members market exclusively in California.
25 Consequently, 100 percent of our tanks
26 must be monitored in accordance with these

1 regulations, whereas major oil companies,
2 even though they will spend many more total
3 dollars implementing these tank require-
4 ments, the regulated California tanks repre-
5 sent a small percentage of the total tanks
6 worldwide, so it is obvious considering
7 the vast difference in the economic strength
8 of CIOMA members and major oil companies
9 the relative cost of these requirements
10 to the major oil companies is much less
11 burdensome than on CIOMA members with all
12 of their eggs in the California tank regu-
13 lations basket.

14 Thirdly, the first two points are not bad
15 enough, we now have the most devastating
16 blow thrown at the independent oil mar-
17 keters. CIOMA members serve the vast
18 majority of small petroleum users. In
19 many cases these are the customers who
20 are too small to be othered with by the
21 major oil companies. These make up the
22 major portion of CIOMA members' business.
23 These customers, these small tank owners
24 as the regulations are presently proposed
25 fall under the same requirements as everyone
26 else.

1 Please tell me what any small tank owner could
2 or should implement tank monitoring which again using the
3 staff's numbers will cost on the average \$9,000 per tank.
4 The small tank owner won't, unless he can justify that
5 expenditure by the incredibly high profits he obtains by
6 selling the petroleum products he stores, which is unlikely,
7 or that small tank owner, for whatever reason, cannot oper-
8 ate his business without his own fuel tanks.

9 Most small tank owners won't fall under either
10 of these two conditions, so he will remove his tanks rather
11 than comply. This means even if the CIOMA member can sur-
12 vive point numbers 1 and 2, what does he do when he loses
13 customers because they no longer have tanks?

14 The CIOMA member will have a tough time because
15 he isn't as financially strong as the major oil companies,
16 because he didn't have the foresight to have worldwide
17 operations so the California regulations don't break all
18 the eggs he has in his small basket and because he serves
19 the wrong customers.

20 Those customers, when faced with the choice of
21 complying or removing, will remove his tanks.

22 How might this be avoided? CIOMA believes this
23 could first be accomplished by a reasonable cost-benefit
24 analysis of the requirements. CIOMA believes fair and
25 reasonable requirements could be imposed which would still
26 meet the intent of the law, which is to provide a high

1 degree of safety for the groundwater.

2 CIOMA further believes to ensure fairness and some
3 chance of survival for small business, phasing in the
4 requirements would be appropriate. A possible approach
5 for this would be to deal with a percentage of the business
6 tanks per year. This might apply to monitoring existing
7 tanks or a timetable to allow installation of new tank
8 systems in lieu of monitoring existing tanks.

9 Also, a phasing in of the monitoring requirements
10 provides for more safety to the groundwater because if
11 you require hundreds of thousands of wells to be drilled
12 in a very short time period, there is a very strong possi-
13 bility that wells will be improperly installed causing
14 a greater chance of groundwater contamination.

15 Another possible consideration would be for some
16 form of economic incentive or assistance to install new
17 double containment tanks which would provide greater safety
18 and would lessen the burdensome costs of monitoring exist-
19 ing tanks.

20 Other possible alternatives could and should be
21 considered which would still provide safety for the ground-
22 water without causing the demise of the independent oil
23 marketer.

24 CIOMA has one final concern and that involves the
25 small spills, small leaks, and the concept of how clean
26 is clean. Around any existing petroleum tank there is

1 some level of soil contamination. CIOMA is very concerned
2 about the potentially very expensive clean up which could
3 be required even when the soil contamination poses no threat
4 to the potable groundwater.

5 Presently there is tank-leak insurance at reasonable
6 rates. Should unnecessary expensive clean up be required
7 in too many instances, either insurance will be impossible
8 to get or prohibitively expensive. This situation could
9 also spell the demise for many independent oil marketers.

10 CIOMA believes recognition of this problem and
11 possible solutions to this potential situation are neces-
12 sary.

13 Thank you for the time to testify today.

14 CIOMA does not believe it is the intent of Assembly-
15 man Sher or the State Water Resources Control Board to
16 financially execute independent oil marketers. We believe
17 measures can be implemented which will provide for ground-
18 water safety but still be cost effective.

19 This ends my general comments.

20 Richard Zipp, senior engineering geologist, will
21 comment on the CIOMA technical concerns, and following
22 him will be Leroy Neider, attorney-at-law, legal counsel,
23 on the legal concerns that CIOMA has with the regulations.

24 Thank you.

25 MS. ONORATO: Are there any questions of Mr. Robin-
26 son at this time? Thank you.

1 Mr. Zipp. Good morning, Mr. Zipp.

2 MR. ZIPP: My name is Richard Zipp. I am a senior
3 geologist and our firm has been retained by CIOMA to provide
4 some technical input.

5 Since our comments are approximately 70 pages in
6 length, I will not bore you.

7 MS. ONORATO: Bless you, Mr. Zipp. Staff, note
8 that.

9 MR. ZIPP: You will have a little reading to do
10 after you adjourn.

11 The intent of Sher, I think everybody will agree,
12 that we need to address the potential groundwater contami-
13 nation. Sher has said that in public in the form of a
14 bill. However, the regulations that have been proposed
15 are a great deal of overkill and are in many cases unneces-
16 sary.

17 I would like to highlight a few of the key points
18 and then I will turn it over to our attorney, who will
19 give some legal aspects.

20 Our firm is putting in something between a thousand
21 and five thousand feet of test hole per week on this. If
22 we were to start drilling on all these underground tanks
23 right now, our firm and every other firm in the State of
24 California, we could not meet your deadline as the regula-
25 tions are written today. There is no way by 1 July '85
26 all the holes and samples that need to be drilled and

1 analyzed could be done. That's a total physical impossi-
2 bility.

3 In addition to that, while there isn't enough equip-
4 ment, we don't have qualified personnel to do it, and I
5 am talking statewide.

6 We could end up with a situation similar to what
7 happened during the California drought when a lot of fly-
8 by-night companies were coming in and getting into the
9 business because there was a market and in many areas
10 we are still paying the price for back workmanship and
11 cross contamination.

12 I think you should really consider the potential
13 for this in the implementation of these regulations, and
14 can we do it within the time frame the regulations require.

15 As I mentioned, this is impractical to implement.
16 There is lack of equipment, there is a lack of qualified
17 personnel, and the approval process is taking far too long.

18 We have been very active in the Los Angeles area.
19 In December of last year, some guidelines went into effect.
20 Many of the sites in the Los Angeles basin still have not
21 implemented programs because they can't get the programs
22 approved through the regulatory body.

23 If that process is to go into effect statewide,
24 we are going to have utter total chaos. So, again, we
25 need something that is going to be easy to implement, rea-
26 sonable to implement, and cost effective, which we discuss

1 in our presentation, and what we have right now is not.

2 If we look at the regulations themselves, we have
3 a tremendous amount of redundancy. We require some slant
4 drilling, we require tank testing, we require vadose and/or
5 monitoring, water-well monitoring. In the event that
6 groundwater is deep, we require basically all of the above
7 plus assurance monitoring. We may have to chase ground-
8 water to 200 feet.

9 What we may be doing in the process is creating
10 a conduit for contaminant movement which may end up with
11 a greater problem than we started out with.

12 Now do we need that much redundancy in the program
13 to adequately protect the groundwater?

14 Now having been with the State Board for many years,
15 I can appreciate where you are coming from, but being a
16 consultant, obviously if these regulations go in as written,
17 we are going to benefit. We are going to keep our people
18 but that's not why we are out there. We are out there
19 to provide a service. Part of that service is to put in
20 a reasonable cost effective program, which we really can't
21 do with good conscience with these regulations.

22 The monitoring, as I mentioned, is a lot of over-
23 kill. Under your regulations we are currently required
24 to put in three monitoring wells per tank, where one might
25 be sufficient. We are required to put in four vapor curves
26 where one might be sufficient. We are looking at factors

1 of three and four costs. It's a horrendous amount of money.
2 It's a large amount of money that is going to have to ab-
3 sorbed by someone, namely us, the consumer.

4 So, again, we need to look at this in the proper
5 perspective of what's involved.

6 There are some technical problems which have to
7 do with the slant holes. There is a lot of equipment,
8 there are real difficulties in sampling, most materials
9 are not conducive to sampling using slant holes because
10 most of us rely on gravity. If we have to use hydraulics
11 to collect samples, there are many materials underneath
12 the ground which we will not be able to get adequate samples
13 of and even if we do drill a hole, we may have problems
14 filling it adequately so as not to provide for cross con-
15 tamination.

16 Again, we have looked at it, we have talked to our
17 staff and we don't feel that the slant hole program really
18 gives you any more information than a vertical hole.

19 I hate to say it, but of the contaminated sites
20 we have investigated, I think we have only found one or
21 two clean. There have not been a lot of clean sites, which
22 means vertical holes are working.

23 If there is contamination down there, if the program
24 is implemented properly, appropriately designed, appropri-
25 ately implemented, samples are collected appropriately
26 and analyzed by the proper methods, if there is

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contamination down there, we can find it with vertical holes. We don't have to drill a 50-or-60-foot hole, slant hole, just to fill it back up with concrete and then move on to alternatives that are required in these regulations.

Then we -- with regard to the 200-foot wells, there is almost no place in the State of California where a 200-foot assurance monitoring well would be required. There are too many low permeability zones between the ground surface and a potential 200-foot water zone to act as a barrier. Shallow, low permeability material will tend to pond or deflect any plume that is moving down vertically. Consequently, all we are doing is generating revenue for the consultants, costing the operator an exorbitant amount of money and possibly providing a conduit for contaminants to get down to an aquifer that heretofore didn't have an avenue for moving to it.

So, again, we really need to look at, do we need it? Why do we need it? Are we out on a witch hunt? Is that the intent of these regulations, to go out and generate new problems when we can't address the ones we have?

That's not saying we should ignore them, but we don't want to just go out and cause the operator to go out and look for problems that may not be there. We can identify local problems. If we identify them, we can resolve them, address them. We don't have to go out and chase a lot of things.

1 In conclusion, I would like to recap a few things.
2 The regulations as written are excessively costly. A pre-
3 Sher gas station, a single or double-tank installation,
4 was running between 2500 and 3500 dollars depending on
5 the analysis required. Under the Sher -- and from our
6 own figures, we are looking at somewhere between 8 and
7 30 thousand dollars for installation, which is quite dif-
8 ferent from what is your fiscal impact statement.

9 There are a lot of things that weren't considered.
10 There is a lot of overkill. I mentioned before requiring
11 three wells down to a hundred feet where one might be
12 adequate, four vapor probes where one might be required,
13 requiring frequency of monitoring for vadose zone weekly.

14 If you have, in the case of gasoline stations,
15 representing CIOMA if you have a good inventory control
16 you are going to pick a major leak. If you have vadose
17 zone monitoring on a monthly frequency rather than a weekly,
18 you are going to pick up a small leak.

19 This is the intent. Why do you have to go in with
20 all kinds of monitoring wells and expensive continuous
21 monitoring sensors with alarms and lights. You can get
22 by with a lot more cost-effective program and achieve the
23 same goal, protection of California's groundwater.

24 So as a final statement, I think I would just like
25 to recommend to the Board that when the regulations are
26 adopted and implemented, that we keep the program simple

1 and we allow for flexibility to implement a program that
2 is reasonable and cost effective.

3 MS. ONORATO: Thank you, Mr. Zipp.

4 Are there any questions of Mr. Zipp?

5 Mr. Willis has a question, Mr. Zipp.

6 MR. WILLIS: Mr. Zipp, based on your comments,
7 you are referring then in some instances or in all instances
8 where three wells are being requested in these draft regu-
9 lations, one well would suffice.

10 You seem to also in your last comment put some
11 emphasis on a singular vadose zone well for monitoring.

12 I wanted to ask you simply, do you feel that some
13 type of a well is necessary in all instances, in some in-
14 stances or not necessary at all?

15 MR. ZIPP: Yes, all of the above. In certain in-
16 stances one well would not be adequate. In some instances
17 where vapor probes may be totally adequate. Where there
18 is a definite confining zone underneath that could be demon-
19 strated, the need to punch holes through this low permea-
20 bility zone is definitely unnecessary and really counter-
21 productive to the program, so I think you have to be able
22 to, you have to assess each program by the constituency,
23 by the geology, the hydrology of the area, the existing
24 water quality and the potential for degradation. I mean,
25 I could talk on this subject for hours, but really, you
26 need to have the flexibility to implement.

1 That doesn't mean necessarily to do one program.
2 One may not be appropriate, but in instances where it is,
3 there should be the flexibility to do that and not have
4 the mandate of putting in 20 or 30 thousand-dollar program
5 when it is not necessary.

6 MR. WILLIS: Mr. Zipp, you made the comment, but
7 I wanted to ask you if you would elaborate on one point,
8 do you think -- you want to keep the program simple and
9 I agree with you, I think we all want to do that, but are
10 you suggesting then that every site should have some type
11 of a soil analysis to determine whether or not it's neces-
12 sary to have a well, no well, or a couple of wells? How
13 do you respond?

14 MR. ZIPP: I think a lot of the local geology is
15 already known. If you have a competent consultant to assess
16 the site prior to the implementation of the program, you
17 can have a lot of information without drilling. I do be-
18 lieve there has to be a baseline analysis. I think that
19 is appropriate.

20 I don't think it is necessarily appropriate to
21 get that baseline information by virtue of a slant hole
22 which you are just going to go back in and cement in. I
23 don't think that's necessary.

24 It really depends on the type of material that's
25 in that tank. If they are at all volatile, our success
26 rate at detecting volatile organics in the soil has been

1 quite good.

2 MR. WILLIS: Do you in the written material that
3 was turned in specify how a baseline analysis should be
4 determine?

5 MR. ZIPP: We have addressed it article by article,
6 section by section. We have proposed alternate language
7 and alternate recommendations.

8 MR. WILLIS: Okay. That's all the questions I
9 have. Thank you.

10 MS. ONORATO: Any other questions?

11 Ms. Ruiz.

12 MS. RUIZ: You indicated there were differences
13 in the slant hole drilling versus the vertical drilling.
14 What are the added costs by doing slant hole drilling?

15 MR. ZIPP: Assuming reasonable conditions, something
16 on the order of 25 to 50 percent in our estimate. There
17 are some people who will say there's no cost differential,
18 but there is.

19 MS. RUIZ: What is the difference in reliability
20 of the sampling from such a slant hole drill?

21 MR. ZIPP: Well, there was a time when the Regional
22 Board in Oakland would not accept some of our data from
23 slant holes because we couldn't get samples that they felt
24 were representative, so from that standpoint, the adequacy
25 of the samples is not as good.

26 In vertical holes we can get closer to the tank

1 because we don't have to worry about the angle, so we can
2 get right next to the backfill or right next to the tank,
3 within a couple of feet, whereas, we are 10 or 15 feet
4 away with the slant hole, so the samples are more repre-
5 sentative.

6 MS. RUIZ: But you don't have any specific figure
7 as to the reliability of the sample from a slant hole?

8 MR. ZIPP: No, not really.

9 MS. ONORATO: I think staff wants to ask a ques-
10 tion.

11 MR. ANTON: I do have a question after Ms. Ruiz.

12 MS. ONORATO: Pardon me.

13 MS. RUIZ: I have completed my questioning.

14 MR. ZIPP: We believe a vertical hole is adequate.
15 We probably cover 95 to 99 percent of the situations. There
16 may be a one-to-five-percent where we might not pick up
17 a leak, but is it justified? What is the intent here? Is
18 95 percent on that aspect of it adequate, or do we have
19 to go into all of this at more expense and possibly a
20 counterproductive investigation? I just don't think it
21 is cost effective personally.

22 MS. ONORATO: Mr. Anton.

23 MR. ANTON: Mr. Zipp, near the end of your pre-
24 sentation you made a comment that before this bill went
25 into effect a tank installation might cost \$2,500 and after
26 that it would be something like 8,000 to an upper limit,

1 I don't remember, but eight to thirty thousand dollars.

2 MR. ZIPP: That is correct.

3 MR. ANTON: Are you referring to the added cost
4 of monitoring on that tank or are you referring to the
5 added cost of the new installation that might be put in?

6 MR. ZIPP: The added cost of the installation and
7 the resultant fees that could be incurred, possibly in-
8 curred.

9 MR. ANTON: Most of your comments up until that
10 time had to do with the monitoring program but hadn't
11 touched on the added cost of double containment.

12 MR. ZIPP: That doesn't include double containment.

13 MR. ANTON: You are talking about monitoring for
14 existing wells?

15 MR. ZIPP: That is correct.

16 MR. ANTON: Thank you.

17 MS. ONORATO: Mr. Noteware.

18 MR. NOTEWARE: Mr. Zipp, earlier you mentioned
19 there is not enough facilities in California to meet the
20 deadlines. I am aware that if we accept your recommenda-
21 tions there will be fewer holes to drill, but do you have
22 a suggestion for a more realistic time schedule?

23 MR. ZIPP: Well, the legislation is quite definite
24 and the requirements. Short of making another amendment,
25 we do have July 1, 1985. Short of legislative change,
26 I don't think we have that flexibility, not this group at

1 at least.

2 MS. ONORATO: And the Board has no discretion in
3 this instance all. That's the way the law reads. I was
4 going to make that point, too, because I also picked up
5 on the date.

6 You had indicated that the Board might have some
7 flexibility. We do not.

8 MR. ZIPP: I realize that. The general comment,
9 I think, was just to make you aware of the impracticality
10 of implementation. I realize you don't have the flexibility
11 to change it, but a recommendation from you for a time
12 change would probably be more receptive than coming from
13 the oil industry or the chemical industry.

14 MR. NOTEWARE: Well, this is the time right now
15 to work with the Legislature on any proposed new legisla-
16 tion that will make things workable. If you are right
17 that it is totally impossible to meet these deadlines,
18 then we shouldn't just shrug our shoulders and say we can't
19 do it. Something has to give.

20 MR. ZIPP: That's correct.

21 MR. NOTEWARE: I would like your suggestions on
22 how impossible it is or how much more time you feel it
23 would take.

24 MR. ZIPP: I think that the simplest way would
25 be to take the hazardous waste material list that was gen-
26 erated by the Department of Health Services and go through.

1 that list and prioritize the constituents that are hazard-
2 ous and make a determination of which ones have the poten-
3 tial to have the greatest impact on the groundwater of
4 California and address those tanks first.

5 You have to keep in mind the whole intent of Sher
6 is a reaction to the Santa Clara Valley issue and the San
7 Gabriel-San Fernando Valleys where chlorinated solvents
8 were found in the groundwater.

9 We have gone from an issue of looking for chlorinated
10 solvents to a witch hunt where we are looking for anything
11 and everything under the rock and tank. There are a lot
12 of chemicals out there that are stored in underground tanks
13 that are not hazardous. They are hazardous by definition,
14 but the relative toxicity to the people, the relative
15 danger they are going to do to the environment is very
16 minimal.

17 These tanks could be, maybe by appropriate legisla-
18 tion, phased in at a later time. That would be my only
19 suggestion and that would be probably the simplest one.

20 MS. ONORATO: Any other questions at this time?

21 Thank you, Mr. Zipp.

22 Mr. Neider, attorney, representing the California
23 Independent Oil Marketing Association.

24 MR. NEIDER: Thank you. Good morning, Chairwoman,
25 Board Members and staff. I am Leroy Neider, representing
26 CIOMA.

1 We have earlier delivered to you our comments and
2 proposals. We have another ten copies, as I understand,
3 for the staff.

4 In looking at this legislation and the proposed
5 regulations, I think it is important to keep a broad over-
6 all perspective. The regulations refer to installing de-
7 vices that will detect historic unauthorized releases.
8 Under the existing law and the proposed regulations we
9 must accomplish in the next seven or eight months the damage
10 that has occurred in the last 70 or 80 years. It's impos-
11 sible. It is financially impossible.

12 And we believe it was not the intent of Sher
13 to require the Board through the regulations to retro-
14 actively and historically clean up what's occurred in the
15 past.

16 Rather, we believe that the intent of the law, which
17 we wholeheartedly support, is for future leakage, stopping
18 that and as we go along clean up the past as best we can.

19 There's another serious issue involving the lessor,
20 the owner, the operator, the lessee. In the code and the
21 regulations there are definitions of owner of the tank
22 and operator of the tank. The law as it now exists simply
23 is not clear as to technically who the owner is or the
24 operator is.

25 For example, most leases that involve service sta-
26 tions or tank facilities were executed well before the

1 law was passed and under California law who owns the tank
2 depends upon what's in the lease, and since these leases
3 were executed before the law was enacted, there's a ques-
4 tion as to whether or not the operator is the owner of
5 the tank during the period of the lease, or whether the
6 operator and the owner of the land is the owner of the
7 tank during the period of the lease and the owner of the
8 land becomes the owner of the tank at the expiration of
9 the lease.

10 We request you to really more carefully study this
11 so there is more of a fair allocation of the liabilities
12 and obligations on the one hand and the legal authority
13 and the right of each of those two classifications of people
14 to discharge those liabilities and obligations.

15 As it now stands, there will be nothing but unneces-
16 sary and absolutely unproductive litigation. We don't
17 want the litigation. We want to work with you. We need
18 your clarification of these terms.

19 A third major item that we are concerned about is
20 the interesting question of inverse condemnation. Earlier --
21 now there is some precedent in California in the Coastal
22 Commission Act whereby the Legislature gave authority to
23 that board to implement regulations. The Board believed
24 that it had the authority to require present landowners
25 to give up some of their rights, property or access, to
26 implement the act.

1 The U. S. Supreme Court has defined inverse con-
2 demnation as the conferring of a clear public benefit
3 through the invasion of the rights of another at the expense
4 of the owner of that property, and this is that situation.

5 Subsequent to that Coastal Board regulation, the
6 California Supreme Court held that the requirement imposed
7 on those landowners to give up trespass and access rights
8 was inverse condemnation and the owners were entitled to
9 just compensation.

10 There may very well be a parallel course here.

11 In addition to this, there are some other inter-
12 esting legal questions posed. Now under the fiscal impact
13 study, whether we use your figures or our figures, or the
14 figures of other third parties, all the figures indicate
15 that the initial cost of implementing these regulations
16 will approximate \$2 billion, and the annual cost will
17 approximate several hundred million dollars.

18 The Board's own proposed regulations do not include
19 such costs as legal fees, permits, demolition, excavation,
20 mobilization, a whole host of items which could well add
21 another 15 to 20 percent.

22 If the thrust of these economic regulations are
23 passed, we believe that it may very well cause the demise
24 of the small local independently owned petroleum distribu-
25 tors. If that does occur, this will only enhance and
26 further build the monopoly and the dominant position of

1 the major oil companies. And as we are all aware, the
2 United States Supreme Court has held that there is no govern-
3 mental immunity for legislatively mandated monopolies,
4 and that governmental entities are liable under the Sherman
5 Act for damages.

6 We are not here to cause a concern or discuss legal
7 issues. Rather, we are here to explain the problems as
8 we see them and invite your help in working with us to
9 eliminate the tremendous turmoil and expenses that would
10 go into litigating either one of these legal issues, the
11 inverse condemnation or the anti-trust issue.

12 Finally, one major response would be tremendously
13 helpful to us. I can tell you that in privately held meet-
14 ings every one of our members support and are enthusiastic
15 about doing some clean-up work for California waters. We
16 support the legislation. We support your good-faith effort
17 and your intent to work within that legislation.

18 What we are concerned about is that the economic
19 thrust and the legal unanswered questions involved in the
20 regulations will impose such a burden on us that we will
21 pass out of business.

22 One helpful response from you would be the enact-
23 ment of the small business regulations which we summarized
24 on page 65 of our outline to allow us to proceed with per-
25 spective help in clean up and particularly not to impose
26 a burden for past historic unauthorized releases that have

1 occurred over the last 70 or 80 years, not our fault.

2 We invite you to call us. We will be more than
3 happy to meet with you, supply additional information,
4 comments, proposals. We want to work with you in avoiding
5 unnecessary litigation and in cleaning up California waters.

6 Thank you very much.

7 MS. ONORATO: Thank you, Mr. Neider.

8 Ms. Ruiz would like to ask some questions.

9 MS. RUIZ: A few questions, counsel. In line with
10 some of my background certainly in the areas of legal
11 claims that you have raised here, are you maintaining that
12 this Board may not rely on the common law dealing with
13 who is owner or operator versus an operator of land involv-
14 ing these kinds of --

15 MR. NEIDER: No, I am not suggesting you can or
16 cannot rely on anything. What I am suggesting is this:
17 That the presently proposed regulations do perhaps raise
18 a question in which there may be some merit to inverse
19 condemnation questions and/or anti-trust.

20 MS. RUIZ: Okay. And in line with your inverse
21 condemnation argument, I am most interested in discovering
22 which case you found that has the Supreme Court of Cali-
23 fornia concluding that the Coastal Commission does not
24 have such authority under an inverse condemnation.

25 MR. NEIDER: Please repeat the question.

26 MS. RUIZ: Which case specifically are you referring

1 to in reliance that the Coastal Commission does not have
2 such authority under inverse condemnation?

3 MR. NEIDER: That I would supply. We also have
4 a specific citation on page 67 referring to two U. S.
5 Supreme Court cases as recently as 1982, the other 1979,
6 and I would be happy to summarize those for you.

7 MS. RUIZ: That's really not necessary, being
8 familiar with those. Those are Supreme Court cases?

9 MR. NEIDER: That is correct.

10 MS. RUIZ: But you did make reference to the Cali-
11 fornia Supreme Court case holding similarly, which case
12 do you refer to?

13 MR. NEIDER: If I did, please let me correct that.
14 I was referring to these two U. S. Supreme Court cases.

15 MS. RUIZ: To your knowledge, there is no California
16 or Supreme Court case on this?

17 MR. NEIDER: I think there is some California law
18 in reviewing it, though I didn't cite it, which gave sup-
19 port to and was consistent with these two holdings of the
20 U. S. Supreme Court. I will be happy to go back and review
21 that and send you what I have.

22 MS. RUIZ: Well, if I may suggest, you may wish
23 to review PLF V CCC, which found to the contrary.

24 Also, isn't it true that before an inverse condem-
25 nation claim can be made out you must establish all the
26 reasonable economic use being derived by the owners of

1 the property?

2 MR. NEIDER: Which would be the exact case here.

3 MS. RUIZ: Economic use has been defined, has it
4 not, as any use up to and including holding it open at
5 a day-care center.

6 MR. NEIDER: I respect your opinion on that subject.
7 I do not hold a similar opinion.

8 MS. RUIZ: You also make reference to an anti-trust
9 claim. Are you familiar with the state action immunity?

10 MR. NEIDER: Yes, and I am also familiar with some
11 specific cases which held that the state was not immune.

12 This spring I am on the CEB, Chairman of the Moder-
13 ator, the panel which reviewed those areas. I will be
14 happy to send you that research as well, which held local
15 entities liable for anti-trust damages.

16 MS. RUIZ: I have reviewed that material and having
17 litigated in the area, I am familiar with the state action
18 immunity and I suggest to you that the Sher bill does pro-
19 vide that immunity, and this Board is only obligated to
20 go forward and implement what the Legislature has created.

21 MR. NEIDER: Again, I respect your opinion. I don't
22 necessarily hold the same views.

23 MS. ONORATO: Are there any other questions?

24 Thank you very much, Mr. Neider.

25 MR. NEIDER: Thank you.

26 MS. ONORATO: I would like to call Dr. J. W. Colin

1 from the Avanti Manufacturing Company, Incorporated, in Los
2 Angeles. Good morning, Dr. Colin.

3 DR. COLIN: Good morning, ladies and gentlemen.

4 I am an independent marketer of petroleum products in
5 the Los Angeles basin and my background is in economics
6 and finance and I am also a registered professional engi-
7 neer in the State of Texas.

8 I operate ten gas stations and twelve car washes
9 in the Los Angeles area, and I would probably be typical
10 of a small chain operator anywhere in the state, and coming
11 from what is known as the profit sector of the market,
12 I have no interest in spilling products into the ground
13 that cost upwards of a dollar a gallon is an action unpro-
14 ductive and unprofitable, and certainly unnecessary.

15 The independent sector of the market in California
16 delivers about 35 percent of the product directly through
17 independent stations or through independently owned or
18 leased stations delivering major products.

19 We are perhaps the most efficient and cost-effec-
20 tive deliverer of products to consumers. I will suggest
21 that one only look at the street sign postings of such
22 costs as Wickland, Regal, World, Thrift, USA, Beacon Kwik
23 and Winall, or ourselves, to see who represents the lowest
24 price delivered to the public on the street.

25 And also, you can see from our major brand outlets
26 that we also represent the low segment of the market, and

1 I would suggest that looking at surveys and other items
2 that we represent anywhere from one to seven cents below
3 the major oil company postings.

4 I would suggest that if this independent segment
5 of the market is eliminated, impaired or destroyed, you
6 would see a far' different bottom to the market as there
7 would be no incentive to combat the low prices that we
8 deliver as there would be no one to offer them.

9 Since the consumer in California uses something
10 like 900 million gallons of a gasoline a month, every one
11 cent at the retail level represents \$9 million a month
12 to consumers, and certainly no one here believes that the
13 costs of levels that we are talking about incurring here
14 are not going to be passed on to the consumer. There's
15 no question that they will be.

16 And I would suggest that five cents a gallon in-
17 crease at the pump level is entirely possible if we are
18 eliminated, and this represents maybe \$45 million a month
19 to the consumer at his level.

20 I would suggest the public would certainly be
21 alarmed if they were aware of this and would want to look
22 at all alternative means of financing or doing these opera-
23 tions.

24 With this as a background, I would like to discuss
25 the financial impact of the implementation of the proposed
26 regulations on small independent marketers such as myself.

1 While I am probably representative of these firms,
2 we have only been in business one generation. You heard
3 a gentlemen earlier who has been around for two or three
4 generations, so we are hardly fly-by-night-type operators.
5 We have been in the state ourselves forty some odd years.

6 As I have spoken with some major company engineers
7 and some other experts, and I with my ten stations are
8 looking in the area of a million dollars to clean up the
9 historic, any possible historic, and also, to put in some
10 of the monitoring equipment.

11 A million dollars may not sound like much but it
12 represents over 30 percent of our net worth, and an interest
13 level cost of borrowing that will exceed our gross profits
14 before income taxes in the last three years. We figure
15 this magnitude will so upset our financial ratio that we
16 base our D & B ratios on and obtain letters of credit,
17 we may or may not able to facilitate product purchases
18 from our suppliers that we have to put up letters of credit
19 with.

20 We are a soundly managed, conservatively structured
21 operation who literally has no long-term debt and almost
22 no current debt other than our payables, and I would hate
23 to see what the impact in a financial sense of the more
24 traditionally financed firm would be. I would suggest many
25 people who have been in the market and are currently finan-
26 cially viable will be rendered financially inept. They

1 won't be able to borrow money in the financial market,
2 be blocked in the credit market.

3 Now you will hear probably today from primarily
4 the independent segment of the market, and I think that
5 this goes on just beyond what you will see here, that what
6 you are talking about is legislating out a complete segment
7 of the market.

8 And the major companies typically expect to see
9 or expend hundreds of millions of dollars in a year for
10 capital improvements. For example, in 1983, Arco, Shell
11 and Chevron each spent over a hundred million dollars in
12 the California market to improve retail marketing or re-
13 fining operations. Exxon nationwide has spent over one
14 hundred million dollars on tank renovations. These figures
15 exceed my own net worth by 75 to 100 times, and I would
16 suggest that my estimates are that the majors will be spend-
17 ing in the area of eight hundred million dollars to comply
18 with the historic end and they have an opportunity to re-
19 cover this money by raises at the wholesale level, and
20 I have an illustration that I believe that one cent a gal-
21 long raise at the wholesale level will return their money
22 in eight years; three cents' increase will return their
23 money in 2.6 years; and a four-cent-a-gallon increase at
24 the wholesale level could receive their money in two years

25 Now at the same time, I cannot return to me in
26 an economic sense the money I am going to invest in this

1 type of equipment and the reason I can't is I am not a
2 refiner. I am a purchaser of products as are most inde-
3 pendent operators, so since we don't have a refinery and
4 we must buy at the wholesale level, and the wholesale price
5 increases do not yield me any economic return, I only make
6 an economic return when I can increase my margin between
7 the wholesale buying price and the retail selling price.

8 And I want to steal the potentially obvious ques-
9 tion, why don't I raise my prices? Historically, at least
10 in the Los Angeles market, when a discount marketer will
11 raise his price by one cent, he will lose roughly ten to
12 fifteen percent of his through-put volume, and you will
13 find if you wanted to follow a policy like that of being
14 non-competitive, you will certainly strangle yourself.

15 I want to leave why the independents will go out
16 of business potentially such as myself and suggest some
17 ways in which we can be insulated from the financial shock
18 of particularly the historic applications.

19 I would suggest that to determine where the under-
20 ground aquifers are in this state is the place to begin,
21 I believe, was suggested earlier, and then to look at the
22 facilities that are near these underground aquifers, deter-
23 mine which, if any, of the facilities are impinging on
24 these and go after these first, and I would suggest that
25 if I happen to be one of the people in one of these areas,
26 I would certainly have to go after the first.

1 MS. ONORATO: Pardon me for interrupting, but I
2 would like to make clear something I earlier said. This
3 would have been appropriate testimony when the law was
4 being drafted, but this is not applicable. The Board has
5 a directive from the Legislature as to what we have to
6 do, and underground tanks will be registered and they will
7 be monitored and regulated, so that those points are moot
8 at this point in time.

9 In the interest of time I would rather you would
10 delete that portion of your comments because it isn't appli-
11 cable. We have a law and we are going to obey that law
12 and enforce it.

13 Pardon me.

14 DR. COLIN: Maybe I wasn't clear. I didn't say
15 we shouldn't monitor them. I am talking about the historic
16 clean-up section, whether or not we have to clean up every-
17 thing at once.

18 MS. ONORATO: We are on a time frame.

19 DR. COLIN: Okay. Next I would suggest that the
20 real estate market will need time to look at the deflation-
21 ary impact on some of the values of the properties. I would
22 suggest property tax relief for the owners is something
23 that may be considered in terms of the property values
24 being reduced.

25 I would also like to point out that just because
26 we are going to put \$100,000 into a site to fix it for

1 historic purposes, that does not represent a capital im-
2 provement and all it is doing is returning the net valuation
3 of the property back to possibly the historic levels.

4 So I would hope we would not have to pay in a prop-
5 erty tax sense for the \$100,000 improvement which is doing
6 nothing more than restoring our property to its former
7 value.

8 In conclusion, I would like to talk about things
9 that I find a little bit curious. With the 200,000 under-
10 ground tanks that are registered in the state, if a large
11 percentage of them have to be dug up or moved, the result-
12 ant pile of earth is going to be dramatic in its size. And
13 I don't know where one is going to put it all.

14 I also wonder if it is so toxic or contaminated
15 that it wouldn't be better left in the underground sense
16 if it is not near an aquifer, whether it is in the public's
17 best interest to dig the stuff up and move it around
18 throughout the state.

19 Then I would like to conclude with the following:
20 Every time Caltrans buys 9,000 gallons of diesel fuel and
21 sprays it on weeds along the freeway in Santa Barbara County
22 or a farmer buys 9,000 gallons of weed oil, which is a
23 petroleum based derivative, or a county or state agency
24 spreads 9,000 gallons of oil on a road, that each of these
25 actions is putting more petroleum products onto the ground
26 and in the immediate subsurface than I have in delivering

1 13 million gallons of product to the public during the
2 year.

3 So the thoughts I have expressed to you here during
4 this presentation are, I think that there are some practi-
5 cal ways we can attack the problem being presented here
6 and it is necessary for industry and the government to
7 work together to obtain a realistic and practical solution
8 to the problems.

9 Thank you.

10 MS. ONORATO: Are there any questions of Dr. Colin?

11 MR. WILLIS: Just one.

12 MS. ONORATO: Yes, Mr. Willis.

13 MR. WILLIS: Basically, do you agree with the
14 comments and testimony that was made earlier this morning
15 by the Independent Oil Marketers Association?

16 DR. COLIN: There were three people making pres-
17 entations. I don't deliver to commercial and industrial
18 accounts, but I would say that fundamentally they were
19 coming from the same sectors of the market, although I
20 am here speaking for my own firm.

21 MR. WILLIS: Okay.

22 DR. COLIN: I don't want to comment on the engi-
23 neering aspects. My engineering is in mechanical and not
24 geological.

25 MR. WILLIS: Thank you.

26 MS. ONORATO: Any other questions?

1 Thank you very much, Dr. Colin.

2 Mr. Kip Lipper from Assemblyman Sher's office
3 is here to deliver a statement for the record. Assemblyman
4 Sher was unable to appear today but is following the pro-
5 cedures with interest.

6 Good morning, Mr. Lipper.

7 MR. LIPPER: Good morning, Ms. Onorato and good
8 morning to the Board.

9 I want to thank you for allowing me to speak this
10 morning on behalf of Assemblyman Sher, who could not be
11 here this morning but who, obviously, is the author of
12 AB 1362, the underground storage tank regulation law, and
13 is interested in the work of the Board and is very inter-
14 ested in seeing that the bill is implemented properly and
15 effectively, and I will read his statement. It is in the
16 first person and, obviously, I am speaking for him so "I"
17 that is referred to is Assemblyman Sher.

18 I am pleased to present testimony before
19 the State Water Resources Control Board
20 today on its proposed regulations imple-
21 menting AB 1362 which I authored during
22 the 1983 legislative session.

23 As originally conceived, AB 1362 estab-
24 lished minimum statewide standards for
25 containment and monitoring of hazardous
26 substances stored in underground tanks.

1 Local agencies were given the authority to
2 implement the tank regulatory program.
3 They were also given maximum flexibility
4 in determining the stringency with which
5 containment and monitoring standards
6 were met so long as at a minimum they
7 met those standards established under
8 the bill.

9 As Chairperson Onorato is aware, I strongly
10 resisted giving the State Water Resources
11 Control Board a regulatory role under
12 this bill. It was my belief that the
13 local agencies implementing the program
14 had enough expertise to administer and
15 enforce the provisions of the law without
16 additional guidance from state government.
17 The example we have seen in Santa Clara
18 County and other cities and counties
19 throughout the state which had adopted
20 their own local ordinances governing
21 underground storage of hazardous materials
22 would seem to bear this out. However,
23 the Board succeeded in convincing the
24 Legislature that its involvement was
25 necessary in order for AB 1362 to be
26 implemented properly.

1 I want to commend the Board and the Board
2 staff in particular for doing a creditable
3 job of adopting these regulations. How-
4 ever, in several critical areas the draft
5 regulations do not fully embody the intent
6 of the law.

7 I would like to comment upon each of
8 these areas and ask that the Board give
9 serious consideration to revising those
10 sections. The areas are as follows:

11 1. Definition of "substantially beneath
12 the surface of the ground."

13 This is referred to in Section 2620 of
14 the regulations. The draft regulations
15 define substantially beneath the surface
16 of the ground to mean at least 50 percent
17 of the surface area of the tank that
18 can be in contact with storage material
19 is below the ground surface.

20 In drafting AB 1362, it was recognized
21 that tanks resting only partially below
22 the surface of the ground were equally
23 capable of leaking hazardous substances
24 into the ground as those tanks which
25 were buried completely.

26 Since they are quite capable of negatively

1 impacting groundwater, there would seem to
2 be little question that even minimally
3 buried tanks should be covered under
4 the law. I would ask the Board to seri-
5 ously consider revising the percentage
6 figures in the definition downward to
7 a five to ten percent so that structures
8 such as those that are minimally under-
9 ground would be subject to the regulations
10 and to the law.

11 2. Containment standards for new tanks
12 storing motor vehicle fuels.

13 This is referred to in Section 2633 of
14 the regulations. In drafting Section
15 25284(a)7 of Ab 1362, it was recognized
16 that one of the types of secondary con-
17 tainment for motor vehicle fuel storage
18 which would be utilized was the polymer
19 or polyurethane liner within a tank hole.
20 Such liners would be monitored by wells
21 placed at strategic locations over the
22 tank area.

23 It is my understanding that several of
24 the major oil companies are currently
25 utilizing these systems in the state.

26 The Board should, therefore, adopt strict

1 durability and permeability standards
2 for such liners within the ambit of its
3 regulations.

4 3. Monitoring standards for new and
5 existing tanks, these are discussed in
6 Section 2634 and 2640 through 2648 of
7 the regulations.

8 The draft regulations establish a wide
9 range of monitoring requirements for
10 new and existing tanks. These require-
11 ments are for the most part expressly
12 authorized under the bill. However, the
13 regulations would seem to impose all
14 of these requirements on most tanks rather
15 than providing local agencies with the
16 flexibility to impose one or more of
17 the monitoring alternatives.

18 Since AB 1362 explicitly granted local
19 agencies these latitudes, the Board should
20 revise its regulations to permit imple-
21 menting agencies the discretion to utilize
22 one or more of the monitoring alternatives
23 outlined under the law.

24 4. Monitoring standards for motor vehi-
25 cle fuel storage tanks -- this is addressed
26 in Section 2634 of the regulations.

1 The draft regulations for monitoring
2 of motor vehicle fuel storage tanks prop-
3 erly allow for one or more systems in
4 monitoring to be required by the local
5 agency. These alternatives include daily
6 gaging, inventory reconciliation, periodic
7 testing of the tanks and other forms
8 of monitoring in the secondary contain-
9 ment.

10 I have seen several oil industry periodi-
11 cals and information pamphlets which
12 would indicate that one belief held by
13 the industry is that simple inventory
14 reconciliation and periodic testing by
15 motor vehicle fuel tank owners will meet
16 the requirements of AB 1362.

17 Nothing could be further from the truth.
18 Section 25284(a)7 was drafted to allow
19 for one or more monitoring methods to
20 be imposed by the local agencies.

21 Any change in the Board's current draft
22 regulations which limited the monitoring
23 requirements on these tanks would be
24 directly contradictory to the intent
25 of the law.

26 That concludes my statement, Madam Chairwoman.

1 MS. ONORATO: Are there any questions of Mr.
2 Lipper?

3 Yes, Mr. Willis.

4 MR. WILLIS: Mr. Lipper, in the last comment about
5 basically gas stations and inventory controls, just to
6 underline or to make sure I understand the statement, basi-
7 cally Assemblyman Sher is saying that he did not intend
8 to limit the monitoring solely to inventory controls?

9 MR. LIPPER: That's correct. I think what he
10 intended to do was, as in other sections of the law, to
11 outline several alternatives which could be either singly
12 or in conjunction with each other by the local agency,
13 but discretion ultimately ought to be left to the local
14 agency and that the Board ought not to lock in the local
15 agency's prerogative to require more than one monitoring
16 alternative if it so desired.

17 I hope that answers your question.

18 MS. ONORATO: Yes, I think so.

19 Mr. Finster, did you have a question?

20 Any other questions?

21 MS. RUIZ: Just briefly. If that's the case,
22 I guess the obvious question that comes burping to one's
23 lips is why didn't he say that?

24 MR. LIPPER: Ms. Ruiz, we had -- I'm not sure
25 if I can answer that adequately. The best thing I can
26 tell you is this was an extremely heavily negotiated bill

1 and that the section as it is now drafted, I think and
2 I believe that those who read it believe, states very
3 clearly that the monitoring requirements on motor vehicle
4 fuel storage tanks ought not to be limited simply to daily
5 gaging and inventory reconciliation.

6 As you know, we introduced another bill this year,
7 AB 3565, which was, in essence, a comprehensive clean up
8 and restatement of the existing law, and in 3565 we tried
9 to make that more explicit by specifically giving subsec-
10 tions A, B, C and D to the requirements that were available
11 to be placed on tank owners and operators by local agencies,
12 and again, I think that simply reinforced the perception
13 I believe of most who worked on this bill and of the author
14 that monitoring alternatives for motor vehicle fuel tanks
15 ought not to be limited.

16 MS. RUIZ: Was that then an acknowledgement as
17 to the ambiguity in the original bill?

18 MR. LIPPER: I think the original bill has several
19 ambiguities that needed correcting and we did that through
20 AB 3565.

21 MS. RUIZ: Thank you very much.

22 MS. ONORATO: Thank you, Mr. Lipper, very much.

23 Mr. Robert Short, Vice President of Goodrich Oil
24 Company, Turlock, California. Good morning, Mr. Short.

25 MR. SHORT: Good morning. I was a little taken
26 aback by the previous speaker's comments.

1 My name is Robert Short. I am Vice President
2 of the Goodrich Oil Company. We have been in business
3 since the early 1900's. We are distributors of motor fuels
4 in the San Joaquin Valley and Sierra Foothills.

5 Our customer base is an agriculturally based eco-
6 nomy. It includes dozens of small retail outlets for small
7 rural areas, little mom and pop operations, places that
8 usually heard about a long time ago and don't hear so much
9 about now. They are not on the main highway, they are
10 not in the city, they are out in the rural area and they
11 take care of a local clientele.

12 In most instances there is no other petroleum
13 marketer in their area.

14 We also have a base of commercial accounts, farm
15 service contractors, farm labor contractors, garbage com-
16 panies, ambulance companies, transporters of agricultural
17 commodities, manufacturers of farm equipment and machinery,
18 as well as farmers.

19 None of these are exempt from your regulations.
20 The monitoring wells, if the regulations continue as they
21 are originally written, would require removal of all of
22 those tanks, would put us out of business after having
23 been in business since the early turn of the century.

24 We have found a procedure that does work to monitor
25 leaks, find leaks in our tanks and it is, very frankly,
26 inventory control. We found that in certain situations

1 inventory control is an accurate way to find leaks. You
2 need to have a metering device calibrated by a licensed
3 repairman to measure the products that go in and that come
4 out of the tank in conjunction with an accurate sticking
5 with the stick to stick the tank and see how much product
6 is in there.

7 We have over 50 years been able to find out if
8 we are losing product or not. We have to control our spill-
9 age. We are a small outfit. We don't manufacture gasoline.
10 We purchase gasoline from the major oil companies and inde-
11 pendent refineries that sell it, and at the small margin
12 of profit left to the independent marketer today, we could
13 not possibly continue to operate if we did have large
14 spills.

15 Now I can't speak authoritatively on large-volume
16 operations. Frankly, our entire operation is less, the
17 fuel we go through, gasoline and diesel, is less in one
18 month than what one major oil company, large self-service
19 station would sell, and maybe they can't control the in-
20 ventory and keep track of their spills.

21 All of my customers' tanks move a thousand gallons
22 or less per month and they can certainly keep track of
23 how much goes in and how much goes out and whether or not
24 their tank is being filled.

25 I think it's important to stop the spill early,
26 not after it has leaked down to be picked up by a 200-foot

1 monitoring well or even a 20-foot monitoring well.

2 In speaking to a geologist about this particular
3 problem, he told me that in many situations with a 200-
4 foot well it would take thousands of gallons before the
5 monitor would kick off and notify you that you have a spill,
6 or in South San Joaquin Valley even in a 20-foot well,
7 it might take years before you detect it.

8 I think the whole purpose and the whole thrust
9 and the whole intent of what we are trying to do is not
10 spill the hazardous materials or not allow them to leak
11 out of the tanks, and I think there are other ways to do
12 it besides monitoring wells.

13 I am really concerned about putting down a lot
14 of monitoring wells. if there are 200,000 tanks underground
15 and you put in three wells per tank, that's 600,000 moni-
16 toring wells that will go down into the water table of
17 this state that aren't here now.

18 I am concerned with the amount of product that
19 could be spilled before these wells are kicked off, but
20 I am also concerned about any unnecessary well drilling
21 down to the water table that can become a conveyor to per-
22 mit contaminants to enter our clean water supply.

23 I hate to see any more wells than we really need
24 to have and I don't think this is necessary.

25 You know, back around 1900, the United States
26 Government -- and it is a matter of public record -- gave

1 a great deal of thought to closing the Bureau of U. S.
2 Patents or the Patent Office because they thought in the
3 year 1900 everything that could possibly be invented had
4 been invented. Now, would you look at everything that's
5 happened since then?

6 I have a Bachelor's and a Master's Degree in In-
7 dustrial Technology, and I am really interested in what's
8 going on in the technical field of development.

9 The regulations call for, or the proposed regula-
10 tions call for a cost variance up to \$26,000. That's a
11 deterrent to technological advances, to development of
12 better systems. There are better ways to monitor under-
13 ground contaminants.

14 You know, it's ironic to me that our country has
15 sent men millions of miles up into space, we have explored
16 outer space, we have even explored the moon, we have had
17 men walking on the moon, but there is a place one mile
18 from here that no one has ever been and that's straight
19 down. We really don't know everything there is to know
20 about what's underneath us, and I sure hate to see us punch
21 a lot of holes down there that we don't have to, and I
22 hate to see us put a lot of small communities in a situa-
23 tion where the people who do have the petroleum products
24 available for the people who live and work there who are
25 providing the agricultural products that are feeding our
26 country, cannot economically comply with the regulations.

1 We are going from no regulations to overkill.
2 We have had a situation where no one has said, you have
3 to keep track, you have to keep a book of how much gas
4 goes in, how much goes out, how much is in your tank. No
5 one has ever told these small businessmen they have to
6 do that, but then, the implementation of these regulations,
7 I feel, is a case of overkill because you are telling them
8 to put in monitoring wells and spend money they can't
9 afford. It's really a shame to put a person out of busi-
10 ness for something they might do.

11 That's kind of like the pet owner having to put
12 his dog to sleep because it might catch fleas because some-
13 body's dog in an adjoining community had fleas or had some
14 other disease.

15 I would like to talk about the products we sell.
16 As I said, we deal in motor fuels, gasoline and diesel.
17 We sell thousands of gallons of diesel to municipalities,
18 public utilities, school districts and private individuals,
19 and they spray it on the ground to kill the weeds. I don't
20 think these are products that really should be hauled to
21 a class 1 dump or class A dump, or whatever it is called
22 and have to be put into a plastic container and stored
23 forever and ever and every.

24 If it is that dirty, if the little diesel that's
25 spilled on the ground is that dirty, then it shouldn't
26 be sprayed on the ground.

1 Mosquito abatement districts are spraying it on
2 ponds and have been for a number of years, and I think
3 we need to take another look at monitoring wells. I think
4 we need to take a really good hard look at inventory control
5 in small applications where they can't afford to put in
6 the monitoring wells.

7 Otherwise, I think you are going to really destroy
8 a large section of the petroleum supply and distribution
9 network that has worked so successfully in this country
10 for so long.

11 MS. ONORATO: Thank you, Mr. Short.

12 Are there any questions?

13 MR. FINSTER: I would like to ask a question there.
14 You indicated -- first of all, I thought we were talking
15 about modern technology, about going to space, and then
16 you talked about the antiquated method of of sticking a
17 tank. It seems to me that method should be improved today
18 compared to what it was a hundred years ago.

19 What I wanted to ask you, I noticed that you feel
20 inventory control is adequate to determine whether or not
21 it leaks.

22 MR. SHORT: Yes.

23 MR. FINSTER: In your experience, what is the
24 accuracy of the inventory control? Do you have any figure
25 that shows the accuracy? There was a question raised rela-
26 tive to the accuracy.

1 MR. SHORT: Yes. In my operation, the largest
2 tank we have is 12,000 gallons. Most of our tanks are
3 smaller than 10,000. But we can find in a 30-day period
4 a loss of less than 100 gallons. It's hard to spot a 50-
5 gallon leak, but you can certainly spot a 100-gallon leak
6 and in an installation where it is closed over the weekend
7 or during the nighttime hours, if we are in doubt, it is
8 very easy to fill a tank up to the top, come back tomorrow
9 morning and see if any has gone out.

10 We don't have any 24-hour operations and a lot
11 of the operations, a lot of the places that distribute
12 our product are seasonal in that the majority of the prod-
13 ucts that they sell are when the farmers are harvesting
14 their products in that area.

15 We have a large distribution in the summertime
16 and in the fall when the tomatoes and pumpkins and corn
17 are coming out of the field. We don't really move very
18 much in the winter, in fact, practically none.

19 MR. FINSTER: During recent years, using the in-
20 ventory to determine leaks, have you been able to detect
21 any leaks at all?

22 MR. SHORT: Yes, we have. We removed the tanks
23 or repaired them or removed the plumbing or repaired the
24 plumbing that's needed.

25 MR. FINSTER: Thank you.

26 MR. SHORT: We know exactly how many gallons are

1 in each of our tanks.

2 One other thing I would like to address, and I
3 hope that is appropriate, the regulations dealing with
4 agricultural accounts, they say that tanks are exempt pro-
5 viding they are used 100 percent for agricultural use where
6 a motor vehicle is not involved.

7 I drove my first gasoline trunk for my father
8 in 1948, or my mother; my father had just passed away
9 shortly before then. I have been to thousands of farms
10 in my years in the petroleum business, and I have never
11 yet been to a farm where the farmer didn't also fuel his
12 farm vehicle that he takes to market, his pickup or his
13 flatbed truck that he hauls hay in, out of the same tanks
14 he fuels his tractors from.

15 The next one I see is going to be the first one,
16 and I think if you want to exempt agriculture, you should
17 exempt agricultural tanks and you shouldn't say a tank
18 is not exempt if the farmer uses that tank to fuel motor
19 vehicles because in reality I think they all do.

20 MS. ONORATO: Again, those comments would be better
21 directed to the author, Mr. Sher, the author of the bill,
22 because we are stuck with the wording of the bill.

23 Are there any questions of Mr. Short by the staff?

24 MR. WILLIS: Just a comment, not a question.
25 Mr. Short, speaking of legislation as the Chair was refer-
26 ring to, I noticed you were speaking to the practice of

1 using diesel oil to kill weeds or to use it for weed abate-
2 ment. I would suggest you be very careful about that.
3 You never know when another bill is going to pop up.

4 MR. SHORT: That could be, and there are probably
5 better things to be used, but right now that's what is
6 being used, and I express that not to state it shouldn't
7 be done. I don't know if it should be done. I am not
8 a chemist.

9 MR. WILLIS: I understand the purpose of your
10 comment. It's well taken.

11 MR. SHORT: But I think we need to look at how
12 dangerous some of these things are.

13 MS. ONORATO: Thank you very much, Mr. Short.

14 MR. SHORT: Thank you.

15 MS. ONORATO: Mr. Bert McCormack, President of
16 McCormix Corporation of Santa Barbara. Good morning,
17 Mr. McCormack.

18 MR. McCORMACK: Good morning, and I wish to thank
19 the Board for this opportunity to speak in front of you.
20 I am Bert McCormack, President of McCormix Corporation
21 of Santa Barbara, which is a petroleum jobbership in Santa
22 Barbara, California.

23 I am here today to represent not only my corpora-
24 tion as well as 1500 commercial, industrial and agricultural
25 accounts in the Santa Barbara area that we serve. In fact,
26 we are the only remaining bulk plant left in Santa Barbara

1 out of nine.

2 A few years ago the major oil companies decided
3 that plants of our size were not economically feasible
4 for them to operate. Since then, they only deliver in
5 our area to accounts that can take full truck and trailer
6 deliveries of 8,000 gallons or more.

7 Before I go any further, I would like to make it
8 clear and state that no one is more concerned about the
9 environment than I am and there's no one in this room that
10 wants to pollute our water.

11 I firmly believe that some kind of regulation
12 is long overdue. However, the proposed guidelines of sub-
13 chapter 16 underground tank regulations is not the way
14 to solve our problem. I feel that this is the most devas-
15 tating regulation that I have ever read. It will have
16 a domino effect not only on our petroleum industry, but
17 particularly on our jobbers, and on every man, woman and
18 child in this state.

19 First, I strongly urge the Board to set different
20 compliance or reporting requirements and timetables for
21 small businesses that are livable and attainable; and
22 secondly, exemptions for small businesses at a cost they
23 can afford.

24 I feel your proposed exemption fees from \$7,500
25 to \$26,000 is totally unreasonable for a small business.

26 Let me now give you a little scenario on how I

1 feel the domino effect will start. My bulk plant was built
2 in 1924 and was operated by a major oil company to 1971.
3 That's 47 years. In 1971, after spending 11 years with
4 a major oil company, I purchased our plant and became an
5 independent oil jobber.

6 In the 13 years I have been responsible for the
7 operation, we have taken every operating day a daily in-
8 ventory control on every underground tank. As of this
9 date, we have never had any major spills or unauthorized
10 releases. However, I cannot guarantee what has happened
11 at our plant during the 47 years that the major oil com-
12 panies were responsible for. In fact, it dates back before
13 I was born.

14 Our plant is located at the end of a street where
15 there are five other major oil bulk plants all located
16 above us. And if any of the other five bulk plants had
17 any unauthorized spills in the same 47 years of operation,
18 it is possible that hydrocarbons could be under my plant
19 today, and when monitoring wells are installed, who is
20 going to be liable for clean up?

21 According to your proposed guidelines, I am. I
22 am guilty of something I did not do, nor could I have pre-
23 vented it.

24 I have seen the clean-up costs levied on one ser-
25 vice station in Santa Barbara last month for over \$200,000,
26 just to remove dirt to a hazardous dumpsite. As of this

1 date, the station has not been opened and the final cost
2 I would hate to estimate.

3 I know my corporation cannot absorb these kinds
4 of costs even though we have pollution insurance up to
5 two million. The fine print in our insurance policy states
6 that for on-site clean up, it is only ten percent. So the
7 maximum insurance I have is \$200,000.

8 Ladies and gentlemen, if our plant clean-up costs
9 historic spills were in excess of my insurance policy,
10 I would have no other alternative other than to declare
11 corporate bankruptcy.

12 Now what happens to my 1500 agricultural, commer-
13 cial and industrial accounts? Where do they go to now
14 for their petroleum needs? The major oil companies have
15 already made it clear they do not want to service this
16 class of trade, and the majors also stated they do not
17 feel they can justify in the State of California with these
18 new regulations stations doing much less than 350,000 gal-
19 lons per month.

20 Now what happens to the farmers, the home owners,
21 who do not have an 8,000 gallon or larger tank? Even though
22 you have exempted the small agricultural tanks and fuel
23 oil tanks, they have no supplier to turn to. Their only
24 alternative would be to go to the closest service station
25 and I think from the examples we have heard, there won't
26 be stations in some towns in a rural area, with their 55-

1 gallon drums or their 5-gallon cans to get products and
2 wait in lines like we had in 1973 and 1978 when the Arab
3 embargo hit our country.

4 In essence, if your proposed guidelines are
5 adopted, you have just ruined the finest distribution sys-
6 tem in the world that has survived two world wars, Korea,
7 Viet Nam and 73 1973 embargoes.

8 For recommendations, my first one is to establish
9 how clean is clean and how dirty is dirty? There is nothing
10 in your proposed guidelines to guide us or anyone on how
11 clean we have to get our property or at what point we have
12 to clean it up. I can see overzealous governmental offi-
13 cials making businesses clean up when there is no need
14 to.

15 In my next comment I asked for geological impact
16 survey and you have thrown that out, so I will go two para-
17 graphs down.

18 This brings up another point. What about all the
19 closed service station sites that have been sold in the
20 past few years where banks, new office buildings, et cetera
21 sit today? There is the same potential historic contami-
22 nation there as you will find in an operationg station.
23 We are all guilty of hydrocarbon pollution. Anyone who
24 has pumped gasoline into their cars and especially with
25 vapor-recovery nozzles, has spilled gasoline. Over a period
26 of years all this spillage will add up to contaminated

1 soil.

2 According to your guidelines, this type of his-
3 toric spillage would not be monitored. This means that
4 your regulations are discriminatory to current petroleum
5 owners and not to other property owners who may also have
6 contaminated soil.

7 This problem is not only the owner/operator prob-
8 lem, it is everyone's problem, and everyone should share
9 in the cost of clean up and not just the current owner.
10 I do not believe you can go back to the previous owner.
11 He broke no laws and if he had an unauthorized spill, most
12 likely the statute of limitations has run out.

13 And, in closing, I would like to say Chairman
14 Khrushchev stated they would bury us capitalists. Gromyko
15 states he didn't mean that, that capitalists would bury
16 themselves, and ladies and gentlemen, your proposed guide-
17 lines on underground tanks are a typical example of our
18 own bureaucracy burying our free enterprise system. (Heavy
19 applause)

20 MS. ONORATO: I would like to correct that last
21 statement to the extent that these are proposed regulations.

22 MR. McCORMACK: I will accept that.

23 MS. ONORATO: Does anyone wish to say anything?

24 Thank you very much for bringing an effective pres-
25 entation, Mr. McCormack.

26 I would like to call Mr. Bob Shuster, President

1 of Shuster Oil, Escondido, California.

2 MR. SHUSTER: That's a tough act to follow.

3 Good morning, Ms. Onorato and thank you, Board
4 Members and staff. I am Bob Shuster, owner and operator
5 of Shuster Oil, a small jobbership located in Escondido,
6 California. We distribute petroleum products to commercial,
7 agricultural and governmental accounts.

8 I am also here representing San Diego County
9 petroleum distributors, whose membership is composed of
10 jobbers with a similar customer structure to mine. They are
11 my competitors.

12 We are not involved in the retail service station
13 business. We operate the smaller tank trucks known as
14 bob-tails or tank wagons serving business, agricultural
15 and governmental accounts that have underground storage
16 tanks located on their own properties.

17 As the proposed regulations now stand regarding
18 the drilling and installation of monitoring wells for each
19 underground tank regardless of size or through put, the
20 results would be devastating on our customers.

21 When advised of the costs and bureaucratic report-
22 ing required by the new regulations, an overwhelming number
23 of our customers indicate that they will stop using their
24 on-site tanks and look to service stations for their fuel
25 supplies. This will effectively destroy our business.

26 It is important to note that our bulk fuel

1 customers do not enjoy cut-rate prices with home delivery.
2 In fact, jobber prices range from eight to ten cents per
3 gallon more than at the average service station.

4 The reason I put that in there, I attended a hear-
5 ing in San Diego and I think Mr. Harold Singer was there.
6 He indicated it was cheaper for them to purchase it from
7 us for their own tanks. Not so. I think I pointed that
8 out to you then, too.

9 On-site tanks are important to our customers for
10 reasons that include the following: Product use security,
11 efficient use of employee time in fueling, speedy availa-
12 bility.

13 Some of my private-enterprise customers who simply
14 could not operate without on-site tanks included packing
15 companies whose trucks require 1200 gallons of diesel per
16 week, an ambulance company and numerous subcontractors
17 in the construction field.

18 As important, in the event of another petroleum
19 crunch as we had in the recent past, these affected busi-
20 nesses would no longer have an historic purchasing record
21 of petroleum products and will be faced with shutdowns,
22 or at best, slowdowns due to long lines at corner gas sta-
23 tions.

24 The whole distribution chain will be destroyed
25 if the regulations that are currently proposed are adopted.

26 The cost of monitoring wells are the same for a

1 small tank owner as they are for larger tank owners. It
2 is my understanding that the cost per well approaches and
3 may exceed \$9,000 per site.

4 Article 2611, exemption A-3, relates to under-
5 ground tanks which are located on a farm and are used only
6 to propel unlicensed vehicles used principally for agri-
7 cultural purposes. Why can't the rule include licensed
8 vehicles the farmer uses to conduct normal farm-related
9 tasks such as part repair errand, farm product delivery
10 and supply trips to town, and you already mentioned why.

11 Let's go back to the Assemblyman then. I suggest
12 that the regulation is not consistent, but evidently it
13 is, so I will strike that paragraph.

14 Another area of concern is the fee charged for
15 application for a site specific variance. The \$7,750 fee
16 puts compliance out of reach of small businesses. On top
17 of it all, there is no guarantee that the variance will
18 be granted, and usually, it's my understanding it is only
19 for a certain period of time until you can comply anyway.
20 Is that right?

21 MS. ONORATO: Not necessarily.

22 MR. SHUSTER: That's the way it was with vapor
23 recovery. You can get a variance, but boy, if you didn't
24 comply within a certain length of time, you were in trouble,
25 so you might as well try to comply ahead of time.

26 Independent oil jobbers supply 85 to 90 percent

1 of the petroleum requirements for small businesses, agri-
2 cultural and government agencies.

3 We believe that customers who purchase petroleum
4 products for their own consumption and their own under-
5 ground tanks should be exempt from the regulations as pro-
6 posed per the small business impact statement, item 4,
7 as found in the Notice of Public Hearing held today.

8 We do not feel that it is the intention of AB 1362
9 to force small businesses into such costly compliance
10 methods or to force petroleum jobbers out of business.

11 You know, these regulations, if you put them on
12 and wear them as a Halloween costume, they would scare
13 the hell out of all of us.

14 MS. ONORATO: That's a good closing line.

15 MR. SHUSTER: It's a little bit like retroactive
16 abortion, we are all dead.

17 MS. ONORATO: Are there any questions?

18 MR. WILLIS: Mr. Shuster, I want to ask you one
19 question. I understand your comments about the well boring.
20 Your early comments at the beginning of your remarks about
21 bureaucratic reporting, I wanted to understand whether
22 or not that was in reference to inventory controls.

23 MR. SHUSTER: It would be, well, not necessarily,
24 because we want inventory control, all of us do, but it's
25 the reporting we have to do to governmental agencies.

26 MR. WILLIS: Let me ask you a question. We have

1 gotten quite a bit of correspondence about these regula-
2 tions and there have been proponents who suggest heavy
3 reliance on inventory control. There have also been other
4 suggestions that inventory controls might be well and good
5 for your typical corner gas station where it is open seven
6 days a week, but that with regard to independent jobbers
7 that are taking gasoline to a contractor or, you know,
8 a particular company somewhere --

9 MR. SHUSTER: Government agencies, too.

10 MR. WILLIS: Or a governmental agency, that their
11 inventory controls would be lax, et cetera. How would
12 you respond to that?

13 MR. SHUSTER: I would respond to that by citing
14 a case we had about a month ago. We made a delivery to
15 an account. He thought he was ten gallons short. We went
16 back out and pumped out his tanks to prove he was not ten
17 gallons short on our delivery. So they are keeping pretty
18 accurate inventory especially when the product is over
19 a dollar a gallon. I think you probably would, too.

20 If somebody siphons the gas out of your car over-
21 night, you would know the next morning.

22 MR. WILLIS: Well, thanks to H.L. I could shoot
23 him.

24 MS. ONORATO: Any other questions? Staff?

25 Thank you very much.

26 MR. SHUSTER: Thank you for your time.

1 MS. ONORATO: Ladies and gentlemen, with your
2 indulgence, I would like to take a ten-minute break. I
3 intend to resume and continue to 12:30, saving us the crunch
4 at 12. I would like to take a ten-minute break. I hope
5 everyone agrees with continuing to 12:30.

6 (Recess)

7 MS. ONORATO: Please be seated. I would like
8 to call Mr. Rick Jirsa, representing Geo Sec from Norco.
9 Good morning, Mr. Jirsa.

10 MR. JIRSA: Good morning. I am a petroleum con-
11 sultant and environmental trainer for companies located
12 in Southern California. I have been 15 years in marketing,
13 retailing, construction and geotechnical business. We
14 are hazardous waste and environmental trainers.

15 I have been working for the Southland Corporation
16 for the last 15 years in the retail marketing division
17 and have just left them to go with my own company -- also
18 in the construction of service stations.

19 One of the concerns of Geo Sec and some of the
20 consultants in the Southern California have, and as environ-
21 mental trainers that we have, is what appears to be a lack
22 of understanding and a writing off of several aspects
23 of the petroleum business, one of them being the ability
24 to correctly gage and monitor a tank.

25 Now tank sticking, as we traditionally understand
26 it, which involves dropping a stick into the tank once

1 a day and taking a reading is truly not inventory control,
2 and inventory control and the aspects of inventory control,
3 declining book balance, through put to a station, tempera-
4 ture correction and security involve a great deal of fac-
5 tors. But if we cannot understand the factors that govern
6 simple inventory control in the station, I think we are
7 looking for a panacea to try to think that we are going
8 to go into a star wars technology or some other kind of
9 phrase like that, we are going to put in a sophisticated
10 monitoring system, we are going to look for electronic
11 systems to sniff the air, we are going to put in the equi-
12 valent to check the declining gallons in a tank, and yet,
13 there is still no concept, there is still no procedure
14 developed as to how we're going to regulate and handle
15 and justify and control these records.

16 The current level of reporting that I see in the
17 bill may be entirely too low in some areas and entirely
18 too high in others.

19 I have been speaking and teaching classes recently
20 to several environmental groups, fire departments, and
21 it is surprising, everyone things that we can talk about
22 inventory control now. Our seminars are two days, at a
23 very minimum eight hours, and we just start brushing the
24 top of inventory control.

25 Inventory control as looked at, as viewed by the
26 API, American Petroleum Institute, PEI, the Petroleum

1 Institute, Equivalent Institute of America, is still one
2 of the soundest levels of inventory control, but it is
3 not something that we can just walk into and thing we are
4 going to be given the answer to.

5 We also have a system, a very old and functional
6 piece of equipment built into most gasoline stations origi-
7 nally, at least put into them at one point that was called
8 a leak detector, and now we hear talks of throwing away
9 the traditional red jacket detector and replacing it with
10 electronic modules, temperature-correcting sensors and
11 everything else, and not looking into what's going to happen
12 with this equipment.

13 There's nothing wrong with the red jacket detector
14 that was originally installed five, ten, fifteen years
15 ago, a year ago, except there is no procedure to monitor
16 it. It was put in the ground and there is nothing to say
17 it has to ever be checked again by any agency except a
18 few remote fire departments throughout the state. The County
19 of Marin is one.

20 What we are looking at is we are looking at putting
21 thousands and thousands of monitoring wells. We are looking
22 at some cities requiring electronic sensing of these wells,
23 of vadose wells, and then as soon as they find out that
24 there is a recommendation maybe by the manufacturer that
25 they be calibrated every six months or every twelve months,
26 that gee, maybe they shouldn't have certified that system

1 or, gee, maybe that's not a good system.

2 Yet, if we don't understand this equipment we
3 are putting in the ground, if we think we are going to
4 install it and 20 years from now on a double-walled tank
5 it's going to go off, I think we really missed the aspect
6 of what we are trying to do here.

7 The money that we are spending today to put in
8 sophisticated electronics, double-walled tanks, we feel
9 would be better spent doing training and inspection. You
10 people are asking for a great deal of things to be put
11 into the ground or to be done, and there are no plans on
12 who is going to handle the inspection of them. Local agen-
13 cies don't have the expertise. They don't have the manpower
14 and we can certainly bury a great deal of electronic stuff
15 out there and never ever check to see if it was plugged
16 in, turned on or otherwise reported.

17 The United States Environmental Protection Agency,
18 when I met at the PEI conference in San Antonio earlier
19 this last week, is currently getting in, as you know, into
20 the tank problem.

21 One of the things that they found helpful is that
22 they have kind of gotten away from the acronym of LUST.
23 LUST kind of bothers us all, start looking at leaking under-
24 ground storage tanks. Their new acronym is maybe not much
25 better, but at least is a step there, RUST, Regulated Under-
26 ground Storage Tanks.

1 I think we need to take a step back from assuming
2 everything is leaking and at least know that it is rusting
3 and we are going to understand what's happening to them.

4 But let's not assume everything is a leaker. Let's get
5 back to good sound business practices.

6 We today in this state have created thousands
7 of unauthorized releases, well, hundreds, in that we have
8 servicemen who have had no certification, no training,
9 no inspection or no monitoring. Standard business practices
10 for them involve disconnecting lines, releasing product
11 into the ground to do what some regulatory agency asked
12 them to do, and that's determine whether or not there's
13 a leak in the system, and the leak they create is maybe
14 bigger than anything they are looking for.

15 I don't know, I have talked to several people
16 on staff in both the city and county; I haven't talked
17 to that many people on the state staff, but as the law
18 is implemented, where is the staff going to come from that's
19 going to look at the reports of inventory variation, since
20 that is still a part of it, whether it be electronic,
21 through gages or hand-sticking or anything else.

22 What is the procedure we are going to have to
23 handle if there's a 500-gallon storage. Are we going to
24 start drilling again, lab testing and sampling again? Are
25 we going to do the basic procedures, which is understand
26 how that gas goes into the ground, how it functions, what

1 are the dynamics of it?

2 Secondly, as geotechnical consultants, we have
3 some concern about the type of wells and the number of
4 wells. I don't think anybody has realized the magnitude
5 of the number of tanks that are out there. In the City
6 of Long Beach they were amazed at the number of single
7 tank installations, the number of small tanks that are
8 there. They are not gas stations, they are not the Mobile
9 Oil, Standard Oil, Chevron stations. We have literally
10 thousands and thousands of people who have single tanks.

11 Local interpretation of that law wouldn't even
12 allow them to abandon the tank or close it without doing
13 slant drilling, test well monitoring and soil sampling.
14 There's no way they can even get out from under that tank.
15 It's a white elephant, and what's scared them the most
16 is that there are no guidelines because, in essence, there
17 are only two kinds of recovery.

18 There's recovery when gasoline flows into a well
19 and sits on top of water and you pump it out. The second
20 kind of recovery is mining and in some areas of this state
21 mining is becoming very -- I don't know how to put it --
22 it's the in thing. We are mining literally thousands and
23 thousands of cubic feet of soil that's contaminated with
24 gasoline and we have no idea what we are going to do with
25 it.

26 On the way up here to Sacramento I passed hundreds

1 of trucks going out of Los Angeles to Kettleman City hauling
2 out water and gasoline. That could possibly be better
3 handled being refined or reprocessed or turned into some
4 other useful function other than hazardous waste.

5 I think the technology aspects of this, that we
6 don't understand all the technology, is best looked at
7 just in the plume from the leaking tank.

8 Like any geology, if you want to talk about con-
9 tinental drift, you can draw a line and put a thousand
10 geologists on one side and a thousand on the other side,
11 and they will probably argue about it. It's kind of the
12 same way with the inverted plume, the dispersion that you
13 get underneath the gasoline tank, and how is that going
14 to migrate, what's going to happen to it?

15 We have, you know, the regulation calling out for
16 slant drilling and drilling to 200 feet and, in essence,
17 when you go and ask has anybody modeled it, no. We went
18 to the Department of Agriculture who puts in drip systems
19 all over the state and said, gee, you have got something
20 very similar to a leaking underground storage tank in that
21 you drip things out of here slowly into the ground. What
22 happens to it? Don't know.

23 We went to University of California at Riverside,
24 the Agricultural Department and presented the same question:
25 "We don't know, good question, though." Somebody should
26 know.

1 Ask the United States Environmental Protection
2 Agency people, their technical staff, they don't know.

3 I think it shows, you know, we don't understand
4 the basics of book balancing, inventory control, and we
5 don't know how to enforce it, and we don't understand what
6 all the technology, why we want angle drilling, why we
7 want to go to 200 feet, and every case is different.

8 I have yet to see a column of sand 200 feet thick
9 that's perfectly graded in the same size and characteris-
10 tics with no bedding or anything else.

11 I and my staff are greatly concerned about these
12 things and we don't know what direction to help you with
13 other than present some of the questions. we would suggest
14 that as the Federal Environmental Protection Agency is
15 going to suggest, that we look at, first of all, some type
16 of demographic mapping and rate water in three categories
17 similar to what they are going to do, potable water, water
18 that's possibly potable in the future, and water that is
19 non-usable and give the tanks then some kind of rating
20 along with that and make that the priority, pristine water,
21 and then they are going to register their tanks and set
22 their categories based on that.

23 But then on top of that, try to at least under-
24 stand the fundamentals and work on the pristine areas,
25 get the wells in and, again, I think we would agree if
26 we try to do every station in California or every tank

1 in California, that the next five years is not too short
2 a time.

3 There needs to be some kind of grading and some
4 kind of understanding, and I would also like to stress
5 what some of the local municipalities have seen fit to
6 do, that there is some qualification with vapor recovery.
7 Towards the end of the compliance period we found household
8 plumbers plumbing vapor recovery in stations and two years
9 later we found those vapor recovery lines went two feet
10 into the sand and it was not the intent of the marketer
11 that they go two feet in the sand,

12 He paid for them to be hooked properly and back
13 into their tanks. Improper work of any kind without train-
14 ing, without some kind of certification, without some kind
15 of qualifications, is going to be, I think, very hazardous
16 to the state, but at the same point, this local control,
17 the 91 different agencies in the state that have taken
18 over local control, some out of fear of what the local
19 board is going to do, they are implementing regulations,
20 adopting regulations and making their guidelines so that
21 they will be finished before this Board can have their
22 requirements out so that they are in full compliance, and
23 I think that's the wrong attitude.

24 There's a lot of fear and a lot of fear between
25 local municipalities and the state, and there's fear be-
26 tween the state and the local people, and the marketing

1 people, and I think there's a lot of talent in this business
2 that could best be served by -- maybe it is too late, sit-
3 ting down with Mr. Sher and talk about this.

4 At PEI, which is a national program where they
5 development equipment for the Petroleum Institute, last
6 week held their convention in San Antonio, Texas. This
7 is not something that is unique to California. Other states
8 have regulations. The industry is responding. Some of
9 the proofs that they had there at the trade show were areas
10 where people were developing new equipment, new spill-
11 tainers, monitoring equipment, but to force the industry
12 to put in equipment today that is not yet developed, that
13 has never been tested, is going to just come back and haunt
14 us because half of it will probably not fulfill what was
15 promised and, again, we have the salesmen promising with
16 no proof.

17 MS. ONORATO: I would like to comment, I think
18 you are almost 15 minutes, and in the interest of other
19 people, I would like to thank you very much.

20 I would also like to ask, does anyone have any
21 questions of Mr. Jirsa? Staff?

22 Thank you very much, Mr. Jirsa.

23 Please, everyone, try to limit your comments when
24 you are representing an individual to ten minutes, and
25 also, I would like to note that when you have any kind
26 of written comments, if you wish to give them to us, we

1 will see they are included verbatim in the record. It's
2 not necessary to read them in unless you really want to.

3 I would now like to call on Mr. William Bouton,
4 President of Genelco, Incorporated, of Dallas, Texas.
5 Good morning.

6 MR. BOUTON: Good morning. I'm from East Cali-
7 fornia, Dallas, Texas, which makes me a little bit of an
8 outsider.

9 Genelco is a 13-year-old company specializing
10 in industrial controls, sensing devices and so on. We in-
11 corporate what we would like to refer to as state of the
12 practice technology, and that's kind of a state of the
13 art technology that's made affordable.

14 About two years ago we became aware of this prob-
15 lem and embarked upon a program to develop a vapor monitor-
16 ing device specifically to solve this particular problem.
17 We did that because we saw a need. Nobody asked us to.
18 We just thought it was an opportunity.

19 The results of our two years and our testing leads
20 us to believe that the technology is available today to
21 economically provide electronic monitoring devices for
22 early leak detection of underground storage tanks and their
23 piping systems because the tank is not the only thing that
24 can leak. It's also piping and this is as hard or harder
25 to detect than the tanks.

26 And we have taken the position with our device

1 that one of the weak links in any kind of monitoring, we
2 think, is the human factor. There is also risk with elec-
3 tronic devices, but we have designed this thing so it is
4 self-checking and correcting and various other things.
5 We are using existing hardware and some innovative software
6 to allow us to not only monitor the tank, but to monitor
7 itself also.

8 The regulations as we see them, we agree with most
9 everybody else, that they are quite extensive and quite
10 redundant, and we think this type of technology will allow,
11 along with inventory management, will allow the use of
12 vapor detection as complementary, and really, we think
13 the only thing that is required.

14 Vadose monitoring doesn't require you to go to
15 the water table and, therefore, these water wells that
16 everybody is very concerned about are not necessary. Vapor
17 detection, as we propose, is an aspirating system. We
18 can use very small diameter wells that are usually put
19 in the backfill of tanks, and from our testing provide
20 very reliable and very quick detection of relatively small
21 leaks.

22 And our comments address some of these things more
23 specifically. I was going to read them, but since they
24 are going into the record later, that will be taken care
25 of.

26 MS. ONORATO: Thank you very much, Mr. Bouton.

1 Does anyone wish to ask a question?

2 MS. RUIZ: I was curious, is it my understanding
3 the current state of the art is you can drill a monitoring
4 well such that it will protect intercommunication between
5 various water tables or vadose zones?

6 MR. BOUTON: I am referring to a tank where the
7 vadose zone is above the water table itself, so we wouldn't
8 actually penetrate the water table. We would be looking
9 strictly at the vadose zone above that water, the unsat-
10 urated zone.

11 MS. RUIZ: You are aware there are circumstances
12 in California where you may have various water levels and
13 various vadose zones?

14 MR. BOUTON: Absolutely. This device has also
15 provden to be very effective in detecting leaks very
16 quickly when they rest on top of the water table, so they
17 can be detected very early.

18 MS. RUIZ: What I am trying to determine is, does
19 your firm do the actual drilling? Are you familiar with
20 the state of the art in drilling these monitoring wells?

21 MR. BOUTON: We are relying on hydrogeologists,
22 et cetera, those types of firms that do have that tech-
23 nology, and working with them to establish technology pro-
24 cedures for installation of this type of system.

25 MS. RUIZ: And you yourself have no expertise
26 in the area?

1 MR. BOUTON: Myself personally; no, not really.

2 MS. RUIZ: Thank you.

3 MR. FINSTER: Do you have any public literature
4 on your equipment?

5 MR. BOUTON: Yes, we do, and that's been made
6 available to the Board. I can make more of it available.

7 MR. FINSTER: I would like to see a copy of it.

8 MR. BOUTON: We also have some test data that
9 we have collected on some inadvertent spills we have moni-
10 tored.

11 MS. ONORATO: Mr. Noteware has a question.

12 MR. NOTEWARE: I understand how your device would
13 work in the backfill of a tank in a new installation. How
14 about an existing installation? Will they detect vapor
15 in the soil, say, in a vadose zone where there could have
16 been a problem earlier?

17 MR. BOUTON: That's one of our stances is we have
18 looked at the background noise that's in existing tanks,
19 especially around the fill nozzle where there is inad-
20 vertent spills, and we can detect levels that agree with
21 core samples that have been pulled out of that same general
22 area.

23 One of the things that is not known is in the back-
24 fill we have established that -- and like most steel tanks,
25 the general backfill is a medium to a fine, or a coarse
26 to a fine sand. In a fiberglass tank it is usually fine

1 to coarse gravel, and in those types of conditions it is
2 very easy for us to detect the propagation of vapor. We
3 have a test station that is an existing station where we
4 have been able to verify some of these results.

5 MS. ONORATO: Does staff have a question?

6 I would like to ask one question. Is there a
7 price range for this monitoring? What determines the cost
8 factor here, which is a concern to everyone we have heard
9 today?

10 MR. BOUTON: The system we have, the initial sys-
11 tem we have designed and developed is for multiple tanks,
12 three to four tanks and the related piping systems, and
13 the best guess estimate we have of installed cost for that
14 is somewhere around \$6,000. The annual cost for maintain-
15 ing it is negligible because of the reliability of the
16 systems and so on.

17 It continually recalibrates itself.

18 MS. ONORATO: Thank you very much for coming to
19 inform us.

20 I now would like to call Carl Sjoberct, Chief
21 Industrial Waste Engineer, Los Angeles County.

22 MR. SJOBERCT: I represent Los Angeles County
23 engineer.

24 The County of Los Angeles, by virtue of an ordi-
25 nance adopted prior to January 1, 1984, pursuant to Section
26 2588 of the Health and Safety Code, is exempt from many

1 provisions in the proposed regulations. However, there are
2 83 cities in the County of Los Angeles, only eight of which
3 have adopted any type of ordinance prior to the first of
4 the year. Seventy-five other cities which we may either
5 have to pick up the program by virtue of being the county
6 agency or they may elect to do their own thing under the
7 proposed regulations, and we still have to interact with
8 them by virtue of the fact that the county provides fire
9 service and other contractual services with these cities.

10 This is not a new area for us. The county has
11 been studying -- the county has its materials coordinating
12 committee which has been studying this problem for over
13 two years. The Los Angeles Regional Board, through their
14 activities in the San Gabriel Valley and San Fernando
15 Valley, for known pollution problems there, has put empha-
16 sis on this study.

17 The County Board of Supervisors ordered our de-
18 partment to prepare a program and we are so doing, but
19 we are not totally disinterested in what happens with these
20 regulations. We desire uniformity, too, as much as anybody
21 else.

22 There are a number of areas in the proposed regu-
23 lations that would affect us and those are primarily what
24 we want to comment on here.

25 One is in section 2611 where it states that the
26 local agencies that have their existing regulations or

1 existing ordinances have to be in compliance with the regu-
2 lations. We don't feel that's true as far as the way the
3 law is written.

4 Section 25288 specifically states that our local
5 ordinances merely have to be in compliance with Section
6 25284 and 25284.1.

7 There are a number of other areas, and many of
8 these have been covered by other speakers and I don't want
9 to go on and get carried away on that. We have given writ-
10 ten comments to the staff here and I think it will suffice
11 for most of that.

12 There is one area, though, that we are concerned
13 about which has been presented by other people and that
14 is the concept of the deep monitoring well. As a local
15 agency, we are a large agency. The City of Los Angeles,
16 which also has a program, is another large agency, but
17 even with our size and the fact that we will probably have
18 to regulate somewhere in the order of a fifth of the tanks
19 in the state, we don't feel that we are the ones that should
20 be undertaking trying to make sense out of a basin-wide
21 or aquifer-wide groundwater contamination problem.

22 This is the function of the State Board and the
23 Regional Board, and the fact that this data is being col-
24 lected by people we have under permit is not something
25 that we will really be able to address. Actually, this
26 information as it now stands is required to be submitted

1 to the local agency. The only way that the local agency
2 is going to even realize something has been found by the
3 owner of the tank is if he reports it as he is supposed
4 to, or as the inspector that makes the triennial inspection
5 and goes through records and discovers things that are
6 there.

7 The deep groundwater monitoring or assurance
8 groundwater monitoring program is going to turn up lots
9 of things, many of which we know are there already. This
10 is true in the San Gabriel Valley of Los Angeles County
11 and it's true in the San Fernando Valley. There are already
12 super fund projects funded by EPA to try to address these
13 problems. We don't think that having the individual tank
14 owners do this monitoring is going to add to that.

15 We feel that the real way that these regulations
16 are going to be effective is in detecting; number one,
17 what tanks out there right now are bad through a leak-de-
18 tection program and testing of the tanks, and how to keep
19 them from leaking in the future or be able to detect leaks
20 in the future, and that the local program should have the
21 emphasis on that.

22 MS. ONORATO: Thank you, Mr. Sjoberct.

23 Are there any questions? Does staff have any ques-
24 tions?

25 Thank you very much, Mr. Sjoberct, and you will
26 submit your written comments?

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MR. SJOBERCT: Yes, I have.

MS. ONORATO: The last I will call before the lunch break is Wayne Kruse, senior engineer for the Los Angeles Department of Water and Power, and then we will break for lunch. Good morning, Mr. Kruse.

MR. KRUSE: Good morning. I am Wayne Kruse, the senior waterworks engineer with the Los Angeles Department of Water and Power. I am the coordinator of the water system's underground storage tank monitoring and replacement program.

As the Board is well aware, and many people here are well aware, the City of Angeles has found traces of solvents in much of its underground basin. Los Angeles supported the legislation to require standards and leak monitoring for underground tanks and feels it is a major step forward in protecting our groundwater basin.

The groundwater basins in Southern California are very important to us because we depend a lot on imported water for our supply. As you are well aware, there are a lot of problems associated with an imported water supply. I won't go into those, but that means that our groundwater supply is much much more important than many of you realize.

The groundwater supply can be used conjunctively to increase the yields from the State Water Project. It can be used during periods of drought to help us carry over and have enough water during those periods.

1 Now, as Mr. Sjoberct mentioned, the City of Los
2 Angeles did pass an ordinance to set up its own program
3 to regulate underground tanks. This was done late in 1983.
4 The city is presently developing guidelines to implement
5 that ordinance. Those guidelines for the most part will
6 follow closely the proposed regulations before you today.

7 Now our department is moving ahead on its program.
8 We have completed an inventory of our underground tanks
9 that are in our system. We discovered we have like 400
10 tanks and all those are going to have to be addressed to
11 some extent by your proposed regulations.

12 What we plan to do is to close certain tanks, re-
13 move certain tanks, those that are not needed any longer,
14 and to monitor and replace those tanks that are needed.
15 Those tanks that are initially monitored will ultimately
16 be replaced with double-walled tanks in the future.

17 Initially we are going to address those tanks
18 that pose the greatest risk to our underground water. The
19 proposed regulations are very rigid. We feel they need
20 to be more flexible. Many different conditions exist in
21 the field. Technology is changing and we feel the regula-
22 tions need to be adaptable to those changes.

23 Specifically, we are concerned about three areas
24 that were raised. Some of these have already been mentioned,
25 but I think they are worth going into.

26 One of those areas relates to the alternatives,

1 the monitoring alternatives or alternatives that may be
2 required when visual monitoring is not possible.

3 It appears to us that AB 1362 suggests alterna-
4 tive monitoring methods, whereas the regulations appear
5 to require all the methods to be used. We feel the local
6 agencies should determine what monitoring methods are
7 necessary for each individual case.

8 Secondly, the subject of soil testing and test
9 hole drilling -- this has been commented on before, so
10 briefly, we are concerned about drilling the deep wells,
11 perhaps as deep as 200 feet, going into a potable aquifer,
12 going through confined layers and we are concerned that
13 this is going to set up a conduit to further pollute our
14 underground basins. We may lose our supplies and we don't
15 want this to happen.

16 We feel this should be addressed as to how deep
17 we drill by a registered civil engineer or registered
18 geologist.

19 The third area we are concerned about is on the
20 question of variances. The proposed regulations appear
21 to miss the intent of the legislation for site specific
22 variances. It appears that it was intended that the
23 Regional Board review and approve site specific variances
24 for alternative monitoring procedures which might be appli-
25 calbe to more than one tank as compared to a site specific
26 variance that is applicable to only one tank as the regula-
tions imply.

1 So we support the legislative intent in that re-
2 spect.

3 Thank you for listening.

4 MS. ONORATO: Thank you. We appreciate your par-
5 ticipation.

6 Any questions? Staff?

7 Mr. Willis had a question.

8 MR. WILLIS: I would just like to ask you if you
9 could elaborate for a second with regard to the second
10 issue you raised which was creating conduits to underground
11 supplies? How serious a problem do you regard that as
12 in terms of its possible implications throughout Los
13 Angeles County?

14 MR. KRUSE: It's hard to address how serious it
15 would be, but the idea here is that if you punch a well
16 or a hole through confining layers of clay, low permea-
17 bility material, and establish a gravel-type well as pro-
18 posed by the regulations, that you are going to have an
19 area of high permeability that will just allow any future
20 contamination to go directly to the groundwater itself.

21 MR. WILLIS: You are aware that various sealing
22 methods have been proposed hopefully to ensure that these
23 wells do not turn into conduits?

24 MR. KRUSE: We are aware of that. It is very
25 very difficult to achieve an effective seal. It takes very
26 knowledgeable people to accomplish that.

1 TUESDAY, OCTOBER 23, 1984

1:40 P.M.

2 ----000----

3 MS. ONORATO: Ladies and gentlemen, the fire mar-
4 shal has just informed us that all the seats on the sides
5 of the aisles are illegally placed. So, may I ask you
6 to either get another seat, if there is one available,
7 or to move the movable chairs and make some rows here.

8 If everyone would please be seated, there are
9 some seats available, so please take a seat, and again,
10 may I restate that those people in the back, on the sides,
11 we can't block the aisles. You will have to take another
12 seat. There are some seats available down here.

13 If everyone will be seated, we will resume the
14 meeting.

15 I would like to call Mr. Frank Melone and Wendell
16 Suyama, representing Southern California Edison Company.

17 Good afternoon.

18 MR. MELONE: Good afternoon. My name is Frank
19 Melone. I represent Southern California Edison Company.
20 I have submitted some written comments and these deal with
21 the regulations section by section.

22 I wanted to present some general overview comments
23 which I think I will substantially truncate because many
24 of the speakers this morning before we have covered many
25 of the points that I wanted to address. However, I would
26 like to make a couple of points.

1 Assemblyman Sher's comments that were read earlier
2 this morning thoroughly reflect some of the thoughts that
3 we had with regard to the intent of the bill. We feel
4 that the bill did intend for the State Water Resources
5 Control Board to provide monitoring alternatives and that
6 the intent was clearly to vest the discretionary power
7 to the local agencies for implementing a control program
8 for underground tanks.

9 The comments that were made by Mr. Zipp, repre-
10 senting the Independent Oil Marketers Association clearly
11 articulate some of the thoughts that we had with respect
12 to the redundancy in the monitoring requirements for exist-
13 ing underground storage tanks and the need for flexibility.

14 One point that Mr. Zipp made, that being that
15 it was going to be virtually impossible for industry in
16 California to comply with the monitoring requirements for
17 underground storage tanks is clearly our position as well.

18 In taking a look at the tanks we have in our sys-
19 tem and recognizing what's being required in the regula-
20 tions, we also feel that it would be virtually impossible
21 for us to meet those regulations.

22 We have come up with an alternative approach which
23 we would like to present to you today, to the monitoring
24 specified in the regulations, and Mr. Suyama from our staff
25 is here to present that approach to you. So I would like
26 to turn it over to him at this point.

1 MS. ONORATO: Thank you.

2 MR. SUYAMA: My name is Wendell Suyama. I am
3 an environmental engineer in the Environmental Operations
4 Division of the Southern California Edison Company.

5 And one of my major objectives is to develop a
6 compliance program for underground tanks for our company.
7 In looking at the draft regulations, we had some of the
8 same sort of comments you heard this morning -- terms such
9 as "unreasonable," with regard to the availability of man-
10 power and equipment, "inflexible," with regard to the multi-
11 ple monitoring systems that are required by the draft
12 regulations, and also, inflexibility according to the date
13 for the compliance.

14 We believe that in the approach adopted by the
15 draft regulations they are trying to attempt to cover every-
16 thing all at once and it is sort of a shocking approach
17 and that they aren't focusing on the real problems. The
18 real problems are the leaking underground tanks.

19 I think a phased approach or a focused approach
20 is more appropriate in this case, that being that you
21 identify the leaking tanks through tank testing and you
22 implement some kind of control program for those to either
23 remove them, replace them; and the non-leaking tanks, put
24 them on a longer schedule for putting in monitoring systems
25 if you plan to do that.

26 Most companies that I have talked to so far have

1 planned to phase out those tanks, to replace them with
2 double-walled containers, but the July 1 deadline doesn't
3 allow that. But I think you can get around that by this
4 phased approach where you identify all the leaking tanks
5 and the abandoned tanks, work on those first, since those
6 are the most serious problems; then, on the non-leaking
7 tanks over -- like we are suggesting -- a five-year period,
8 bring those into monitoring compliance, if that's what
9 it is going to take.

10 We suggest that the five-year period would allow
11 us to evaluate the use of these tanks. You are probably
12 going to phase out most of them, like I said, and put in
13 some alternative methods of leak detection other than what's
14 proposed in the regulations, when they are developed. But
15 the way the regulations are now, everything is July 1st
16 regardless of their leaking or not leaking, and that sort
17 of pollutes the resources that are available to handle
18 the problem.

19 MS. ONORATO: Mr. Suyama, I said it earlier and
20 I will say it again, that is the language of the bill.

21 Mr. Richard, am I correct about that? So those
22 types of remarks would have to be addressed to the author
23 of the bill asking for some change legislatively because
24 we can only react to the language of the bill.

25 MR. SUYAMA: What I am suggesting is that an in-
26 terim monitoring leak detection program for these tanks

1 that would be phased out over the five-year period.

2 What we are proposing is something like periodic
3 tank testing and maybe in combination with something like
4 inventory control so during that five-year period you do
5 have some detection-type of program in place.

6 These tanks that are not leaking that is determined
7 by our initial tank testing of all tanks immediately, and
8 then addressing the problem tanks immediately, the leaking
9 tanks and abandoned tanks, because usually those abandoned
10 tanks were abandoned because they were leaking, and I think
11 that way the ability to focus our resources is what is
12 really needed, rather than trying to do everything all
13 at once.

14 And I think you can meet the intent of that July
15 1 deadline with an interim monitoring program which consists
16 of something like tank testing, periodic tank testing.
17 So what we are really proposing is a five-year phased
18 program, a focused program, and having an interim leak
19 detection program.

20 MS. ONORATO: Thank you, Mr. Suyama.

21 Are there any questions? Does staff have any ques-
22 tions?

23 Thank you very much.

24 I would now call on Mr. Reinhard Hanselka of Ad-
25 vanced Industrial Design, Incorporated.

26 Good afternoôn.

1 MR. HANSELKA: Good afternoon. My name is Reinhard
2 Hanselka and I am a chemical engineer with Advanced Indus-
3 trial Design, Santa Cruz, California.

4 I would like to address my comments, and I will
5 be very brief, and I will set a precedent for briefness,
6 concerning vadose zone monitoring.

7 I have the distinction of being an expert, I guess,
8 by accident. Two years ago I started vadose monitoring
9 for a client of mine. In fact, the gentleman spoke a little
10 earlier and at that point I had a marginal confidence level
11 similar to what the Board has right now about the validity
12 of vadose zone monitoring.

13 Since that time, we have done some original re-
14 search and investigation and I have done a lot of literature
15 research and talked to a lot of people across the country
16 and come up with some interesting conclusions which I would
17 like to make you aware of.

18 First of all, my own confidence level has gone
19 up in order of level of magnitude.

20 There are two types of vadose monitoring; in place
21 monitoring and aspirating monitoring, and they function
22 completely differently and should be handled that way.

23 As far as aspirated monitoring, the zone of influ-
24 ence is not a function of the soil essentially, it is a
25 time parameter. As the soil becomes less and less permea-
26 ble, the zone of plume propagation becomes wider and the

1 pollutants, so to speak, do hit the aspirated zone. It's
2 just a matter of time. The time is a variable. We docu-
3 ment this. We don't know the extent of influence which
4 is interesting, but we have the real world to work with
5 and a small area. A little vadose zone aspirating unit
6 will essentially monitor the entire backfill of a good
7 constructed backfill tank area.

8 All investigations reveal, those done back east
9 also, that the vapor propagation is faster than the liquid
10 plume propagation, and that's a key point because I think
11 something that we want to avoid is contamination to the
12 aquifer, because this is difficult or impossible to clean
13 up. Soil we can deal with.

14 Also, moisture content, a lot of questions come
15 up there. All of my experimentation, again, corroborated
16 by other parties, is that moisture content tends to increase
17 the sensitivity of insoluble organics to aspirated vadose
18 zone monitoring.

19 Also, remember what aspiration is. It's an aber-
20 ration of nature, a low pressure zone in the vadose zone
21 and the driving force is again is one towards equilibrium,
22 and the volatile constituents of gasoline are drawn to
23 this aspirated low pressure area, and then concentrated
24 and sensed. It's a very very interesting way and very
25 cost effective way of doing it.

26 Also, in conclusion, and quite interestingly

1 enough, the history of a site which is a big area of con-
2 tention, an expensive area to determine is trivial vadose
3 zone monitoring.

4 In the sites we have tested, low level background
5 noise is evident and we can corroborate, and it has been
6 corroborated with core sampling and quantitative analysis
7 that the material, in fact, sensed is, indeed, that part
8 of the soil. So the history around the site is extremely
9 trivial and extremely easy.

10 Slant core drilling and those very difficult drill-
11 ing techniques, in my opinion, aren't really necessary.
12 I think that a good documented vadose zone investigation
13 would reveal just about everything in the soil.

14 The monitoring also becomes trivial in that the
15 tanks and piping become a conduit for any type of leaking
16 and propagation, again, is indeed faster in the vapor area
17 than in the liquid area documented.

18 Reliability of the devices has gone up in orders
19 of magnitude in the last several years. In fact, I have
20 seen in the last two years I have been investigating, I
21 have seen progressive reliability in various devices, and
22 as far as I am concerned, one of those important things
23 and very very low in environmental hazard is vadose zone
24 monitoring which is quick, inexpensive, and does not require
25 penetration to the aquifer. It is simply a matter of
26 penetration to the area around the tank. If the water

1 table comes up, a very very quick response time can be
2 had. If the water table goes down, you are seeing the small
3 carbon fraction off the water fraction.

4 Thank you.

5 MS. ONORATO: Thank you very much.

6 Are there any questions?

7 MS. RUIZ: You indicate that it is a very small
8 cost. What are you talking about for vadose zone monitor-
9 ing?

10 MR. REINHARD: Well, the devices I looked at --
11 well, the aspirated type is around \$3,000, \$3500 per unit.
12 The unaspirated is probably a third of that.

13 I heard the installation, which is the real im-
14 portant thing, the turnkey, as stated before by many of
15 the consultants, and I am not a geologist, indicate a five
16 to six thousand dollar range for turnkey full-service sta-
17 tion, with the aspirated vadose zone.

18 MS. RUIZ: Ongoing monitoring?

19 MR. REINHARD: Yes.

20 MR. NOTEWARE: Do these devices give you a continu-
21 ous record or do they have to be checked occasionally?

22 MR. REINHARD: Yes, that's really software.
23 Sensors now in the technology have limited use. Sensors
24 used to get a bad name because they had a very short life.
25 With some of the new devices they are only used for a very
26 few seconds during the particular time and are not exposed

1 to long levels of hydrocarbons. The contamination level,
2 instead of being a year sensor life, can be extrapolated
3 to many many tens of years, and I have seen some good re-
4 sults.

5 MS. ONORATO: Any other questions? Staff?

6 Yes, Mr. Anton.

7 MR. ANTON: As I am sure you are aware, the law
8 calls for us to set regulations for all hazardous sub-
9 stances. Yet, I have the feeling that the vadose zone
10 monitoring devices you are talking about may have their
11 application mainly with those substances that are volatile.

12 Is there any way that you could help us in recog-
13 nizing the difference in substances in a way that we could
14 easily specify what substances could be accurately detected
15 with a vadose zone monitoring device such as they are talk-
16 ing about?

17 MR. HANSELKA: Yes. As a matter of fact, the
18 mistique is essentially gone. Many of the manufacturers
19 have now isolated which range of hydrocarbon the sensors
20 are sensitive to. The sensors are sensitive to Carbon 4
21 which is the lowest constituent you ever find in gasoline,
22 but the sensitivity is also broader than C-8. You can
23 find a distribution per sensor, absolutely.

24 MR. ANTON: Do you consider that this something
25 that can be left up to the manufacturer to specify?

26 MR. HANSELKA: Yes, absolutely. The people

1 manufacturing the sensors are well aware of the range and
2 sensitivity of their devices. They should be or they
3 shouldn't be manufacturing them.

4 MS. ONORATO: Any other questions?

5 Thank you very much, Mr. Hanselka.

6 Mr. Tom Wedegaertner, Assistant Director of the
7 Cottonseed Products Association of Memphis, Tennessee.

8 Good afternoon.

9 MR. WEDEGAERTNER: Good afternoon. I am Tom Wede-
10 gaertner, with the National Cottonseed Products Associa-
11 tion, Memphis, Tennessee.

12 The National Cottonseed Products Association
13 represents cottonseed crushers in the United States. Today
14 I am speaking to you on behalf of the cottonseed crushers
15 in California.

16 The cottonseed crushers utilize hexane to extract
17 the cottonseed oil from the cottonseed kernels. The hexane
18 tanks which store the hexane were placed in the ground
19 at the extraction site using methods prescribed by the
20 American Petroleum Institute and the National Fire Protec-
21 tion Association.

22 The National Fire Protection Association Manual
23 No. 36 which governs solvent extraction plans and has de-
24 tailed specifications for the manufacture and processing
25 of solvent extraction plants clearly prohibits any kind
26 of drilling or digging or boring or trenching in the

1 extraction area. In fact, it prohibits the use of internal
2 combustion engines within a hundred feet of the extraction
3 plant, and this is where the hexane tanks are located.

4 Any regulation covering existing underground tanks
5 which were placed in the ground using the state of the
6 art technology at the time should allow for a maximum free-
7 dom of implementation. We strongly prefer performance
8 oriented standards to those which are tightly specified.

9 This proposed regulation also allows for visual
10 inspections in lieu of further monitoring.

11 We are convinced that daily inventory control which
12 we have been using for several years now is essentially
13 equivalent to visual monitoring in that the immediate leaks
14 could be detected. Thus, there would be no further moni-
15 toring necessary.

16 Daily inventory control along with tank testing
17 are realistic means of identifying the leaking tanks and
18 the other provisions of this regulation will over time
19 phase out the older tanks which are in the ground.

20 That is a summary of my written statement.

21 MS. ONORATO: Thank you very much. Are there
22 any questions?

23 Yes, Mr. Anton.

24 MR. ANTON: One question. Does your industry
25 at present at least accurately measure the amount of hexane
26 that you are withdrawing from the tank or replacing in

1 the tank if it is used in the process? In other words,
2 do you have good gaging right now as far as measurement
3 of the flow into and out of the tank?
4

5 MR. WEDEGAERTNER: It's a continuous process and,
6 no, there is no meter on the flow out of the tank. But
7 by looking at the records historically and knowing what
8 they normally use from day to day, they tell me that they
9 could detect losses of one-half percent of the tank volume
10 per day.

11 MR. ANTON: Thank you.

12 MS. ONORATO: Thank you very much.

13 Now I would like to call Mr. Robert French. Is
14 Mr. French here.

15 I will call someone else and call him next then.

16 Mr. Bob Johnson, Regional Gas Manager for the
17 Southland Corporation of Anaheim, California. Good after-
18 noon, Mr. Johnson.

19 MR. JOHNSON: Good afternoon. Today is the day
20 that my sense of humor kind of drops off a little bit.

21 Southland Corporation appreciates the opportunity
22 to present our comments to the State Water Board regarding
23 the proposed regulations. We support the Board's attempt
24 to fashion a responsible program and we offer our assistance
25 in developing a practical program which protects the public
26 health and environment.

We have several points which we would like to talk

1 about; number one being an alternative inventory control
2 and leak detection technology. We feel that the Board
3 has relied upon existing inventory control and leak detec-
4 tion technology to fashion the proposed requirements. How-
5 ever, we feel that there are adequate inventory control
6 systems of an electronic nature that are far superior to
7 the types that were used in the proposed regulations.

8 We feel that there are systems that will measure
9 to the accuracy of plus or minus a tenth of an inch, and
10 these types of systems will actually detect leaks sooner
11 than vadose monitoring.

12 I will submit an example and that is if you have
13 a 10,000-gallon storage tank which is approximately 32
14 feet long by 8-foot wide, and you had a vadose monitoring
15 well directly located underneath the centerline of the
16 tank attached to a pan that was 8 foot by 32 feet by 1/2
17 inch high, that pan would contain 75 gallons of gasoline
18 before you would detect a half inch of hydrocarbons which
19 is currently allowable in the regulations.

20 I submit that with adequate inventory control
21 with an electronic system that measures to plus or minus
22 a tenth of an inch, that you can adequately detect leaks
23 far less than that, and I have presented information on
24 computer scenarios that we have run that will show a leak
25 exists -- with .05 gallons per hour we could detect with
26 about 25 gallons before it's leaked into the environment.

1 I believe that we need to look at the cost-benefits
2 of installing whatever type of system that we do to protect
3 the environment. We have estimated that it's going to
4 cost somewhere in the neighborhood of \$15,000 per station
5 in the State of California. Per the Board's fiscal impact
6 study, that's close to \$2 billion. I submit that if you
7 apply some math to that, that even if 30 percent of the
8 tanks are leaking, 70 percent of the money expended is
9 a waste, and that 70 percent can much better be invested
10 in other capital improvements, and I think that with the
11 electronic inventory control systems, we can reduce the
12 overall fiscal impact to somewhere in the neighborhood
13 of 30 percent of that \$2 billion.

14 And I think the opportunity costs that are pre-
15 sented to an oil company were a private investor to spend
16 that \$1.2 billion in beautifying the cities and doing other
17 worthwhile projects is much better spent than spending
18 it on monitoring wells that we hope are going to do ab-
19 solutely nothing.

20 So, I think when you are looking at negative spend-
21 ing dollar versus a positive spending dollar, you have
22 gained a lot more by investing in a more accurate inventory
23 control system, and I think that they will detect leaks
24 much sooner than either vadose or groundwater monitoring
25 on existing locations.

26 In addition to that, I would like to address the

1 construction standards for new motor vehicle field tanks.
2 It seems that the regulations that are proposed by the
3 Board are inconsistent with both the Los Angeles and the
4 spirit of Section 25284(a)7 of Chapter 67 of the Health
5 and Safety Code.

6 By means of the logic that was used to require
7 field tanks to be monitored on a daily basis, it references
8 the Health and Safety Code paragraph 87 which allows for
9 fuel tanks to be monitored but does not call for double
10 containment. It says they are excluded from 1 through
11 7 above, which is the particular paragraphs which cover
12 double containment.

13 However, in the regulations, the double contain-
14 ment standard is included, and rather than allowing the
15 fuel tanks to be applied less stringent, the regulations
16 in Section 2633 and 2634 impose more rigorous requirements
17 on fuel tanks than it does on other types of contaminants,
18 and we urge the Board to restore the equity which 1362
19 had intended for fuel tanks.

20 In addition, the regulations in several areas
21 refer to definitions of underground tanks and tanking sys-
22 tems and also piping. The definition of piping is at this
23 point unclear because it doesn't distinguish between un-
24 pressurized piping and pressurized piping, vent piping
25 and normally non-food-carrying piping, and we feel that
26 in this case there should be some redefinition of which

1 type of piping needs to be contained, if any.

2 Under Section 2634 and 2643, the Board has pro-
3 posed monitoring standards for fuel tanks in daily inventory
4 variation and reconciliation. The current proposal is
5 to report inventory variations on a daily basis in excess
6 of 50 gallons.

7 Included in my written comments is computer-gen-
8 erated scenarios on tank stickings and no leak and leak
9 situations where you can have accurate inventory control
10 from one inch plus or minus accuracy to a tenth of an inch.

11 I submit that with one-inch accuracy, that in
12 a period of 30 days your plus or minus variation can be
13 in excess of 130 gallons.

14 On a daily basis in the scenario that we ran in
15 a non-leak situation, 16 out of the 30 days were in excess
16 of 50 gallons per day. So, I think that the information
17 that we have provided should be substantial enough to change
18 these regulations.

19 In order to cut the time down I will thank you
20 for allowing me to comment on the regulations.

21 MS. ONORATO: Are there any questions? Staff?

22 Thank you very much, Mr. Johnson.

23 Now Mr. Robert French, Executive Vice President
24 of California Target, from Downey, California.

25 MR. FRENCH: Good afternoon. I am Bob French
26 with California Target, and in an effort to speed the

1 hearing, the written comments that I have already submitted
2 I will not reiterate.

3 MS. ONORATO: We appreciate that, Mr. French.

4 MR. FRENCH: Great. We have approximately 150
5 stations with approximately 800 employees, and the regula-
6 tions as they currently exist would effectively put us
7 out of business, and I think you have heard enough from
8 everyone else in the business how it would do it.

9 The part I would like to spend a little bit of
10 time on is the system to be used for determining tank
11 leaks. We have been in this for a number of years. It
12 involves current technology and purely a product reconcilia-
13 tion, sticking tanks on a daily basis, having persons
14 assigned to do nothing but reconcile the overages and
15 shortages that occur in operating a service station.

16 I think requirements that require a lot of bells
17 and whistles and new technology really aren't going to
18 do anything except spend a lot of money. The real work
19 is in analyzing the data you get, such as did the truck-
20 driver cross dump? Was there a theft of product? Is there
21 a media that has gone bad and giving away free gasoline?

22 These situations are much more prevalent in the
23 service station business than a leaking tank.

24 In the past four years we have had one tank out
25 of five hundred go bad and that one tank actually didn't
26 leak. It was close to the ocean and water came in.

1 So these rules and regulations that we have are
2 really superfluous and nothing but a waste of time.

3 We would be happy to show anyone from the Board
4 at any time how our system works and the fact it is effec-
5 tive and can be demonstrated to be so. All that you have
6 to do is have the desire to do it.

7 And I think that's the only real problem there
8 is in the whole area of reconciling profit.

9 As far as the tanks themselves, we support an
10 annual tank testing and we believe that there are some
11 number of good systems out there for tank testing, and
12 we think that the Arco system is probably one of the better
13 ones wherein you have a chart provided by the tank tester
14 which is pretty indicative of the fact there would be no
15 leaks in the tank. On an annual basis, this should be
16 more than sufficient to handle the tanks because most leaks
17 are very slow in developing. You would never come up to
18 a situation, at least I have never in 14 years, come up
19 to the situation where a tank failed and you lost a thou-
20 sand gallons in one day. They are always very very minimum,
21 and we believe that in our company these methods would
22 be more than sufficient to handle any tank-related problem.

23 I believe that's all I have.

24 MS. ONORATO: Any questions of Mr. French? Mr.
25 Willis.

26 MR. WILLIS: Mr. French, you indicated that you

1 supported annual tank testing as one option, and in addi-
2 tion, were you speaking to daily tank controls?

3 MR. FRENCH: Yes, we do daily inventory controls.

4 MR. WILLIS: Is there any prescribed method of
5 doing that that you would recommend, or just having a log
6 or journal available for local government agencies to in-
7 spect?

8 MR. FRENCH: Well, if you do a log or journal
9 correctly, that should be sufficient. There are a number
10 of factors to consider in creating your log or journal such
11 as temperature correction, theft of product, which is a
12 big problem in the area that we do business in. The people
13 who are truckdrivers have been known to steal product from
14 us.

15 The station people, one of the methods for steal-
16 ing is disconnect a meter which, of course, would affect
17 your product inventory on a daily basis. Another is cross
18 dumping where one product is dumped into a tank -- things
19 are reversed, which would, of course, throw off your in-
20 ventory.

21 There are sheets which we provide which are really
22 rather detailed to analyze exactly what the problems are.
23 A simple reconciliation such as a balance for inventory
24 would probably not be too terrible helpful except for the
25 small operator. For an operator like ours, we go into
26 quite a bit of detail and we could provide any material

1 anyone wanted to see.

2 MR. WILLIS: Thank you very much.

3 MS. ONORATO: Thank you very much, Mr. French.

4 I would like to call Mr. Noel Fletcher, Manager
5 of Legislative Issues for Atlantic Richfield. Good after-
6 noon, Mr. Fletcher.

7 MR. FLETCHER: Good afternoon. I am Noel Fletcher
8 from Atlantic Richfield, and you have already given my
9 title; so I don't have to go into that.

10 I appreciate the time that the Board has given
11 us both prior to day and today for listening to us. We
12 have the same general concerns that you do, to protect
13 the groundwaters of the state and to do it in a cost effec-
14 tive way.

15 We have anticipated as we have discussed with you
16 some of these requirements and have tested all of our tanks
17 and about a third of them twice, and we have found a leak
18 rate of about one percent. That is nationwide, not just
19 here in California.

20 We do have some specific concerns about overkill
21 as we have discussed with several of you which is very
22 very obvious in the draft regulations, and a great deal
23 of redundancy, and I won't be redundant in repeating what
24 has been said much better before me.

25 We have done an inventory of our underground tanks
26 and 98 percent are in service stations and total corporation,

1 although we are large producers of chemicals. These are
2 non-toxic materials. They are not bad actors in the sense
3 that certain materials and components are.

4 We think that the exemption or options which were
5 provided for in the legislation should be incorporated
6 in full in the regulations, including the fact that they
7 are alternatives, not additive methods of monitoring.

8 The bill is written in the present and future
9 tenses and the regulations as drafted keep delving into
10 history. We would like to have some consideration given
11 as to consistency.

12 We also have about 300 independent service sta-
13 tion dealers who fly the Arco flag in California who will
14 be responsible for their own compliance with whatever form
15 the regulations finally take. We would not like to see
16 these people driven out of business.

17 We have about 300 also who are supplied by our
18 branded distributors and they, too, will probably be re-
19 sponsible for their own compliance cost, and we don't want
20 to see them driven out of business.

21 If we were very parochial about this, we would
22 sell the same number of gallons whether they are sold
23 through our lesser dealer stations, contract stations or
24 distributor stations. We would just like to have the right
25 to have the balance of all three types of customers survive
26 the regulations.

1 Thank you very much.

2 MS. ONORATO: Thank you very much, Mr. Fletcher.

3 Were there any questions? Yes.

4 MS. RUIZ: I had one question. Mr. Fletcher,
5 earlier Assemblyman Sher's office requested that the defini-
6 tion allow for tanks that may only be five percent below
7 surface or below grade, if I understood the comment cor-
8 rectly, and I am curious as to the fineries and the like,
9 say, with even those floating and root tanks and fixed
10 root tanks that you may have, would those then be included?

11 MR. FLETCHER: Basically we consider those above-
12 ground tanks. They are sitting on a pad on the top of
13 the ground. They have a containment dike around them.
14 Normally those dikes are raised above ground level and
15 are sufficient to hold all the capacity of the tank in
16 a disaster situation.

17 MS. RUIZ: So they do permit for visual inspec-
18 tion?

19 MR. FLETCHER: Oh, yes. Everything except the
20 bottom, and we can lift them up and look at the bottom.

21 MS. RUIZ: Someday we may request it.

22 MR. FLETCHER: It may be immaterial. The amendment
23 to RCRA which was passed into law deals with ten percent
24 or more.

25 MS. RUIZ: Thank you.

26 MS. ONORATO: Any other questions?

1 Thank you, Mr. Fletcher, very much.

2 I would now like to call Mr. K. B. Smith and George
3 Soares representing the California Cotton Ginners Associa-
4 tion. Good afternoon.

5 MR. SOARES: Member of the Board, I appreciate
6 the opportunity to speak on behalf of the California Cotton
7 Ginners Association. My name is George Soares and I am
8 legal counsel for that association.

9 I wanted to briefly speak to an area of the regu-
10 lations that I believe has not been touched upon yet today,
11 if that's possible, and namely, I want to speak to the
12 area of the exemptions that are provided both in the law
13 and in the regulations.

14 Just by way of explanation, the California Cotton
15 Ginners Association consists of 220 cotton gins throughout
16 the state that gin 98 percent of all the cotton grown
17 in this state.

18 In our conversations with your staff to date we
19 have been attempting to better understand to what extent
20 the exemptions contained in the law and your regulations
21 will include such activities as cotton ginning, and it
22 is our impression from discussions with staff that the
23 exemption that deals with on-farm use or on-farm under-
24 ground storage tanks does not apply to the cotton ginning
25 operation, and so I wanted to spend a few minutes with
26 you, if I could, speaking to that issue.

1 Before you is a prepared statement along with a
2 letter from Assemblyman Norman Waters, Chairman of the
3 Assembly Agricultural Committee, that I believe clearly
4 outlines his understanding of the bill as it passed the
5 Assembly floor regarding this agricultural exemption.

6 You will note at your leisure in the letter that
7 Assemblyman Waters understood the exemption to apply to
8 all of agricultural production, including cotton ginning
9 activities, and yet again, we are under the impression
10 that that understanding is now not carried forward in your
11 proposed regulations.

12 We are very concerned about that because we think
13 it is inconsistent with the underlying intent behind the
14 bill, and as we understand the intent, the author spoke
15 to the issue of wanting to monitor underground storage
16 tanks in populated areas.

17 As I recall, he had a particular problem in his
18 assembly district where there was some contamination prob-
19 lem, and from that problem we grew to a piece of legisla-
20 tion that covers all of the State of California save for
21 certain exemptions.

22 And that's why on the Assembly floor, there was
23 a discussion as to exactly what does this exemption mean.
24 Well, Assemblyman Waters has explained in his opinion that
25 that exemption means, we concur in that opinion and we
26 think that there's more than just conversation on the

1 Assembly floor that this Board should consider in evaluating
2 how broadly or how narrowly to judge that exemption.

3 In that regard, I would like to, in my testimony,
4 direct your attention to a discussion I have there and
5 I would be happy to provide the Board with additional infor-
6 mation later on regarding some equal protection doctrines
7 under the law.

8 And basically, our position is that when you create
9 exemptions in law, I understand this Board did not create
10 the exemptions, but nonetheless, I believe this Board has
11 the responsibility to interpret the exemptions and provide
12 that interpretation regulatorywise, send it to the Office
13 of Administrative Law for their review.

14 Well, the Office of Administrative Law, as I un-
15 derstand, must judge your regulations on several standards,
16 including the clarity of your regulations, the consistency
17 of your regulations with statutory authority themselves.

18 So, I suppose it's a fine line as to what issues
19 the Board deals with as it relates to legislative intent,
20 equal protection issues, but nonetheless the regulations
21 that you send forward are going to be dealt with on those
22 standards and, therefore, I appreciate the opportunity
23 to briefly touch upon them.

24 We, for example, in our research have discovered
25 a case that I mention on page 5 of my testimony, the Gassner
26 versus Miner case of 1975, Appellate Court decision. That

1 essentially dealt with the question of standard regulations
2 that affect motels, but exempt hotels from the same stand-
3 ards. That case finally came down to conclude that by
4 such an arbitrary distinction on standards, the motel people
5 were denied equal protection under the law.

6 Our point to you is that when you create an exemp-
7 tion or if your interpretation of on farm means just the
8 farmer, does not mean others who are connected to the pro-
9 duction process, then I believe you may creating such an
10 arbitrary distinction that could create problems on the
11 road.

12 Again, I invite your staff to review those cases
13 and we would be happy to present even more cases that speak
14 to that particular issue.

15 We further want to cal to your attention what we
16 believe to be a standard in government as it relates to
17 a balancing test between the cost of a given regulation
18 and the public health to be addressed by that regulation.

19 In the case of the cotton ginning industry, we
20 are talking about millions and millions of dollars as we
21 can best conclude to test tanks that are, say, 500 to 1,000
22 gallons, a hundred or so tanks in the cotton gin industry,
23 by way of example, and while I talk about cotton ginning,
24 as you know, we have 250 crops in this state and we have
25 a number of unique circumstances that deal with each one,
26 and I would like to focus on this because as we do our

1 balancing test, we have to understand that we are weighing
2 what we understood to be a limited problem in the assembly-
3 man's district in the Bay area, has now grown to a billion-
4 dollar-plus project by the Board, not a project you neces-
5 sarily invited, one you inherited, but nonetheless, it's
6 grown to those proportions, not only for agriculture, de-
7 pending on your interpretations, but also, for the industrial
8 community.

9 We question very seriously whether that billion-
10 dollar price tag when measured against what we believe
11 to be the scope of the problem, warrants these regulations.

12 We, therefore, conclude without citing all the
13 numbers we have in our testimony, again, I will leave that
14 for staff to review, we conclude that, frankly, the legis-
15 lature has given you a mess to deal with, and you have
16 a very difficult task in dealing with that mess.

17 They have just developed a statute and said, here
18 it is, go out and implement it by a certain date, never
19 once checking, I imagine, with this Board to find out
20 whether any such thing was practical at all.

21 We would encourage you to look at the request
22 of Assemblyman Waters in his letter, that the Legislature
23 has a certain responsibility I would think, to provide
24 statutes to the administrative agencies that are enforceable
25 and to the extent that they are unenforceable or questiona-
26 ble, we encourage you to go back to the Legislature and

1 say, we have tried to do our job, but because of the vague-
2 ness of some of your statutes, because of the lack of bal-
3 ance between costs and the public health, we encourage
4 you to give us a better statute.

5 Short of that, we think that you run into serious
6 consistency problems, clarity problems, statutory authority
7 problems.

8 We think you also run into equal protection prob-
9 lems as it relates to the agricultura exemption.

10 Finally, notwithstanding your time times, we re-
11 quest the opportunity to be able to filed written briefs
12 and we would request a reasonable period of time in addi-
13 tion to today's meeting, of a couple of weeks so that we
14 could learn from this experience, as you people are learn-
15 ing from this experience, and be able to provide you with
16 supplemental information to assist you in your work.

17 MS. ONORATO: May I tell you there's small chance
18 of that. We are only going to take submittals until this
19 afternoon, which I think is reasonable because we are on
20 a time lag for adoption of these regulations and submittal
21 to OAL, and it wouldn't be fair to make an exemption for
22 you on any information you wish to put in. We would have
23 to extend it to everyone.

24 MS. RUIZ: Let me check with staff. Correct me
25 if I am wrong, if further substantial change is necessary
26 for these regulations, cannot we simply announce another

1 further public hearing in this matter?

2 MR. ANTON: The concern you have, unless I misin-
3 terpreted it, we can always change the regulations after
4 we adopt them by going through -- (laughter) --

5 MS. ONORATO: Just a moment, please. We have a
6 workshop and by the time the workshop is scheduled for
7 meeting, what is it, November --

8 MR. ANTON: We have a workshop scheduled on the
9 2nd of November.

10 MS. ONORATO: Second of November. Will we have
11 response to the comments today?

12 MR. ANTON: Well, we will not have responded to
13 all the comments. We will have for you a summary of the
14 issues that have been presented, but we won't have the
15 detailed responses to all the comments until you are about
16 to adopt the regulations, which is presently scheduled
17 for November 27.

18 As you know, some people have presented as many
19 as 70 pages of comments individually, which we will have
20 to respond to in detail for the submittal to OAL.

21 Furthermore, until the time that we go out, and
22 until the time you really adopt something, we can't accu---
23 rately respond to the comments until we know what your
24 pleasure is.

25 We hope to find that out at the workshop.

26 MS. ONORATO: Yes. Does that help you at all?

1 MR. FINSTER: I think the question Darlene is
2 asking here is if there are major changes made in these
3 regulations as a result of these hearings and the workshop,
4 are they then put up for adoption by the Board, or are
5 they put back to a hearing for the public to get their
6 piece in?

7 MR. ANTON: The key there is the changes are a
8 logical outgrowth of this hearing process and within the
9 scope of the initial notice and the comments we receive,
10 we can go ahead and adopt them based on that record. If,
11 however, we come up with proposals that go beyond that,
12 then we would have to start over with a new comment period.

13 MS. RUIZ: So, in fact, you are assuming we will
14 engage in no new proposals or no new method of approaching
15 it, but rather cosmetic changes to what is currently before
16 the public?

17 MR. ANTON: It will certainly be more than cos-
18 metic. We are receiving some substantial comments that
19 we can act upon and make modifications based on those com-
20 ments which you have received. In other words, we can
21 change the monitoring program in a way that's based on
22 requests by the public based on testimony and evidence
23 presented to you.

24 I don't know the exact nature of how extensive
25 those comments, those changes can be, but as long as they
26 based on the record that has been presented, within the

1 official rule-making guidelines, I believe we can make
2 some pretty substantial changes, but they do have to be
3 the kind of comments we are receiving now that provide
4 in put.

5 MS. RUIZ: I have some hesitancy because I am
6 looking at either we are going to have to wait and amend
7 later on, or we are going to be pushing pell-mell to get
8 through what we currently have without having an option
9 of perhaps making some major changes based on comments
10 we have started to hear today.

11 I understand the concern that the staff does have.
12 The staff does call for fine time lines. I am very aware
13 of that fact, but I am also very concerned that we may
14 be pushing something through that may be not to the benefit
15 of the State of California or the intent of the legisla-
16 tion. I think we need to take a (applause)- .

17 MS. ONORATO: Are you suggesting then that we
18 extend this point in time beyond this afternoon, five
19 o'clock deadline, I think it is five o'clock this afternoon,
20 for additional input?

21 MS. RUIZ: I would suggest that perhaps the Board
22 then would want to meet and discuss the possibility of
23 either a further hearing or keeping the record open.

24 MS. ONORATO: We will have to get a feeling of
25 where the Board is going because this could very substan-
26 tially impact his.

1 I disagree with this. I feel that I would like
2 to proceed to the interim workshop hearing, at which time
3 I would make a decision based on what staff comes up with,
4 not only from the input we have had today, but when staff
5 does consult with individual Board Members as their reac-
6 tion to the information they have had today.

7 Please remember, the audience, that these are
8 proposed staff recommendations. The board did not have
9 input into these regulations. We were briefed on what
10 they would be. We directed that there would be workshops
11 and so forth, but we have not had our input into them yet,
12 and I think that the proper time to make a decision as
13 to the scope of the changes would be at that workshop,
14 and I would like to at least have some reasonable parameter
15 for staff to work with. That's my concern.

16 I am not suggesting that if we make substantial
17 enough changes that we should cut out the public input
18 into this at any time. I don't think this Board has ever
19 been guilty of that, nor would any of us be a party to
20 that. That's not our intent.

21 I would like to continue on the time frame that
22 we have and I feel that there was a proper notice, 45-day
23 notice, for this hearing, right, and that that should have
24 provided you with adequate time to come forth with comments,
25 and I think that it's appropriate, I repeat, that when
26 the board comes up with some new proposals based on the

1 testimony today, that that would be the time to consider
2 the request that you made for additional input.

3 I would like to hear from other members.

4 MR. FINSTER: I can basically agree with what
5 you just said there, and I think that's the way I would
6 go, but I don't want to close out additional information
7 being furnished to us.

8 I think you were given sufficient notice. I think
9 if we go ahead and have a workshop later, which is the
10 next thing on the agenda as far as this procedure is con-
11 cerned, that at that point in time, we may determine, and
12 I am not saying we will, but we may determine we will open
13 it again for public input on the revised regulations, if
14 that's the case at that time.

15 But I think we can reserve that decision to that
16 point in time. I think we should not accept any further
17 information past tonight's five o'clock deadline.

18 MS. RUIZ: In that case, I would ask for further
19 clarification from staff. At the workshop, is this Board
20 permitted to take action to extend that time or enlarge
21 the record period?

22 MR. RICHARD: At the workshop that is scheduled
23 for the 2nd, that would be the appropriate time for the
24 Board to direct staff to make changes in the regulations.
25 Thereafter, there will be an additional 15-day comment
26 period when the final test of the regulations as modified

1 to accommodate the State Board directions and to respond
2 to the comments and issues that have been raised in this
3 hearing as a result of comments that are submitted in
4 writing -- that final text will be made available after
5 the workshop since those changes will be made as a result
6 of Board direction at that workshop.

7 And the changes will be available for public review
8 and commentary for a period of 15 days, during which the
9 members of the public will have an opportunity to submit
10 further technical information and additional comments on
11 the changes.

12 MS. RUIZ: Perhaps I haven't made myself plain.
13 I was curious as to the Board's authority at the time
14 of the workshop to take action along the lines Mr. Finster
15 was indicating, to allow for further public hearing.

16 MR. RICHARD: Certainly the Board at any time
17 during the rule-making process could extend the schedule.

18 MS. RUIZ: Okay, but the public notice of the
19 workshop normally does not include action of this Board.

20 MR. RICHARD: That's true, but that kind of deter-
21 mination made at the workshop would require additional
22 notice to the public that the period of time for comment
23 was being extended.

24 MS. ONORATO: But we clearly have authority to
25 do that?

26 MR. RICHARD: Yes, we do have the authority to

1 do that. What we run into is the practical problem of
2 getting the rule-making process finished within the statu-
3 tory deadline which is going to be pretty close in any
4 event.

5 MS. ONORATO: I recognize that. I think the whole
6 Board does, but again, I think Ms. Ruiz very definitely
7 described the Board's position on that. We don't want to
8 enact bad regulations or bad law, and I don't know, maybe
9 we will all spend Christmas in jail.

10 MS. RUIZ: There were a couple of other points.

11 MS. ONORATO: Are you ready for questions?

12 MR. SOARES: At any time.

13 MS. ONORATO: I am sorry. I misunderstood. Appar-
14 ently, there is a fellow Board Member that --

15 MR. FINSTER: I was going to say if we cannot
16 take action at the workshop, it could be carried over into
17 the Board meeting which follows shortly after that, or
18 we could have a special Board meeting, if that's necessary,
19 in order to carry out what we feel is necessary, if we
20 feel it is required.

21 I think he's clarified it that if they make major
22 changes, they do open the period for 15 additional days
23 for comments from the people here today or new people,
24 but I think the public is protected in that manner, so
25 they will be given an opportunity at that time.

26 MS. RUIZ: One other small clarification. As I

1 understand your explanation, that 15-day period would be
2 if the changes were made within the context of the record
3 already established; is that correct?

4 MR. RICHARD: That's correct. The changes that
5 would be made would be based on the record as established.

6 MS. RUIZ: Anything beyond that would require
7 a further full-blown notice and full public hearing; is
8 that correct?

9 MR. RICHARD: That is correct. Anything which
10 is outside changes which could not have been anticipated
11 as a result of the initial notice which was published on
12 August 24, would have to require a full 45-day comment
13 period.

14 Changes which could be anticipated within the con-
15 text of the initial notice require only the 15-day comment
16 period prior to adoption.

17 MS. RUIZ: Thank you.

18 MS. ONORATO: Anyone else have anything to say?

19 MR. NOTEWARE: John, could you clarify for me
20 or maybe give me an example of a change that could not
21 have been contemplated? Just a for instance.

22 MR. RICHARD: Well, I am trying to think of some-
23 thing. Let's suppose, I mean hypothetically, that the
24 original notice proposes that we are going to regulate
25 underground tanks, and if we then modify the regulations
26 to include surface impoundments or above-ground tanks,

1 those would be changes that somebody reading the original
2 notice would not have anticipated, and therefore, would
3 not necessarily have participated in the rule-making pro-
4 cess and wouldn't have expected that those kinds of changes
5 could have come out of the process.

6 However, I can't imagine anything that we would
7 do in the context of containment and monitoring for under-
8 ground tanks that would be outside the scope of the notice
9 that was published in August.

10 MR. NOTEWARE: Thank you.

11 MS. ONORATO: Any further questions?

12 MR. SOARES: I would like to speak to that point,
13 if I can, because that really strikes at the heart of the
14 problem I have. I appreciate the fact that you are going
15 to have workshops and so with that in mind, I really don't
16 need an extension of time now.

17 Where I really need the time is after the workshop
18 has done its work and this Board comes up with proposed
19 regulations. Frankly, I think I need more than the oppor-
20 tunity for 15 days to prepare briefs. I think I need the
21 opportunity to come back before this Board in a public
22 hearing and tell you what I like and tell you what I don't
23 like, because while these are significant regulations for
24 you as a Board, they are equally, if not more so, signifi-
25 cant for us in the industry, and so, notwithstanding the
26 15-day time line, and I don't criticize staff for this,

1 they have to do what they have to do, I would request then
2 that the 15-day period be established in such a manner
3 that we can once again appear before this Board when we
4 know really for the first time what this Board has decided
5 to do with these regulations as opposed to staff workshops
6 and so on and so forth.

7 I think we are entitled to that and, frankly,
8 I think your staff person is exactly right when it comes
9 to whether something was anticipated or not.

10 In my experience with that, in appearing before
11 various agencies of state government, notices anticipate
12 the world. They anticipate everything.

13 Now the example given by staff, I would disagree
14 with because the above-ground tank issue would not even
15 be authorized, so that would be out of the question in
16 the first place.

17 But it is very difficult to come up with every-
18 thing that isn't anticipated, so it really is a catchall
19 phrase that allows a board, not this Board, but a board
20 to do whatever they want and, therefore, just in case you
21 are doing something that we didn't anticipate, even though
22 the notice anticipated it, I think we are all entitled
23 to be able to talk face to face at that time even if we
24 agree to disagree at that time.

25 I think it would be a healthy process especially
26 in light of some of the points I think my client has tried

1 to make and the other witnesses have tried to make, so
2 that is a standing request on behalf of the Ginnners Associa-
3 tion, that we have a public hearing following the workshop
4 for that opportunity, whether it be 15 days or 30 days,
5 whatever works out timewise, and with that, I will thank
6 you for your time. I appreciate it very much.

7 MS. ONORATO: Thank you, Mr. Soares.

8 Any questions of Mr. Soares at this time?

9 Thankl you very much, Mr. Soares.

10 Mr. William Stead, Regional Director of the
11 National Association of Corrosion Engineers, from Sonoma,
12 California.

13 MR. STEAD: Good afternoon. Thank you for the
14 opportunity to speak to you. I am representing the Western
15 Region of the National Association of Corrosion Engineers,
16 NACE. I am a registered corrosion engineer in the State
17 of California, fire chief in the Fire Service, State of
18 California, so I have managed to come at this problem from
19 a variety of directions.

20 Speaking for the National Association of Corro-
21 sion Engineers, they recognize that there was a preference
22 for steel tanks because of their strength, rigidity and
23 time-tested container.

24 They also recognized there was a potential prob-
25 lem and this occurred back in the 1950, and that problem
26 was corrosion.

1 They developed a standard called RPO 1069. It was
2 revised in 1983, for corrosion control of pipelines, and they
3 felt that pipelines and tanks were a similar product.

4 It was then determined in 1980 by demand that there
5 was a desire for standards for tanks alone, so they de-
6 veloped those standards. They have just been put into
7 draft form and they expect to release them in the first
8 quarter of 1985.

9 There is a concern in the corrosion community for
10 the potential corrosion in the annular space between the
11 two walls of the dual wall of the steel tank and it is
12 felt that this could be a very difficult problem to re-
13 solve, to try and control that corrosion.

14 NACE recommends cathodic protection on all metal
15 tanks and pipes. With a well coated facility, this is
16 a reasonably inexpensive procedure.

17 It has been established by NACE and industry over
18 the last 30 years that steel tanks, single wall, with
19 cathodic protection properly installed and maintained,
20 these tanks do not leak, and I cite as an example a major
21 city in Southern California which developed 30 years ago
22 guidelines based on the NACE recommendation. They require
23 that all buried steel tanks and pipes be coated to their
24 specifications. They required that cathodic protection
25 be designed, installed, and properly maintained by an
26 approved corrosion engineer if the soil resistivity where

1 that tank was placed was 10,000 ohm centimeters or greater.
2 These criteria are found in the Uniform Fire Code. It
3 is optional with the industry in that area if it wants
4 to put cathodic protection on a tank in soil over 10,000
5 ohm centimeters.

6 Under those conditions tanks will last indefi-
7 nitely corrosion free.

8 This particular city in the last 23 years has had
9 no leaks except as the city boundaries have expanded and
10 they have taken in areas where tanks were installed without
11 their criteria. Within those tanks are where the leaks
12 have occurred.

13 It becomes pretty evident that strict enforcement
14 is necessary for effective growth and control:

15 Proposed Section 2640 of subchapter 16 states
16 that the objectives of the monitoring program for existing
17 underground tanks are to determine if unauthorized releases
18 have occurred, are occurring or are likely to occur in
19 the future.

20 NFPA 329 addresses this problem by their criteria
21 for precision testing. It is my personal opinion, shared
22 by many in the corrosion industry, that good cathodic pro-
23 tection and the proper criteria of soil with periodic tank
24 testing by regulations which we already are living by,
25 thaat this problem will not need to go to the extensive
26 drilling that has been proposed.

1 And I will sum up by saying that new codes, new
2 regulations and laws above the existing are not nearly
3 as important as the strict enforcement of the rules and
4 regulations we already have. This we have shown to be
5 effective.

6 I have submitted detailed written comments to
7 the staff and I will not take any more of your time unless
8 you have questions.

9 MS. ONORATO: Any questions of Mr. Stead?

10 MR. FINSTER: You have made reference to a city.
11 What city is that?

12 MR. STEAD: The City of Hawthorne.

13 MR. FINSTER: The City of Hawthorne. How many
14 tanks do they have?

15 MR. STEAD: That I don't know. I am not from
16 that city. I know the fire prevention officer, the fire
17 marshal personally. It is a relatively good sized city,
18 but I cannot tell you how many tanks there.

19 MR. FINSTER: Did you submit a copy of the regula-
20 tions?

21 MR. STEAD: Yes.

22 MR. FINSTER: Thank you.

23 MS. ONORATO: Does staff have any questions?
24 Thank you very much, Mr. Stead.

25 MR. STEAD: Thank you for the opportunity.

26 MS. ONORATO: Mr. Gerry Hagy representing Shell

1 Oil Company, and I believe also the Western Oil and Gas
2 Association.

3 MR. HAGY: That's correct. Good afternoon, Madam
4 Chairwoman and Board Members. My name is Gerry Hagy and
5 I am an engineer with Shell Oil Company, and have been
6 employed approximately 26 years working mostly in retail
7 engineering, marketing engineering and market distribution.

8 As you mentioned, we are here to represent WOGA,
9 Western Oil and Gas Association. We also have three other
10 speakers who will help me make this presentation.

11 The Western Oil and Gas Association is an associa-
12 tion whose members conduct the majority of the producing,
13 refining, transporting and marketing of petroleum products
14 in the Western states.

15 WOGA wishes to thank you for the opportunity to
16 submit written comments and to speak on the proposed regu-
17 lations for the storage of hazardous substances.

18 The majority of our comments are found in a sec-
19 tion-by-section analysis which we have presented to you.

20 So, fortunately, at this time of the day and the comments
21 made previously, we won't attempt to go through those.
22 We will, however, have some duplication only in those areas
23 where people have talked before and we feel we need to
24 emphasize it. So, in the interest of brevity, we will
25 limit it to that.

26 We believe that these regulations should focus

1 on utilizing the most cost efficient proven control tech-
2 nology and management techniques that will provide the
3 necessary protection for the groundwater.

4 Requiring money to be spent on duplicate monitor-
5 ing systems and unproven control technology simply diverts
6 the funds away from effective solutions to the problems
7 of protecting the groundwater.

8 Getting to a couple of points on the regulations
9 themselves, we would like to make a comment about the motor
10 vehicle fuel references as they appear in the regulations.
11 The staff work indicates that there are approximately
12 200,000 underground hazardous material tanks in California,
13 and approximately 70 percent of those tanks contain motor
14 vehicle fuel.

15 The enabling statute addresses storage of motor
16 vehicle fuels which obviously WOGA members are very inter-
17 ested in.

18 The difference in the draft regulations as compared
19 to the statute, however, limits the fuels to the fuels
20 used in motor vehicles that are used on the highway.

21 We believe that there is an important considera-
22 tion here that the application of the motor vehicle fuels
23 as it is shown in the statute should be addressed to not
24 the type of vehicle that it is used in, but the type of
25 fuel it is. It is the fuel we are interested in in terms
26 of contaminating the water, and again, not the vehicle

1 that it is used in.

2 A second point that I would like to comment on
3 has been commented on previously, but we would like to
4 emphasize it. Inventory has long been felt an effective
5 control for monitoring of underground tanks, particularly
6 in the motor vehicle fuel industry. As I think mentioned
7 previously, EPI has supported this as have other trade
8 and industry associations. We continue to feel that way.

9 We, however, feel that it probably has not re-
10 ceived the credit that it is due because as with any sys-
11 tem not properly administered, implemented or controlled,
12 it, too, has human failures and it can fail and has failed.

13 However, inventory control does, if properly imple-
14 mented and controlled, provide very early leak detection
15 and I think it was previously stated that we are interested
16 in determining leaks as soon as we can, and so waiting
17 for a monitoring system outside the tank to identify them
18 could result in some delay of time.

19 So we feel as we look at the regulations that more
20 emphasis should be given to inventory control in terms
21 of a valid monitoring technique either integrated with
22 others or as it might be deemed an appropriate alternative.

23 As I mentioned, we have three other gentlemen
24 with us who are going to speak on various subjects. We
25 have Mr. Pat Dennis of McCutchin, Black & Shea, a law firm
26 in Los Angeles, who is the legal counsel for WOGA; and

1 he is going to address some of the legal issues that we
2 think are important for you to consider.

3 After Mr. Dennis, Mr. Dave Draney and Mr. Eric
4 Lappala, will also make some comments on the monitoring
5 section of the regulations, and then I would like to offer
6 a few closing comments if there's time when they are
7 through.

8 MR. DENNIS: Good afternoon, Board Members. My
9 name is Pat Dennis and I am an attorney with McCutchin,
10 Black & Shea, general counsel for WOGA.

11 I have just three legal comments to make. I can
12 make them very briefly. I think they have all been touched
13 on before.

14 The first one was somewhat confirmed by the report
15 given by Mr. Sher's office that our main concern with these
16 regulations is that the statute appears to give authority
17 to the Board to develop alternative monitoring techniques,
18 and it seems that this has not been followed within the
19 draft regulations.

20 We feel that instead of proposing these monitoring
21 alternatives, the regulations make each and every monitor-
22 ing method a requirement for all tank owners and others,
23 thus the Board has effectively undercut any authority en-
24 visioned by the statute for the local agency to choose
25 among alternatives.

26 We strongly urge the Board to reconsider the

1 proposed regulations and to draft a new Article IV which
2 would set forth the alternatives to be selected by the
3 local agencies.

4 Our second comment is really in line with that.
5 The proposed monitoring requirements leave very little
6 discretion to the local agency as far as their actual im-
7 plementation. For example, with monitoring wells, the
8 depth, location and number of wells is by statute to be
9 left up to the local agency. The proposed regulations
10 specify these parameters and leave little room for the
11 local agencies to exercise any discretion.

12 Now we suggest that it makes good sense to leave
13 much of the full details of implementation in these regu-
14 lations up to the local agency. That's what the statute
15 provided for.

16 The local agency will be the most knowledgeable
17 about local terrain, groundwater and the particular facili-
18 ties that they are permitting, and it would be best able
19 to tailor the general monitoring requirements to a specific
20 situation.

21 Our third point is in regard to motor vehicle
22 fuel storage tanks, and we will differ slightly from Mr.
23 Sher's interpretation. We believe that the Health and
24 Safety Code Section 25284.1(b)3 as it is currently written
25 establishes the monitoring alternatives specifically for
26 tanks containing motor vehicle fuels. These alternatives

1 include, first, daily inventory gaging, inventory recon-
2 ciliation, and second, hydrostatic testing.

3 But instead of requiring these monitoring methods
4 for motor vehicle storage tanks alone, the proposed regula-
5 tions would subject motor vehicle fuel storage tanks to
6 the very same monitoring requirements as for all existing
7 underground storage tanks.

8 WOGA believes the statute is clear that motor
9 vehicle fuel storage tanks were not to be subjected to
10 the extensive monitoring alternatives as all other tanks.

11 We urge the Board to follow the statute in adopting
12 regulation.

13 I have no further legal comments.

14 MS. ONORATO: Any questions of Mr. Dennis? Does
15 staff have questions of Mr. Dennis?

16 Thank you very much, Mr. Dennis.

17 MR. DENNIS: I am going to turn it over to Mr.
18 David Draney of Chevron USA, who will explain the impact
19 of the monitoring requiring in Article IV on retail gasoline
20 stations.

21 MS. ONORATO: Good afternoon, Mr. Draney.

22 MR. DRANEY: I am Dave Draney. I am a hydrogeolo-
23 gist for Chevron and I will be discussing the impacts of
24 Article IV, particularly on service stations.

25 Again, according to staff estimates, 140,000 tanks
26 in the State of California, or roughly 70 percent of the

1 total tankage is motor vehicle fuel tanks.

2 At the typical service station, everything up to
3 this point has been in generalities, not specifics. We
4 are addressing specifically service stations. There will
5 be other sites with multiple tanks. There are generally
6 three tanks that contain gasolines, three 10,000-gallon
7 tanks that are roughly eight feet in diameter and 30 feet
8 in length. In the separate backfill material is a waste
9 oil tank generally from 500 to 1500 gallons.

10 Under the proposed monitoring regulations there
11 is basically a four-tiered approach depending upon the
12 depth to groundwater, but the initial installation will
13 require soil borings and soil analysis. From our inter-
14 pretation of the regulations, this would be a minimum of
15 one boring for a tank directionally drilled obtaining
16 samples at five-foot intervals down to approximately 50
17 feet below the base of the tanks, so it intercepts the
18 middle of the tank.

19 This, according to the rationale of a list of rea-
20 sons, is to establish groundwater and pass contamination
21 for the site.

22 A second phase of monitoring to be used in con-
23 junction with this is vadose monitoring. There are various
24 methods in vadose monitoring, but specific to hydrocarbon
25 would mostly likely be vapor monitoring.

26 I did some interpretation on my own, but based

1 constraint primarily due to the enabling statute. It set
2 a deadline. However, it is our belief that any monitoring
3 scheme that is set up should be based upon physical char-
4 acteristics of the materials stored in the tank. Physical
5 characteristics need not be rationalized as gasoline or
6 solvents. They are unique and can be quantified. Solu-
7 bility is one, density -- gasoline floats, people know
8 that, miscibility, and in addition to that, volatility.
9 Gasolines vaporize readily. They can be smelled. Other
10 substances do that.

11 So some substances can be used. Vadose monitoring
12 is applicable to them. It is not applicable to others.
13 The monitoring scheme must take the physical characteristics
14 of the material stored into consideration when establishing
15 a monitoring scheme.

16 This is the reason why we believe that, as we have
17 mentioned, motor fuel storage tanks should be given separ-
18 ate monitoring, but again, I would broaden that to those
19 materials with physical characteristics similar to motor
20 vehicle fuel should be given separate monitoring schemes
21 and should be based upon physical characteristics.

22 Estimated costs have varied. Again, they will
23 vary depending upon the depth of the groundwater, but we
24 have heard estimates of \$9,000 per tank. I have gone
25 through on a case-by-case study and it has been presented
26 in the comments. They have ranged at a minimum cost of

1 upon the fiscal impact, there are four wells around a three-
2 tank cluster and two around the waste oil tank.

3 As mentioned in the fiscal impact proposed by
4 the staff, the actual number that they have used is six
5 wells around the three-tank cluster, and four around the
6 waste oil tank.

7 Again, it is a fault on my part, but this is a
8 little bit under what is recommended by the staff.

9 The third phase of monitoring is groundwater moni-
10 toring wells and in a typical service station a minimum
11 of four groundwater monitoring wells will be required around
12 the three tank clusters, and three around the individual
13 waste oil tank. This would be required for groundwater
14 depths from zero feet to 100 feet below grade.

15 Used in conjunction, the entire program shows,
16 I think, the complexity of it, and again, for the chart's
17 sake, I left out four monitoring wells which would make
18 a total of 21 borings at the typical service station, and
19 that would be a minimum required by the regulations.

20 Part of the comment that WOGA has and has great
21 concern about is the redundancy of the monitoring systems.
22 In addition to that, not only the redundancy, but the com-
23 plexity involved. What has been proposed is an all-encom-
24 passing monitoring scheme to cover all substances and all
25 materials.

26 I realize the staff is under a strict time ..

1 installation, assuming ideal conditions and no equipment
2 is installed anywhere, anywhere from \$17,000 per service
3 station up to about \$47,000 with a mean value of probably
4 35 to 40 thousand dollars, in that range.

5 Again, this assumes absolutely no equipment and
6 no continuous monitoring.

7 Staff estimates for leak detection monitoring
8 for routine maintenance an annual cost range from 150 to
9 \$14,200 per tank.

10 So, just the monitoring itself would dwarf the
11 installation cost very quickly if we are looking at the
12 higher range value in a given year.

13 This is the rationale that we think that there
14 is a bit of redundancy in the system, that it can be taken
15 out, it can be adjusted downward and that these things
16 should be left up to the local agencies as options, as
17 alternatives, because they will be aware of the geology
18 in many instances. It should be left up to the profes-
19 sionals installing them what is necessary to the physical
20 characteristics in the tank. It should be based upon that.

21 That's basically what I would like to present.
22 Do you have any questions at all?

23 MS. ONORATO: Are there any questions? Does staff
24 have questions?

25 MR. WILLIS: I just wonder if I could get a lami-
26 nated copy of that for my office. It's something I should

1 look at every morning when I come to work.

2 Seriously, you know, looking at that demonstra-
3 tion there, I seem encouraged to ask the question that
4 under any circumstances does WOGA see a need for ground-
5 water testing wells or any boring?

6 MR. DRANEY: Again, I believe it is based upon
7 the local agency's discretion, personally. Is that what
8 you mean, or WOGA?

9 MR. WILLIS: I don't want to get you into trouble.

10 MR. DRANEY: I have no qualms answering.

11 MR. WILLIS: I want to ask you a question seri-
12 ously. We have nearly 500 incorporated cities in California
13 and, of course, 58 counties. Assuming that all of them
14 can be the local permitting agencies, how many variations
15 do you suppose they could come up with if they were given
16 the carte blanche to use a list of alternatives depending
17 on what they felt was necessary for their geological con-
18 ditions, and coming from my own business background, I
19 know that local governments can hit you with a heck of
20 a lot more than they think need.

21 MR. DRANEY: I agree. We may find a local agency
22 may require everything in addition to other things, but
23 again, if we accept what was intended by the legislation,
24 the Board appears not to have the choice of selecting the
25 specific monitoring system in its entirety, but rather,
26 presenting alternatives.

1 I agree in certain areas there will be difficulties
2 in implementing, but that should be left up to the local
3 agencies because those are the people -- because they are
4 the knowledgeable people in enforcing that who would be
5 doing the permitting, that would be aware of these situa-
6 tions, and I think they are specifically Santa Clara County
7 and other areas that are implementing and that have come
8 up with draft regulations that we may not agree with, but
9 they have looked at it as a logical progression. This
10 is what they believe is necessary.

11 And again, I don't think we are looking at this
12 as an end all.

13 The vadose monitoring, we keep talking about past
14 history. Everybody has mentioned two years. That's two
15 years from inception. You know, there's very little field
16 experience out there.

17 Again, it's great to say vadose monitoring works
18 because theoretically it should work, which is fine. The-
19 oretically, it should work but what we are doing here is
20 setting up a leak detection system, and in a leak detec-
21 tion system what has been done primarily in the past in
22 fuel testing is we had a loss, something triggered us to
23 investigate a loss. We used vadose and said, uh-huh,
24 we have found vapors.

25 There's a great deal of difference between saying
26 we have found vapors, i.e., a loss or a leak in the tank,

1 and that's the difficulty. That's the problem that we
2 have, and that is why I see these regulations as being
3 somewhat evolutionary.

4 It is much easier for the local agency, the local
5 board to address those rather than having the regulations
6 changed on a state-wide basis.

7 So, I think there is a rationale for having the
8 local agencies suggest specific alternatives.

9 MR. WILLIS: Would you like to see them with as
10 many alternatives as are in the proposed draft regulations,
11 their choice?

12 MR. DRANEY: Their selection? Well, you know,
13 even if you limit -- I will admit, given if we list each
14 one of them as an alternative, a year from now we may find
15 that electronic inventory control may be another alterna-
16 tive, or maybe something else is an alternative, or we
17 may find several other systems that will apply in six
18 months.

19 I will guarantee as soon as this regulation is
20 passed, you are going to find a lot of people doing re-
21 search to make a lot of money to implement these things,
22 so, you know, to say specifically groundwater monitoring,
23 vadose monitoring, slant boring, inventory control and
24 this must be done precludes, unless we get into categorical
25 variances your basically telling the manufactures, you
26 seek the catorical variance, to even allow us new technology.

1 I don't think that's what we want.

2 MR. WILLIS: I appreciate your demonstration.

3 A picture is worth a thousand words.

4 MS. ONORATO: Just a moment.

5 MS. RUIZ: One question in light of the fact that
6 you feel so strongly that this particular program, the
7 alternatives, should be picked up by the local governments,
8 what do you see as the State Board's role in all this sub-
9 chapter?

10 MR. DRANEY: Somewhat as a guiding body, again,
11 establishing what has been done.

12 MS. RUIZ: You are aware that they are not answer-
13 able to us as such. Unless their program is more stringent
14 than the regulations, there is really no oversight role
15 to be played by this Board.

16 MR. DRANEY: I realize that.

17 MS. RUIZ: What particular role then do you see
18 for us?

19 MR. DRANEY: Again, propagate the alternatives.

20 MS. RUIZ: Recommendations and suggestions to
21 the locals?

22 MR. DRANEY: Yes. And they can be as many and
23 as multiple and varied as possible, and I would recommend
24 that you try to make them that way.

25 MS. ONORATO: Any other questions? Thank you
26 very much.

1 MR. DRANEY: I would like to make a brief pres-
2 entation. WOGA, realizing the time constraints placed
3 on the Board and the staff by the legislation, funded Hard-
4 ing-Lawson & Associates, a geotechnical consulting firm
5 involving groundwater contamination extensively through
6 California and the nation to come up with an alternative
7 monitoring scheme that they felt in view of the documents
8 and technical review, come up with an alternative system
9 that they believe will be feasible given the fact that
10 just based upon what we have right now, it addresses speci-
11 fically Article IV and the monitoring well.

12 It is also taken in light of the fact that all
13 these systems were required. WOGA's position from day
14 one has been that alternatives be established by the Board.
15 We have funded this project. WOGA members have not seen
16 it in its entirety, at least all WOGA members have not
17 seen it, and therefore, they can't propose it as a WOGA
18 proposal --

19 MS. ONORATO: Mr. Draney, may I ask how long this
20 will take? It's about an hour and a half and I would like
21 to break every hour and a half.

22 MR. DRANEY: Ten minutes.

23 MS. ONORATO: This seems to be a logical place
24 if we can take a ten-minute --

25 MR. DRANEY: I would prefer to continue.

26 MS. ONORATO: Okay, please continue then.

1 MR. LAPPALA: Thank you for your indulgence.
2 My name is Eric Lappala, I am principal hydrogeologist
3 with the firm of Harding-Lawson & Associates. We are head-
4 quartered in Novato, California, and do geotechnical and
5 groundwater contamination investigations in the Western
6 United States and throughout the United States and the
7 world.

8 As indicated by Dave Draney, we were retained by
9 WOGA to prepare an alternate monitoring plan that addresses
10 specifically Article IV, and more specifically, the situa-
11 tions in which monitoring may be required for tanks that
12 contain motor fuels and lubricants.

13 Our proposal is based on having the following
14 purposes:

- 15 1. That it should provide the earliest
16 possible detection before significant
17 subsurface contamination that is experi-
18 enced throughout all industry, including
19 the industries that deal with fuels and
20 lubricants which has shown to be extremely
21 expensive to remediate.

22 There are three elements, as you have seen, de-
23 scribed involving exploratory borings, provisions for vadose
24 zone monitoring systems and provisions for groundwater
25 monitoring.

26 The theoretical and practical basis of this

1 approach is well founded. The theory is well founded and
2 has been for many years. The practical applications are
3 based upon experience in the consulting industry as well
4 as in the engineering practice in general in the occurrence
5 and movement of subsurface contaminants, a wide range of
6 them, including motor fuels and lubricants.

7 The four properties of motor fuels and lubricants
8 that make them distinct and thus justifying a separate
9 or alternative monitoring approach are the following:

10 One has been mentioned. They are lighter than
11 water. They tend to float and hence will be found above
12 the zone of the uppermost saturation or the shallowest
13 water table beneath the land surface.

14 Secondly, they generally don't mix with water
15 to any significant amount and, therefore, they are detecta-
16 ble as a separate phase that exists generally above the
17 perennial water level.

18 Thirdly, these materials all are retained or ad-
19 sorbed by the soils themselves. This particular property
20 results in some residual saturation of product being re-
21 tained in the vadose zone or zone above the perennial water
22 level that will not drain appreciably further downward
23 under the influence of gravity.

24 This particular property is the basis for our
25 suggesting an alternate monitoring plan with significantly
26 different depths to which monitoring wells should be

1 installed than have been proposed in the draft regulations.

2 The example that we have used is the release of 500
3 gallons of product which is a typical release that we have
4 determined in our practice and our fellow industry have
5 dealt with also, a leak of 500 gallons of product for the
6 typical soil found in California under typical climatic
7 conditions generally will not move any further than 30
8 to 35 feet below the depth of the leak. For typical ser-
9 vice station installatins this is typically 35 feet below
10 the ground surface.

11 Because of this, monitoring wells that are in-
12 stalled deeper than this will not be effective in detect-
13 ing groundwater contamination. Therefore, a detection
14 program must rely on some other methodology and in our
15 alternate propose that methodology involved vadose zone
16 monitoring.

17 The fourth property of these effluents that makes
18 them distinct is that they are volatile. They vaporize
19 and the vapor phase we have heard several times today is
20 detectable by methods that are available to some extent,
21 and those that are currently being -- so, I would like
22 to interject a comment here.

23 Our firm has been instrumental in developing a
24 vadose zone monitoring technique to address this specific
25 problem. The difficulty we have with it today is that
26 it is too sensitive. We have tested it on tanks and

1 several service stations, we get a lot of false positives.
2 So, just because technology is proposed does not mean it's
3 appropriate, and we are not pushing that particular tech-
4 nology until we can demonstrate that it will not result
5 in unnecessary excavation of tanks that do not, in fact,
6 have fluid leaks.

7 In summary, our plan involves the three elements
8 I indicated, borings, vadose zone monitoring and wells.

9 The boring -- first of all, we are commending
10 that these be vertical borings as opposed to the slant
11 borings. The reason for this is well based in physical
12 theory as well as in practical experience, and this is
13 that when mother nature laid down the soils and the mate-
14 rials on the skin of the earth she laid out more or less
15 horizontally and there is a horizontal stratification on
16 many scales, on a microscopic scale, a somewhat larger
17 scale as indicated by clay layers that you would typically
18 encounter during borings, and larger scales where you have
19 extensive low permeable formations.

20 The net effect of this stratification is to cause
21 the spreading out of contaminants. They move down through
22 the subsurface, through the vadose zone. This spreading
23 out makes detection by vertical borings, as long as they
24 are within a reasonable distance from the tank backfill,
25 an efficient method of evaluation.

26 We have recommended a reduced number of borings,

1 essentially a half to a third of the number of borings
2 included in the draft regulations, and the maximum depth
3 to which they will be carried if a depth of 45 feet below
4 the land surface to the shallowest perennial groundwater
5 level or unweathered competent bedrock, whichever of those
6 three is the shallowest.

7 We recommend in our ultimate plan where possible
8 these horizontal borings be used for the placement of
9 monitoring wells where they may be required or vadose zone
10 detection devices. Our recommendation is to maximize the
11 economic utility of those borings.

12 Where they have not been used for that, we have
13 included specific recommendations for their proper sealing
14 and abandonment.

15 The second element of our monitoring plan involves
16 vadose zone monitoring. We are proposing that as the pri-
17 mary detection method where the depths to either the shal-
18 lowest perennial groundwater level or the unweathered com-
19 petent bedrock is greater than 45 feet. We are suggesting
20 it as an adjunct to groundwater monitoring where the depth
21 to water is between 20 and 45 feet, and we are suggesting
22 it should not be used except in the tank backfill where
23 the depth to groundwater below the tank is less than five
24 feet because vapor protection devices are not effective
25 because of the high water table in these areas.

26 The technology we have included in the alternate

1 plan are very general. We recognize that and you can call
2 it the state of the art or the state of the practice. I
3 have been playing with the unsaturated zone for better
4 than 12 years and I still don't understand it.

5 The state of the art is not sufficient, in my
6 opinion, to say that any one technology can assure with
7 100 percent confidence that you have detection ability.
8 We do not want to get locked into one particular technology
9 so we have left open the general techniques that can be
10 utilized.

11 The third element of our program is where wells
12 may be required. These would be required where the depth
13 to groundwater is less than 20 feet below the land surface.
14 It's an adjunct to vadose zone monitoring where the depth
15 to groundwater is between 20 and 45 feet and not required
16 where the depth to groundwater is greater than 45 feet,
17 the reason for that being again it provides for too long
18 a time between the release of a leak and its detection
19 by a monitoring well.

20 The number of tanks and their depths, as indicated,
21 and the approximate numbers of borings and wells and vadose
22 zone devices recommended in our own plan are a third to
23 a half of those included as a maximum in the draft regula-
24 tions.

25 We have also, last but not least, included proto-
26 cols for the installation, construction, development,

1 completion of these wells and their sampling, and data
2 recording and reporting requirements, and material compati-
3 bility requirement to assure that contamination, further
4 contamination of the subsurface does not occur.

5 One of the concerns that has been expressed today
6 is subsurface contamination via the multitudive conduits
7 provided by these regulations. We concur in that concern.
8 We deal with it every day. We have a liability that we
9 have to prevent in all of our investigations from causing
10 that contamination to occur.

11 The cost of putting in wells to prevent cross con-
12 tamination between aquifers can be up to four times the
13 cost of a well where you don't have to worry about that.
14 So, the shallow well that we have recommended minimizes
15 this impact.

16 The fiscal impact of our alternate monitoring plan
17 we conservatively estimate to be approximately a third
18 to a half the cost per installation than is recommended
19 in the draft regulations.

20 If there are any questions, I would like to enter-
21 tain them. Otherwise, I would like to turn it back to
22 Mr. Hagy.

23 MS. ONORATO: Are there any questions?

24 MS. RUIZ: In that chart I haven't found the facts
25 you just presented.

26 MR. LAPPALA: That is not this chart, but there

1 is a similar one in the very back. The package includes
2 both alternaate monitoring plans as well as an item-by-
3 item rationale for the proposed methodology.

4 MS. ONORATO: Are there any questions? Does staff
5 have questions?

6 Thank you very much. I just wanted to be sure.
7 Thank you very much, Mr. Lappala.

8 MR. HAGY: I will be as brief as possible, we
9 would like to point out that the monitoring alternatives
10 presented by Mr. Lappala were presented at WOGA's request.
11 We offer this as an alternative program, as an example
12 of what might or should be done if, in fact, an alternative
13 of installing wells is chosen.

14 To say it another way, WOGA is not endorsing the
15 installation of wells as a preferred method for motor vehi-
16 cle fuels, but there could be situations where they are
17 required, and it would certainly be better than what we
18 were looking at originally.

19 As far as the timing of the adoption of the regu-
20 lations, I would just like to further comment without be-
21 laboring the point, we also feel that it would be advan-
22 tageous for all parties to allow further public comment
23 by the industry before these regulations are adopted.

24 What we have seen up until now, this morning and
25 this afternoon and our own feelings about our own comments,
26 we feel that the suggested changes are substantial. And

1 again, we are down to semantics as to what substantial
2 means, but we think they vary considerably to what was
3 originally put in the draft, and we recognize the time
4 constraints put on the staff to make the draft. Neverthe-
5 less, that's where we are and we feel it would be benefi-
6 cial to everyone to have this additional opportunity for
7 public comment, and I think you have covered that ade-
8 quately.

9 So, to close, we have seen a couple of aspects
10 of the regulations where we have shown some special concern.
11 Number one, the monitoring requirements for existing tanks
12 go far beyond the monitoring authorized by the statute.

13 Number two, the enabling statute provides for
14 special monitoring requirements for motor vehicles fuel
15 storage tanks. And once again, we feel the regulations
16 fail to make that distinction.

17 So we ask the Board to develop the regulations
18 called for in the statute.

19 Thank you for your consideration.

20 MS. ONORATO: Thank you, Mr. Hagy.

21 Are there any questions of Mr. Hagy at this time?

22 MR. WILLIS: I would like to ask you, you are
23 for the Shell Oil Company and how do you feel about the
24 regulations that were made by Harding-Lawson & Associates?

25 MR. HAGY: I think speaking for Shell, we would
26 say that they are a very good professional approach. They

1 are the people who have the experience and the knowledge
2 to come up with such a plan, and it's about as good as
3 we know.

4 We also have hydrogeologists and they have re-
5 viewed that same plan and they all have some differences
6 as professional people will, but substantially they feel
7 that that is a logical approach if you are going to do
8 well construction.

9 MR. WILLIS: I interpret something you said earlier
10 that only a few persons or interests within WOGA had an
11 opportunity to review these regulations.

12 MR. HAGY: Yes.

13 MR. WILLIS: Is it possible to get us an idea
14 of any particular companies or groups within WOGA, who
15 they were?

16 MR. HAGY: Well, certainly Chevron was one of
17 them. As far as the hydrogeological review of them, I
18 can't say. I know some people in some other companies
19 have looked at them, but not people that we would consider
20 professional in that field.

21 MR. WILLIS: I see. I take it, outside of WOGA,
22 nobody has seen these?

23 MR. HAGY: That's correct.

24 MR. WILLIS: Thank you.

25 MR. HAGY: Well, I will stand corrected. We did
26 review it with staff. Sorry, Harold. We did review it

1 with staff yesterday. I don't believe we had the write-
2 up. We were a little tardy in getting the write-up, so
3 we weren't able to present them with the write-up questions,
4 but they have it today.

5 MS. ONORATO: Mr. Hagy, it's good to know that
6 industry isn't always timely.

7 MR. HAGY: We do have those problems. Thank you.

8 MS. ONORATO: Thank you very much, and thank you
9 for your presentation and recommendations to the Board.

10 I now would like to declare a ten-minute recess.

11 (Recess)

12 MR. NOTEWARE: Let's reconvene this hearing.
13 Ms. Onorato had a speaking engage and she had to leave,
14 so before we proceed any further, we have been discussing
15 the schedule from here on out and how we want to handle it.
16 I would like to ask Mr. Willis to read the dates and ex-
17 plain what we are going to do next.

18 MR. WILLIS: Mr. Chairman, if this meets the
19 approval of the other members, the proposal that I have
20 here is that on November 2 at the workshop, regularly
21 scheduled workshop, proposed changes would be presented
22 to the Board.

23 On November 9, the Board would present a second
24 set of regulations as revised. Following that, there would
25 be 15 days for commentary.

26 On November 27 a second hearing on these . . .

1 regulations, actually that hearing would be on new regula-
2 tions, would occur if no changes were proposed by the Board.

3 The hearing would be closed on the 27th and we
4 could begin to move the regulations toward the Office of
5 Administrative Law.

6 If changes are proposed on the 27th that the Board
7 wishes to consider, then an additional 15 days would be
8 provided for review by affected parties and a new Board
9 meeting would then be required for consideration of those
10 changes.

11 So, I will repeat that. At the November 2nd work-
12 shop, we would consider staff recommendations for new
13 changes. On November 9, the Board would present a second
14 set of regulations followed by 15 days of commentary by
15 affected parties, whereupon on November 27 a new hearing
16 would be convened to consider the second set of regulations.
17 If those regulations are adopted at that time, the Board
18 could proceed toward the Office of Administrative Law.

19 If they are not, then an additional 15 days mini-
20 mum would be required for consideration of any new changes,
21 whereupon still yet, an additional Board meeting and hear-
22 ing would be required.

23 MR. NOTEWARE: Thank you, Mr. Willis.

24 MR. FINSTER: The only thing that I see missing
25 in that statement by Mr. Willis is that thids hearing will
26 be closed today. The hearing we are having today will

1 be closed and anybody who wants to make a written presenta-
2 tion should do it by five o'clock. That's what it said.
3 I assume that will be at the end of this hearing, and no
4 further information will be considered in making the modi-
5 fications, whatever is necessary at the point in time of
6 the presentation on the 9th; right?

7 MR. WILLIS: You are correct, except it would
8 not be going to the 9th. We will go to November 2, which
9 is the regularly scheduled workshop. At that time, staff
10 would propose alterations to the regulations, draft regula-
11 tions we have before us. The Board would be able to con-
12 sider the changes and on November 9, the second set of
13 regulations would be put forth for a 15-day comment period
14 by affected parties, and then on November 27, a formal
15 hearing would be held to consider that second set of regu-
16 lations, or I should say, the new set of regulations.

17 MS. RUIZ: Which I gather then would mean that
18 the record would be open at that time, on the date of that
19 hearing we would taking evidence on that second proposed
20 draft and adoption may or may not take place at that time,
21 but if it does not take place, then the schedule suggested
22 by Mr. Willis would be what we would proceed with.

23 MR. WILLIS: Then, on the 27th, if it was decided
24 that we still did not have the regulations where we would
25 like to have them, we would have the option at that time
26 to make alterations and allow commentary for another 15

1 days on those changes where, again, still another hearing
2 would be held.

3 But the purpose of this format is to attempt to
4 meet two needs. One is to ensure that the public has ade-
5 -quate opportunity to review proposed changes and make
6 formal and legal comments for the record. Additionally,
7 it would allow the Board to attempt to meet the legislative
8 mandate of having adopted regulations by the end of this
9 calendar year.

10 I would only add to that that I think the collec-
11 tive feeling that I sense among us and anyone can correct
12 me if I am wrong, is that it is more important to get the
13 regulations right the first time than to meet the schedule
14 by the Legislature. However, that doesn't mean we want
15 to take another year to do so, by any means, but if it
16 was necessary that we had to go into January or something
17 to get it done right, it would be better to get it right
18 than to get it wrong and discover that we wished we had
19 taken the time.

20 MR. NOTEWARE: Right.

21 MR. WILLIS: So that would be our directive to
22 staff.

23 MR. NOTEWARE: Thank you, Mr. Willis.

24 Now a couple of people have expressed that they
25 have a problem with plane reservations and so forth, so
26 we are going to take the next two out of order to try to

1 accommodate their schedule. First is Mr. Kenneth Flaks
2 from the National Paint and Coatings Association.

3 MR. FLAKS: Good afternoon. I am Kenneth Flaks,
4 Plant Manager of DeSota Chemical Corporation in Berkeley,
5 California.

6 DeSota is a major coatings manufacturer with plants
7 across the country, including plants in Berkeley and Orange.

8 I am testifying today on behalf of the Paint Manu-
9 facturers in California who are members of the National
10 Paint and Coatings Association in Washington, D. C.

11 I have brought comments, written comments from
12 the association and also a copy of the brief oral comments
13 I wish to make.

14 Representatives from California Paint Manufacturers
15 and staff members of the National Paint and Coatings
16 Association met with the staff of the State Water Resources
17 Control Board in March to urge that these regulations be
18 drafted in a way that affords flexibility and gives com-
19 panies enough time to choose their compliance options and
20 put the system in place.

21 We were also pleased to participate in the Septem-
22 ber 17 workshop at which the staff of the Board indicated
23 that the regulations would be undergoing substantial revi-
24 sion. We hope our involvement through the process and
25 our written comments will have a beneficial impact on the
26 promulgation of final rules.

1 Obviously, identifying leaking underground storage
2 tanks and monitoring for future leaks, is a state-wide
3 problem. We believe it should be treated accordingly with
4 the state establishing fundamental guidelines and providing
5 technical options, with local governments then tailoring
6 the system of regulations to local considerations such
7 as topography and commercial and population density.

8 I acknowledge that the legal grandfathering clause
9 may result in some localities running willy-nilly with
10 divergent and redundant requirements. Hopefully, if the
11 state devises a clear and flexible program, localities
12 will be inclined to follow that program unless there is
13 a peculiar situation which warrants special local rules.

14 The California Paint Manufacturers appreciate the
15 in depth, intelligent comments offered by the California
16 Manufacturers Association on the proposed subchapter 16
17 regulations. We agree down the line with their specific
18 expressed concerns.

19 As an industry with approximately 2,000 under-
20 ground storage tanks located throughout the state, we con-
21 cur with CMA that, in general, many of the monitoring re-
22 quirements are too technically restrictive and unnecessary
23 to accomplish the goal of protecting the public health.

24 An owner or operator of an underground tank would
25 be better served by a more general performance oriented
26 standard. Of particular concern to our organization are

1 the overly extensive monitoring requirements for existing
2 underground tanks, and the unrealistic compliance time
3 schedule for implementation of the required monitoring
4 systems.

5 The Board's own fiscal impact statement estimates
6 that "It will probably take five years before all monitor-
7 ing systems are in place." Therefore, we recommend a
8 phased-in implementation of the monitoring program.

9 First, some variance from the July 1, 1985, dead-
10 line should be offered to those who certify that the intent
11 to close their tanks in favor of new above or below-ground
12 facilities within a reasonable time period.

13 In addition, an interim authorization program
14 for existing tanks should be implemented akin to the interim
15 status permitting system used in RCRA. Under this approach,
16 interim authorization would be granted if the tank operator
17 submits a permit form detailing his testing and monitoring
18 plan and certifies that he has taken an initial step to
19 ensure that the tank is not currently leaking.

20 The owner would then be granted interim authoriza-
21 tion to operate his tank for the time period needed to
22 complete the installation of his monitoring system. In
23 view of the fact that there are some 200,000 underground
24 tanks in California, all of which must come into compli-
25 ance within 37 weeks, this may be the only sensible
26 approach.

1 And finally, I believe that the proposed rigid
2 requirements for monitoring existing underground tanks
3 in Article IV are too onerous and unnecessary. It strikes
4 me that the law compels the Board to develop a range of
5 alternatives from which the local agency and operator would
6 choose.

7 Instead, due to the imperfection inherent in any
8 single monitoring approach, the Board would mandate an
9 elaborate and expensive shotgun system whereby virtually
10 every system would be required in conjunction with all
11 the others.

12 Not only does this exceed the spirit and scope
13 of the enabling legislation, but it is inefficient. The
14 determination of which and how many monitoring procedures
15 are necessary can be made by the local agency by reviewing
16 critical individual factors as the age of the tank, the
17 material being stored and the geology of the geographic
18 area.

19 The NPCA has developed an alternative approach
20 to monitoring existing tanks which I feel offers increased
21 flexibility without reducing the ability to identify leak-
22 ing tanks. The alternative approach would allow operators
23 to select visual monitoring, tank-tightness testing, or
24 soil sampling as the initial step in determining if a tank
25 or tanks are currently leaking. Tank testing would be
26 required for all tanks more than five years old.

1 This recommendation is based on U. S. EPA studies
2 which show that tanks over five years old have significantly
3 higher incidence of leaks. A facility that does not detect
4 a leak would then continue to implement an ongoing leak
5 detection program.

6 Up to four options would be available to operators
7 and local authorities for the ongoing leak detection pro-
8 gram depending on individual considerations such as material
9 being stored, type of tanks, geology of the site and any
10 other factors the Board felt should be considered.

11 These four options are:

- 12 1. Vadose zone monitoring in conjunction
- 13 with semi-annual verification monitoring;
- 14 2. Weekly groundwater monitoring;
- 15 3. Visual monitoring; and
- 16 4. Inventory control, tank testing and
- 17 semi-annual verification monitoring.

18 The first two options are the same as those of-
19 fered in the proposed regulations. The third option, visual
20 monitoring, would be conducted on a regular basis, weekly
21 at a minimum. The fourth option would require inventory
22 control for retail outlets only, conducted in conjunction
23 with annual tank testing and semi-annual verification moni-
24 toring.

25 We believe this alternate approach would provide
26 the flexibility that the enabling legislation intended

1 while ensuring that existing tanks will be properly main-
2 tained, inspected and tested. The approach also lends
3 itself to a phase in of the monitoring requirements as
4 I have recommended.

5 I recognize the problems that the Board and its
6 staff face in implementing this regulatory program and
7 hope that my comments will assist in this effort.

8 Thank you.

9 MR. NOTEWARE: Thank you, Mr. Flaks.

10 Any questions? Did you give our staff a copy of
11 the comments?

12 MR. FLAKS: Yes, and also written copies that
13 I did refer to from the Paint and Coatings Association.

14 MR. NOTEWARE: Any questions?

15 I had a question, Mr. Flaks. You mentioned twice
16 visual monitoring. I assume that would be only for above-
17 ground tanks? What can you look for with underground tanks?

18 MR. FLAKS: I think the interpretation of under-
19 ground tanks is that they are below-grade level, and in
20 many cases people that are associated with it have tanks
21 that would be below-grade level where you can go around
22 and visually inspect the entire tank, basement tanks, things
23 of that nature that are below grade, which is very very
24 apparent that to visually inspect them would be a fully
25 comprehensive way to see if there are any leaks.

26 MR. NOTEWARE: Mr. Anton.

1 MR. ANTON: Mr. Flaks, you mentioned one of your
2 alternatives and I don't know if I got it totally right,
3 but you indicated an alternative inventory control testing
4 and verification monitoring. What do you mean by verifi-
5 cation monitoring in this particular instance?

6 MR. FLAKS: Well, the inventory control I was
7 referring to was retail outlets. The verification monitor-
8 ing, I think, would have to do with a positive program
9 of physical tank testing.

10 In the written portion of the document it refers
11 to that, but the verification program would be a physical
12 tank program. Pressure testing of the tank is a way of
13 verifying any kind of a leak using a positive tank-testing
14 method.

15 MR. ANTON: The reason I ask is that in the pro-
16 posal we have prepared we have a verification monitoring
17 proposal that refers to a groundwater monitoring system.
18 Do I understand you correctly -- I am assuming that you
19 do not mean that.

20 MR. FLAKS: What we are looking for is a flexi-
21 bility within the regulations that would afford us the
22 opportunity to take a choice of a verification method.
23 In some cases, the groundwater monitoring method may be
24 the method of choice. What we are really concerned about
25 is the overall interpretation that would be subject to
26 all of the monitoring methods as afforded in the regulations.

1 What we are looking for is groundwater monitoring
2 as being an accepted choice, physical tank testing as being
3 an acceptable choice, but not being subjected to the whole
4 realm of the monitoring provisions.

5 MR. ANTON: Thank you.

6 MR. NOTEWARE: Thank you, Mr. Flaks.

7 Next, Armando Figueroa, President of the California
8 Car Wash Association.

9 MR. FIGUEROA: Good afternoon. As President of
10 the Car Wash Association, I would like to also say I am
11 a car wash operator and graduate engineer, and prior to
12 going into the car wash business, I was in charge of two
13 NASA programs testing reliability on electronic components
14 and I would like to address that.

15 We have submitted a letter through staff as far
16 as our general comments on the ordinance, but the one thing
17 I would address my comments to now is the reliability of
18 the electronics.

19 I specifically asked some people in the field
20 to supply me with data giving me the MTBF, mean time before
21 failure, MTR, mean time to repair, or the availability
22 of typical electronic devices they intend to use. I have
23 been told they are proprietary information and could not
24 be given by the company.

25 But we have heard statements that electronic test-
26 ing has been giving some problems. I will point you in

1 this direction. Every time we send a man up in space the
2 electronics seem to fail and man has been the one to cor-
3 rect the problem, so I feel that pressure testing of tanks,
4 good inventory control -- inventory control now happens
5 to be a stick, but there are float devices being manu-
6 factured, there are several different controls that can
7 be put into a tank other than electronics that are visual,
8 that are mechanical, and we are looking at tanks with an
9 expected 30-year life line. I ask anybody, can you give
10 me two years' life on the electronics? When it has to
11 be repaired, how long does it take to repair? They can't
12 give me answers.

13 Also, in the particular situation that I am in
14 in the southern area of Los Angeles County, if you drilled
15 down below 75 feet, you hit contaminated water. It's called
16 the Silverado Aquifer, I believe, and it's contaminated.
17 They don't want you in it at 75 feet. At 200 feet of water
18 you get into, I believe, major oil companies' oil supply
19 that sits over water.

20 So, I think that the local agency has to be aware
21 of what happening because I don't want to come to the Board
22 with a \$7,000 fee to say, hey, I can't drill due to this
23 aquifer being already contaminated; or sescondly, gee,
24 I happen to have a mobile home park next to me on an open
25 field dump, and it has methane gas leaking.

26 The local agency would be aware of these things.

1 They would be the ones that would allow me to exercise
2 options and I think that's the one thing that the Sher
3 bill addresses. You set up the standards, you give us
4 the options, you let the local agency in its judgment,
5 knowing the area, apply them.

6 Thank you very much.

7 MR. NOTEWARE: Thank you.

8 Any questions of Mr. Figueroa?

9 MR. WILLIS: Mr. Chairman, my wife Jane is 500
10 miles away and I can feel her elbow in my left rib. Mr.
11 Figueroa, we don't have manned missiles anymore.

12 MR. FIGUEROA: I stand corrected, man capsule
13 in deference to the staff as a people --

14 MR. WILLIS: I think we are going to have to find
15 a new name.

16 MR. NOTEWARE: Next is Gary Rosa, Beacon Oil Com-
17 pany. Mr. Rosa, thank you for your patience.

18 MR. ROSA: Thank you for allowing me the oppor-
19 tunity to comment on the proposed regulations.

20 I want to be very brief. I have submitted written
21 testimony and I have some comments here that I would like
22 to read through and address you.

23 The proposed regulations will affect approximately
24 first of all, let me back up a little bit. Beacon Oil
25 Company markets from Kern County on up into Oregon, so
26 we cover the better part of the state except for the

1 southern part of it.

2 The proposed regulations will affect approximately
3 70 of the 150 retail stations Beacon owns and operates.
4 The remainder of the stations in that 150, there aren't
5 any that aren't already covered under local ordinances.

6 Monitoring costs for compliance to the regulations
7 as drafted will easily exceed a million dollars for those
8 70 stations during the first year alone. Add to this the
9 cost of compliance in the communities that have already
10 adopted similar laws and any costs that may pertain to
11 clean-up historical spills. These costs could very well
12 be catastrophic to an independent oil company, even the
13 size of Beacon Oil Company.

14 Beacon Oil certainly wants to do their part in
15 maintaining clean water and will comply with the recently
16 passed underground storage of Hazardous Substance Act.

17 However, in our opinion, the proposed regulations
18 go far beyond the jurisdiction granted to the Board by
19 the Act.

20 As members of the California Independent Oil Mar-
21 keters Association, CIOMA, whom you heard earlier, and
22 Western Oil and Gas Association which just recently spoke
23 before the break, we have had the opportunity to study
24 the formal comments and alternatives in great detail.

25 Both of these organizations have done, in our
26 opinion, an excellent job in critiquing the proposed

1 regulations, and we support their comments and alternatives
2 100 percent.

3 I notice the box over here, it's about that deep
4 with comments on regulations, so we encourage the Board
5 and the staff to study these comments from these two or-
6 ganizations in detail.

7 For us to comment in detail on the proposed regu-
8 lations would only provide you with duplicative testimony.
9 However, at the risk of being duplicative, there are some
10 specific areas we feel we must comment on.

11 One section of the proposed regulations states
12 that one of the objectives of the monitoring program is
13 to determine if unauthorized releases have occurred in
14 the past.

15 In another section, the proposed regulations state
16 that the soil testing requirement is expressly designed
17 to determine if priority usage of the underground storage
18 tank has resulted in an unauthorized release.

19 In contrast, the main section of the act relied
20 upon by the staff as authority to propose the regulations
21 speaks only of a monitoring system capable of detecting
22 unauthorized releases of hazardous substances.

23 Nothing is stated in the act regarding past or
24 historical unauthorized releases.

25 The cost to clean up even a minor historical re-
26 lease which poses no threat to the underground water supply

1 can easily come into the tens of thousands of dollars.

2 The statute regarding monitoring of tanks installed
3 prior to January 1, 1984, allows for alternative methods
4 of monitoring the tank on a monthly or more frequent basis
5 than may be required by the local agency. The act clearly
6 provides that one of a number of monitoring methods be
7 implemented.

8 For example, Section 25284(a)7 refers to meeting
9 the alternative method in Section 25284.1(b)3, not all
10 of the possible monitoring methods.

11 However, the proposed regulations list a number
12 of monitoring methods, all of which are required for exist-
13 ing tanks, again very expensive and clearly not what was
14 intended by the statute.

15 Examples such as these, as previous testimony has
16 pointed out, are throughout the proposed regulations.

17 While none of us want to contaminate the under-
18 ground water supply, we feel that these proposed regula-
19 tions go far beyond the jurisdiction -- I am being repeti-
20 tive -- granted to the Board by the act. These proposed
21 regulations impose unnecessary costs that can threaten
22 the financial survival of many of us.

23 That's all I have to say. I would be glad to an-
24 swer any questions.

25 MR. NOTEWARE: Thank you, Mr. Rosa.

26 Any questions?

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Thank you.

Next is Richard Fahey of Diablo Petroleum.

MR. FAHEY: Gentlemen, losing our audience on both sides I see. In the interest of brevity, I would like to say, me too. I am only kidding.

I represent a company with 45 employees and we are one of the small jobbers that delivers gasoline and diesel, lubricants, to non-service stations. We are also licensed contractors. We have a general engineer's license and we install tanks and pumps.

We have installed many corrosion resistant tanks using cathodic protection such as the President of the Cathodic Engineers' Society mentioned earlier.

Actually, I have mailed you our written comments, and I won't repeat them. I brought them with me and I will give copies to the staff because I am not too confident in U. S. mails and they just went last Thursday.

But things happened today that I didn't mention in my comments that I wish to mention now.

Just before the break WOGA made a very elaborate presentation and had some wonderful drawings, and I think you asked for copies, or one of you asked for copies for your office.

The kind of tanks I am talking about are of 500 gallons, 1,000 gallons, and can you imagine in your wildest imagination a small installation like that with the kind

1 of monitoring that is in the proposed regulation as shown
2 on those drawings? There is just no economic way and from
3 a statistical probability standpoint, they are not going
4 to cause a problem. We have never in any of our installa-
5 tions, although that's a small part of our business, we
6 have been doing it for years, we have never had a failed
7 a tank or a line.

8 Mr. Lipper, in speaking for Mr. Sher, spoke of
9 the monitoring alternatives that are permissible for motor
10 vehicle fuels. He made the point that there are several
11 alternatives permissible, but monitoring is permissible
12 for motor vehicle fuels only.

13 I hope that you can take that into consideration
14 and change the regulations which only use monitoring as
15 one of several very onerous and most difficult provisions
16 for the kind of operation that we represent.

17 And I thank you for your attention.

18 MR. NOTEWARE: Thankl you, Mr. Fahey.

19 Are your customers primarily farmers or truckers
20 or --

21 MR. FAHEY: They are everything from contractors,
22 we have a few doctors, trucking concerns, large and small.
23 We deliver to several of the fire stations. We operate
24 in Contra Costa, Napa and Sonoma Counties. We deliver to
25 several fire stations. They typically have a 550-to-1,000-
26 gallon tank. We don't deliver to service stations, at

1 least not commonly. We might occasionally, but small busi-
2 nesses and small governmental accounts.

3 MR. NOTEWARE: Thank you.

4 MR. FAHEY: You are welcome.

5 MR. WILLIS: Mr. Chairman, before the crowd gets
6 much thinner, I want to make a brief comments, if that's
7 allowable.

8 MR. NOTEWARE: It's always allowable.

9 MR. WILLIS: Board Member prerogative.

10 The purpose of the hearing today has been to hear
11 from the regulated community and from the general public
12 about these proposed regulations, and the kind of comments
13 that we have picked up have been valuable and, obviously,
14 it has had some impact on our thinking.

15 We do not pretend, nor does the staff pretend,
16 that we are perfect in our judgment and in our evaluation
17 all the time.

18 I would like to make one thing understood before
19 everyone else leaves here today, and that is that when
20 I came to the State Board, I came from a business of land
21 development and building and contracting, and I can tell
22 you that I have experienced more regulations than I thought
23 it was possible in this particular industry by local govern-
24 ment, and a very pleasant surprise awaited me at the State
25 Board when I got here and that was I found that we had
26 some of the best people I have ever seen in public service,

1 especially compared to a lot of cities and county govern-
2 ments that I have had to work with.

3 I have seen a lot of city managers that probably
4 couldn't even get a job working for this Board, and I know
5 that it is very comic and sometimes assumed by various
6 and sundry members of the public that public servants are
7 in some kind of orbit around the earth and you will never
8 understand them, but what I have found is well educated,
9 well intended, bright, dedicated people that stay after
10 five o'clock, come in on the weekends, and in times when
11 we have really needed them, they have been here until mid-
12 night working on problems this Board to deal with.

13 They don't get paid extra for that and in the
14 private sector I got paid extra for that. But here they
15 don't. They do it because they are primarily concerned
16 first with the health of the public and the people of Cali-
17 fornia. They do not intend to promulgate regulations that
18 are going to put people out of business or do anything
19 else that has been suggested by a few here today.

20 But the important thing is that they do care about
21 the economic impact of the regulations and they do care
22 about how the regulated community is able to meet and con-
23 form to those regulations, and as many of you have stated
24 today, this is something that was handed to us. It's not
25 something that we created in terms of the actual legisla-
26 tion, but it is the law and we have got to find a way to

1 make it work.

2 And I would appreciate in the next couple of hear-
3 ings that obviously we are going to have, the workshop
4 followed later by a hearing, some understanding of the
5 fact that these people really care and I know that Darlene
6 and Doug and Ted and Carole Onorato and myself are really
7 proud to be associated with them.

8 So I have had my say. Thank you.

9 MR. NOTEWARE: Very well said, Ken.

10 Next, Andrew Ramirez, Ramirez Service and Garage.

11 It looks like we have lost him.

12 How about Marc Bon Burger? He has left.

13 Ron Duncan? Mr. Duncan is the Director of Environ-
14 mental Health for El Dorado County.

15 MR. DUNCAN: Thank you. I would like to point out
16 there are some county employees and there are counties that
17 also have people that are deciated and interested in pro-
18 tecting the health and safety of the public.

19 MR. WILLIS: We understand.

20 MR. DUNCAN: Okay. First of all, I have a short
21 series of a few comments. A lot of them have been covered,
22 but I just want to go on record as bringing lthese up.

23 First and foremost, I think there's a large range
24 of difference between what we are regulating in the way
25 of hazardous material, from gasoline, I suspect Johnson
26 & Johnson baby oil to some of the most horrendous

1 materials. Therefore, I think that our monitoring require-
2 ments should also reflect the variety of ranges.

3 Second, there's not enough companies in the state
4 to do all the testing and drilling that's being proposed.

5 I suspect if I was wise enough to have had the
6 money behind it, I would go into the private business of
7 consulting because it appears that is the new frontier.

8 I truly feel that there's a need for a phasing
9 mechanism consideration. I agree with those speakers previ-
10 ously who indicated that there was a bit of overkill,
11 whether it was intended or not.

12 I think that sticking a tank may be adequate,
13 especially one that was installed last year or two years
14 ago, but that on a phasing-type basis you might want to
15 consider additional requirements.

16 By the way, we at the county level are the ones
17 that are going to get to regulate these regulations and
18 enforce them, and I think that although I am not sure how
19 much input the rest of the directors of environmental health
20 had in the promulgation and spending the midnight oil on
21 these regulations, I feel that we have a group of directors
22 that deal with groundwater, that deal with hazardous mate-
23 rials, that should, in fact, be considered for input. Most
24 of them are from the Southern California area. I'm not
25 sure that I saw anybody here that represented those direc-
26 tors.

1 Another point I would like to make is that all
2 the testing that has been proposed and considered, whether
3 you use one range or another, if you go all the way down
4 to the \$9,000 figure, or all the way up to the \$45,000
5 figure, it has one major impact in the rural counties.
6 It's going to put all the mom and pop gas stations out
7 of business.

8 We have these small operators that, in fact, scream
9 because you doubled their permit fees from 24 to 48 dollars
10 for their health permit, and I expect I am going to have
11 a lot of explaining and dancing to do to try and persuade
12 them that they should, in fact, comply with the require-
13 ments.

14 MR. WILLIS: You wouldn't pass the blame on, would
15 you?

16 MR. DUNCAN: No, I sure wouldn't, not to the fine
17 staff.

18 MR. WILLIS: You can pass it to us.

19 MR. DUNCAN: Okay. Well, I see you have broad
20 shoulders.

21 Another point, the counties, and maybe there are
22 some that are more set up to do this, but the rural counties
23 in particular, which I represent, are not ready to imple-
24 ment any type of program of this nature right away. I
25 know that you may not have the best of feelings for the
26 county staffs, but I would like to say that it's a process

1 in which we have to convince the Board of Supervisors that
2 we need that stuff before we can get it and that process
3 takes a little while.

4 I couldn't pass, for example, a local ordinance
5 until I saw what the regulations looked like. It would
6 be ludicrous for me to say, well, whatever the state says,
7 that's what we are going to do here in El Dorado County.

8 Another point I would like to make, and I don't
9 know where to address this, but I wonder why the counties
10 are looked upon to be the tax collectors for the state.
11 That is part of the, I know, somewhat controversial issue
12 on who pays the surcharges and how it is collected, but
13 if I am already going out there to a job that nobody wants
14 to see me doing and not only do I have to collect fees
15 for the permits to run the program in my county, I am going
16 to be also asked to carry on the amount and exceed it by
17 whatever it takes to inventory or surcharge, or whatever
18 you want to call it, and for that I feel we are being con-
19 sidered tax collectors for the state.

20 I am from a foothill county. We don't have a
21 definable groundwater table except for certain areas of
22 our county, Lake Tahoe being one of them.

23 If we drilled all these monitoring wells that
24 were drawn and shown so explicitly, we have a good chance
25 that we wouldn't get anything even if the tank was leaking
26 because we are drilling in hard rock, mountain county

1 country, and drilling down to 200 feet you are going for
2 fractures. Those fractures don't run horizontally or verti-
3 cally, or a rib work that you can readily predict, and
4 you could have a well -- I have seen wells five feet apart,
5 one being dry and one having a reasonable amount of water.

6 Well, for the same reason that you don't always
7 hit the same strata, you could also be testing the wrong
8 strata.

9 I strongly concur with previous statements re-
10 garding potential problems of conduit for other contamina-
11 tion. All I can tell you is there is a lot of septic sys-
12 tems in the rural foothills and by running around and
13 probing additional holes into the ground, no matter how
14 well a well driller is capable of protecting it, there's
15 a certain amount of contamination, I predict, and whether
16 we are talking about only the gasoline contamination or
17 you look ion the health and safety of my bailiwick, I have
18 to deal with other things besides this hazardous material,
19 and there is a likelihood that you can get some septic
20 tank effluent into the groundwater by this inadvertent
21 process.

22 Also, there is what I consider a real possibility
23 of safety hazard. Among other hats I have dealt with the
24 Occupational, Health and Safety, and I think this monitor-
25 ing could present potential safeguard problems.

26 It's a bit like the wheelchair safety curbing

1 in the downtown streets here. They were put in for a very
2 obvious reason, to help people get around, but they didn't
3 take into consideration another thing, and that is for
4 the people that have poor eyesight who trip and fall all
5 over them.

6 The vents may have a good use, as to the safety
7 curbs. On the other hand, there may be other problems
8 that the fire people may be able to better tell you.

9 I have another question about commercial inter-
10 sections where you have four gas stations. If we do have
11 these requirements as suggested in the regulations, if
12 you multiply times four those diagrams you have how many
13 holes you have in a very sort area, so when you get that
14 copy, put it onl your wall. I want you to duplicate it
15 four times so I feel better.

16 MR. WILLIS: Once is sufficient.

17 MR. DUNCAN: Okay.

18 Then I guess lastly, I would like to point out
19 that where are the performance standards in the regulations,
20 and at what point, and who makes the decision to excavate
21 the tank and pull them, to excavate the material and take
22 it to where.

23 I think those are very important points that should
24 be addressed.

25 I would be happy to answer any questions, if I
26 can.

1 MR. NOTEWARE: Ms. Ruiz.

2 MS. RUIZ: Yes, thank you. As far as I can tell,
3 you are one of the first county people from local govern-
4 ment that has started to address these issues. How many
5 underground tanks does the county control?

6 MR. DUNCAN: The county itself, you mean the county
7 public works?

8 MS. RUIZ: Correct.

9 MR. DUNCAN: I don't have an actual number. I
10 would guess that we probably have about 50.

11 MS. RUIZ: Has there been any cost analysis on
12 what that impact would be financially in El Dorado County?

13 MR. DUNCAN: I had a consultant come to El Dorado
14 County. I didn't go through and ask him to -- or bid it
15 out to a lot of consultants. I didn't see him listed in
16 the phone book either.

17 MS. RUIZ: So that work is still ongoing?

18 MR. DUNCAN: Well, excuse me, I am fumbling through
19 my papers. I do have some actual numbers. I have his
20 name but he suggested that we would be talking about nine
21 to fifteen thousand dollars per site. If you want a break-
22 down of what he gave me, he indicated that hydrostatic
23 testing, for example, he would charge a thousand dollars.
24 To slant bore for four straight samples, including the
25 sample, eight hundred dollars. I think he hasn't seen what
26 our underground conditions are. He did not go on site

1 to check it. I'm sure you put a rock clause in there,
2 however.

3 The three monitoring wells to 50 feet he estimated
4 at \$12,000 and to write the report, \$1,000, so if my addi-
5 tion is correct, that's \$14,800 per site for us.

6 MS. RUIZ: Installation only?

7 MR. DUNCAN: Yes.

8 MS. RUIZ: Any figures provided for ongoing moni-
9 toring costs for the county?

10 MR. DUNCAN: He did not give that because at that
11 point we really didn't know how much we would be monitoring.

12 MS. RUIZ: Okay. Has the county set up its work
13 plan for the number of staff that it will have to augment
14 its current staffing by in order to be able to implement
15 if they undertake a program of their own?

16 MR. DUNCAN: That's an interesting question.
17 I suspect -- I have only eyeballed that. I am already
18 understaffed. I can't afford to even put in the time to
19 deal with the new tanks that are going in, you know. We
20 have had some staffing problems.

21 I don't know if you read the papers, but we did
22 have a work furlough problem in El Dorado County. We had
23 a budgetary problem and now we are on a better stand, but
24 we still don't have the luxury of a full staff to pick
25 and choose which mandated program we choose to enforce.

26 MS. RUIZ: I am finished.

1 MR. WILLIS: Mr. Duncan, I think that you realize
2 county government is an extension of state government.

3 The second thing, if you were a tax collector for
4 the state, you would be sending us revenue. You are not
5 sending revenue. Our personnel dealing with this particu-
6 lar legislation are paid from the state general fund.

7 In addition, you also have the requirement of
8 enforcing building and safety codes of the State of Cali-
9 fornia, both of which empower local government to collect
10 sufficient fees to pay for the staff to enforce and imple-
11 ment those programs.

12 MR. DUNCAN: Now before you go any further, I
13 am here to tell you I know that we have the power to collect
14 it. My question is, how am I going to have the staff with
15 the fortitude to go up and say, now you have three tanks,
16 that's going to cost you \$70 apiece plus the monitoring,
17 plus --

18 MR. WILLIS: My advice would be don't charge more
19 than it costs to do it, first of all.

20 MR. DUNCAN: Have you given verification that
21 the surcharges are no more than it takes to compile those
22 lists?

23 MR. WILLIS: If you want to know the truth, I
24 have spent more time figuring out sewer charges, water
25 rates, as well as the cost of the building permit, as well
26 as the cost of every possible type of permit process under

1 the development codes of the State of California more than
2 once, but with numerous cities and with a couple of coun-
3 ties, and frankly, yes, you can prove your case and you
4 can prove what it costs. It takes some work to do so,
5 I realize that. It's not an easy world.

6 MR. DUNCAN: I suspect that proving must be neces-
7 sary before the counties will readily go about collecting
8 it for you.

9 MR. WILLIS: I had to do it because I didn't want
10 to pay more than it was worth.

11 MR. FINSTER: I had one comment. I wasn't here,
12 I just came aboard the Board a short time ago, and I wasn't
13 here during some of the periods when the act or bill was
14 enacted, but it is my understanding the League of Cali-
15 fornia Cities and the Supervisors Association for the coun-
16 ties were ones who supported the bill and wanted it to
17 be placed in local control rather than state control.

18 Am I correct on that?

19 MR. DUNCAN: I agree with you, enforcement of
20 the program should be under local control as long as the
21 locals have some latitude to deal with it. But the issue
22 about collecting for the inventory fee, I think has been
23 one that has been hotly contested as to why the county
24 should collect it for the state.

25 MR. FINSTER: But you are saying you don't have
26 the capability to enforce the rules and regulations once

1 they are adopted. Is that what you are saying?

2 MR. DUNCAN: I didn't say that. I don't think
3 I said that. With additional staff, I could comply with
4 the state law is what I am saying. There are a lot of
5 mandated programs.

6 MR. FINSTER: That is right, that are not financed
7 for you.

8 MR. DUNCAN: That aren't financed, yes.

9 MR. NOTEWARE: I have a question for you. You
10 mention the rural counties are not ready yet. What do
11 you anticipate would be necessary in order to get ready
12 to implement the provisions of this? Are you thinking
13 of something like a training program?

14 MR. DUNCAN: Well, we would need training periods.
15 We would need -- let me go from the example that was por-
16 trayed by, I believe it was Mono County -- my board was
17 requested to support some modification legislation which
18 would delay the implementation of the Sher bill for the
19 rural counties. They did the figuring, I didn't. They
20 came up with a permit fee to finance their program in Mono
21 County at \$214 a tank. That's because you need to have
22 personnel to go out and do it. We are not talking about
23 counties where you can walk next-door and find the next
24 gas station, although I used the example of four sides
25 of an intersection, but our counties range in distance
26 all over the place, and without looking into the central

1 core or looking outside the central core of El Dorado County,
2 which goes from Sacramento to Lake Tahoe, we have a lot
3 of communities that have these very small operations which
4 are quite a driving time -- which brings me to another
5 point, and I guess this is about as good a forum to bring
6 it up, is that currently, and since we are talking about
7 gas stations mostly right now, let me step back two steps.

8 I concur with the new installations having strict
9 requirements. I concur with extremely hazardous materials
10 have strict requirements. It's the area of gasoline, I
11 think we ought to have the phased monitoring program --

12 I lost my train of thought.

13 Well, I had a great thought for you, but --

14 MR. FINSTER: Assuming that the gasoline problem
15 didn't exist, in other words, it was taken out of the pic-
16 ture, how many other types of tanks do you have, other
17 industry, in the county?

18 MR. DUNCAN: I could probably count them on my
19 hands and feet.

20 MR. FINSTER: So you don't have very many?

21 MS. RUIZ: I was curious. We haven't had much
22 testimony today, but I am sure there are a number of other
23 industries that are impacted by this. Does El Dorado County
24 currently know how many, say, people who are dealing with
25 pesticides or --

26 MR. DUNCAN: Those people are basically exempted

1 under the provisions as I read it. The pesticide people
2 are regulated by the Agricultural Department.

3 MS. RUIZ: How about cleaning-industry people
4 that put solvents into tanks.

5 MR. DUNCAN: Every dry-cleaner business that has
6 storage, most of it isn't underground. I suspect there
7 are some larger paint companies that may have underground
8 paint thinner storage tanks. There may be a few chrome
9 or brass-plating outfits that may store some materials.

10 We have some light industry which may, in fact,
11 have some underground storage tanks, but they are very
12 small in number as compared to gasoline.

13 MS. RUIZ: How about lumber and wood processing?

14 MR. DUNCAN: In the processing, I am not sure.
15 It has been a long time since I have been to one of the
16 local mills. There aren't as many of them and they are
17 regulated by OSHA.

18 I remember now what I was going to say, but get-
19 ting back to the gas stations, I think that most everybody
20 that owns a gas station will recognize that on an annual
21 basis the Department of Agriculture comes out to make sure
22 the delivery system puts out a gallon for the gallon they
23 charge, on weights and measures.

24 The Air Pollution Control agency is out there on
25 an annual basis. The fire chief is out there on an annual
26 basis on a fire plan, and if environmental health or

1 another portion of local government is out there, we will
2 be having a series of one or more people out, one for the
3 installation and one for the monitoring maybe, and I sus-
4 pect that local industry might be a little concerned with
5 the verbose number of people coming out making trips to
6 some of these outlying areas.

7 MR. FINSTER: You forgot the tax collector is
8 out there.

9 MR. DUNCAN: Thank you for your time.

10 MR. WILLIS: Before Mr. Duncan leaves, you made
11 a comment about gas stations being subjected to some sort
12 of, I believe the term was "phases approach." Can you
13 give me a few words on what you mean?

14 MR. DUNCAN: Okay. What I would look at under
15 a phasing program, or consider looking into, would have
16 to do with the age of the tank. We would have to go out
17 maybe once a year to make sure their inventory reconcilia-
18 tions were correct and maybe have them certified by pressure
19 tests, a hydrostatic test, whatever, that their tanks are
20 in good shape.

21 I think that when you got down the line to a point
22 where they were ten years old, we mmight want to have them
23 check it more frequently, but the point I am trying to
24 make is there should be some consideration for the cathodic
25 protected tanks that are going in, some consideration for
26 tanks that have been installed and follow the rule, so

1 to speak, and then there's the old tanks that may, in fact,
2 leak. And I think going after and requiring the guy that
3 two years ago put in a fiberglass or cathodically protected
4 tank, right now is hard for me to do.

5 MR. WILLIS: Thank you, Mr. Duncan. May I ask
6 a question of staff.

7 Mr. Richards, legally in your interpretation of
8 the law as I understand by the Governor, could some type
9 of a phased approach, not exactly what Mr. Duncan is talk-
10 ing about here, but something similar, be incorporated
11 if there was some kind of a requirement that had to be
12 met by July 1st of '85, such as there shall be by that
13 time an implemented, for example, an inventory control
14 program, other things that might be included, and the varia-
15 bles that might be associated with them could follow in
16 some kind of phased approach thereafter with perhaps dates
17 certain by which a task would be complete, to allow local
18 government permitting agencies to set up their program,
19 hire some people that either knew what they were doing
20 or could learn to do the proper job, that sort of thing?

21 I mean, obviously, this can't all be done by July
22 1, 1985, and it's rather obvious the only thing we will
23 tell Mr. Sher is that we will mandate inventory control,
24 and now what do you want us to do?

25 MR. RICHARD: I believe that the statute does
26 permit us to consider some kind of phasing in of the

1 implementation of these requirements, and we will certainly
2 give more consideration to that situation.

3 The essential concern, of course, is to make sure
4 that whatever the first phase is that it complies with
5 the requirements of the bill.

6 MR. WILLIS: I would appreciate it if we could
7 have more dialogue on that between now and the workshop,
8 and if it is possible that we might have some kind of recom-
9 mendation that we could discuss at that time.

10 MR. RICHARD: That will certainly be one of the
11 issues that we will be considering.

12 MR. WILLIS: Thank you.

13 MR. NOTEWARE: Thank you.

14 Before we go any farther, I would like to state
15 in about half an hour we will have another recess and at
16 that time it would be really important for you to get your
17 cars out of any of the state garages because they lock
18 them up at six o'clock.

19 Also, if we have a break much later than that,
20 the doors are locked so we can go out but can't get back
21 in again.

22 We still have a number of cards and it is certainly
23 our intention to stay here long enough to hear from every-
24 one, so next is Mr. Fred Bunch. I guess we lost Mr. Bunch.

25 Margaret Allender.

26 MS. ALLENDER: Thank you. I think it is probably

1 advantageous to both of us that I no longer have the energy
2 to scream and yell like I had intended to.

3 My name is Margaret Allender. I represent the
4 California Rental Association and the Rock, Sand and Gravel
5 Association.

6 The California Rental Association is a trade
7 association of about 800 outlets operating throughout the
8 state. They are primarily small businesses. They provide
9 tools and equipment to business, home owners and recrea-
10 tion.

11 The Central Valley Rock, Sand and Gravel Associa-
12 tion includes ready-mix and concrete suppliers and rock,
13 sand and gravel operations in the Central Valley region,
14 primarily between Modesto and Bakersfield.

15 A critical part of these business obviously rests
16 on their ability store fuel oil. The rental outlets must
17 control fuel oil so they can make sure that the integrity
18 of their machinery is maintained.

19 Both the sand and gravel association and the
20 rental organizations operate often in rural areas and don't
21 have a lot of access to regular fuel supplies. You heard
22 all the screaming and yelling that I wanted to do, you
23 have heard about the duplicative regulations and overkill,
24 and we support all of those statements.

25 We appreciate the work done by WOGA and the other
26 oil-producing and marketing organizations. One thing that's

1 maybe a little bit different from these groups is that
2 they are owner-operated for the most part and they have
3 a very personal stake in their community. They have a
4 great visibility in their community, and they cannot afford
5 to contaminate their groundwater and have a bad political
6 situation because their business viability rests on good
7 community relations.

8 As everyone else has said and I will reiterate,
9 and be redundant, we support the intent of the legislation.
10 All these people live in this community. They don't want
11 their children to drink bad water. They don't want anyone
12 else to drink bad water. That's not a contention.

13 Also, many of these people lack the technical ex-
14 pertise and they would welcome input from regulators on
15 procedures that can be used reasonably to protect the
16 groundwater in association with their tanks. They request
17 simply that they be afforded the opportunity to address
18 their responsibilities in a reasonable manner which recog-
19 nizes their financial and technical limitations.

20 We had two comments which have come up; one done
21 very well by the gentleman from El Dorado County, and the
22 other one concerns the fiscal impact statement. We felt
23 this was a particularly important document in light of
24 our clients on this issue and we were disappointed by that
25 document.

26 You have already heard that it was excessively

1 low, that the estimates weren't correct. Well now, not
2 only were they not correct, but they didn't address the
3 impact and we contend to you that even if the costs were
4 as low as \$10,000, which obviously is in great dispute,
5 and I am not a technological person that can tell you
6 whether it is right or wrong, \$10,000 is a tremendous ex-
7 pense for someone who is renting a rental yard, for example,
8 on a marginal operation.

9 We request the Board to consider very much not
10 only the perspective of a group by WOGA that perhaps can
11 implement regulations that a smaller group cannot, people
12 that are at a more marginal level of operation and do not
13 have the overhead factors that would allow them to do so.

14 We commend staff on a really exhaustive technologi-
15 cal job. They have worked really hard and that's obvious.
16 We all want to attack them and tell them they are terrible,
17 but we would like to see the same type of effort put into
18 really analyzing what these actual costs are and what they
19 are going to do to small business because, frankly, as
20 everyone else has said, we see nothing in the legislation
21 that Assemblyman Sher anticipated threatening or elimi-
22 nating business in California.

23 The county question is particularly important to
24 us, the local government question, because we have so many
25 of our people, and especially the rock, sand and gravel
26 people, who operate in rural areas, and I am glad the

1 gentleman from El Dorado preceded me because I didn't want
2 to step on any toes.

3 If the Board proceeds with a strict interpreta-
4 tion from staff of direct regulations without much leniency
5 on the part of local government and "leniency" is perhaps
6 not the best word to use, we feel that our people out in
7 the rural areas will be forced into a lead position in
8 adopting technological material they are not familiar with
9 and installing systems that they don't understand with
10 no input, direction or any kind of advice at all as to
11 whether this will eventually fit the mandate that that
12 rural local government may eventually adopt, and it is
13 a real and actual problem.

14 I happen to be a resident of a rural area and
15 I can tell you that the three-man health department in
16 Amador County, and it is all men, by the way, is not pre-
17 pared to deal with this. It's just not prepared to deal
18 with this at all.

19 We feel that the people in the rental association,
20 as well as the sand and gravel operators, have exhibited
21 their willingness to work with the state or in local agen-
22 cies to deal with this problem because they have partici-
23 pated, they have been conscientious in dealing with past
24 leaks. They have filed their registration forms and they
25 are simply awaiting good, reasonable, sound direction as
26 to how to proceed.

1 We felt that it would be most constructive to offer
2 some recommendations. These recommendations are less tech-
3 nical than those that you have heard before. They are
4 more philosophical in nature, but I would like to go through
5 them. They are part of our written comments that has been
6 delivered to you.

7 We ask you to establish as part of the regulations
8 a reasonable time frame and methodology of testing with
9 the goal of determining actual hazard potential and obvi-
10 ously, we are reacting as everyone else has to the over-
11 kill question.

12 We feel and we appreciate the staff's response
13 to your question that there is the possibility of doing
14 this. We would suggest that you establish expanding levels
15 of testing only for those sites which exhibit failure in
16 the lower level.

17 We might suggest, for example, simple pressure
18 testing and/or inventory control could be an initial step
19 with further testing required only when or if tanks fail
20 to meet the initial criteria and combining those types
21 of testing would fulfill the law's intent.

22 We ask that you eliminate duplicative monitoring
23 and multiple technological systems not directed in the
24 legislation, but based on the worse case analysis, and
25 rather adopt procedures which can provide reliable results
26 in a cost-effective manner.

1 We ask that you eliminate the soils and ground-
2 water testing designed primarily or exclusively to establish
3 data base information.

4 As directed in the legislation, all such testing
5 should be aimed at actual hazard response. We find nothing
6 in the legislation to support the extensive data base infor-
7 mation that we feel staff is asking for.

8 We ask that you devise a phasing period for all
9 major construction requirements to allow a reasonable time
10 to recoup revenues against capital investment. We ask that
11 you have prepared a complete factual fiscal impact report
12 using actual field operating costs, including a signed
13 wage rate for overtime and time factors, and addressing
14 the impact of such costs on current operations.

15 We were dismayed at one point to find that the
16 regulations called for renewal of permits to be filed six
17 months in advance to allow staff time to review; however,
18 at the point of changing permits, only three months was
19 allowed for business to finance and install new machinery.
20 We find that' reasoning to be very counterproductive.

21 And probably this is our basic philosophic point
22 of view, we suggest that the regulations be, the entire
23 regulatory framework be revised to eliminate the inherent
24 assumption of blame and unwillingness of business to work
25 toward uncontaminated groundwater. This inherent perspec-
26 tive runs throughout the regulations, and I'm sure staff

1 felt justification but we don't feel it is justified, and
2 this negative perspective toward the objects of the regula-
3 tions is not only out of place, it totally precludes a
4 business/government cooperation which is critical to carry-
5 ing out the intent of the legislation.

6 We ask in the face of the EP regulations that are
7 supposed to be coming in, the health department and what-
8 ever, you either delay, address or prepare for these cor-
9 responding rules which have been announced from other state
10 or federal regulatory bodies to allow for a streamlined
11 implementation and comprehensive program.

12 We would ask that you prepare or support legisla-
13 tive or regulatory measures which afford economic incentives
14 perhaps in the form of tax credits, appreciation adjust-
15 ments or whatever vehicles are possible to assist business
16 and industry in meeting their tremendous financial obliga-
17 tion mandated in this program.

18 Stemming from this session that we are here today
19 on, we hope the Board has the opportunity in the light
20 of your very restricted time schedule to review all the
21 written comments provided to you. We feel that it would
22 be appropriate to wait until after the regulations are
23 adopted to get a response to the staff on the comments
24 that have been brought up.

25 We feel that the scope of the discontent that has
26 been expressed here today is so great and the concern with

1 the regulations is so overwhelming that the public should
2 be offered as much input on whatever subsequent regulations
3 are issued as possible, and we appreciate the steps that
4 you are taking to do so.

5 While staff has undertaken an exhaustive review
6 of optimum systems to cope with worst case scenarios, that
7 academic model perspective of the draft regulations actually
8 threatens the implementation, we believe, of sound, rea-
9 sonable programs which would fulfill the intent of Assembly-
10 man Sher, the majority of the Legislature and Governor
11 Deukmejian.

12 Refinement, redirection and simplification of the
13 regulatory procedures will not only bring this program
14 into the parameters of business, but make it an enforceable
15 mandate from local government.

16 Members of the California Rental Association and
17 the Central Valley Rock, Sand and Gravel Association do
18 not dispute the need for securing the state's groundwater.
19 To comply with this, they need, however, reasonable direc-
20 tion from a government able to understand their limita-
21 tions.

22 May I answer any questions?

23 MR. NOTEWARE: Any questions or comments?

24 MR. WILLIS: A comment. First of all, you made
25 a comment to the idea that perhaps we should slow down
26 and wait for other state or federal regulations.

1 MS. ALLENDER: Not necessarily slow down.

2 MR. WILLIS: I want to tell you that's impossible.
3 We have a state law and we are obligated by the oath we
4 took when we came on this Board that whether we like the
5 law or not, we have to implement it.

6 The other thing is that anything, but no other
7 state rights, laws for California, just the California
8 Legislature; and in addition to that, when the Federal
9 Government sends us a regulation, it doesn't matter if
10 it is less than what the State Legislature has prepared,
11 the State Legislature standard by constitution is what
12 we meet.

13 I just wanted to indicate also that I don't agree
14 that there was an intent and admittedly the draft regula-
15 tions come across pretty hard from a fiscal standpoint
16 to a lot of readers, but I don't agree that they are in-
17 tended to be interpreted as negative government business
18 relation

19 MS. ALLENDER: My comment is supported in our
20 commentary. Obviously, for the sake of brevity I didn't
21 read it.

22 MR. WILLIS: We have a lot of comment today.

23 MS. ALLENDER: We based that on the statement
24 of reasons that accompanied the regulations. We found in
25 those statements of reasons numerous allegations of oper-
26 ator inefficiencies, of regulations being proposed because

1 the operator could not be depended upon to undertake and
2 be conscientious about what they were doing. It's not
3 that -- I mean, we do feel --

4 MR. WILLIS: We don't see that as an attack on
5 anybody and I dare say, believe me, we would have to have
6 a much larger auditorium if we wrote the regulations in
7 such a way that we just put everything out on the table
8 and we wouldn't worry about it.

9 MS. ALLENDER: Let me say, I am not sure we en-
10 visioned this as an attack. We just say that we see it
11 as a negative perspective --

12 MR. WILLIS: That's your opinion.

13 MS. ALLENDER: That's right. We would like to
14 see a more cooperative approach. That is our basic point.

15 MR. WILLIS: It has been cooperative.

16 MS. ALLENDER: Let me respond. There is not an
17 intimation in our commentary that there would be any lesser
18 rules enforced. We are simply saying that small business
19 is going to be, if you will, saddled with this program
20 and we foresee that in the event of other regulations coming
21 through from EPA, which has announced a program on under-
22 groundtanks, this could cause confusion at the local level
23 within a small business particularly, and standing in the
24 way of a comprehensive program.

25 We only ask you to acknowledge it.

26 MR. WILLIS: For your information, EPA does not

1 supersede us in these regulations.

2 MS. ALLENDER: I understand that.

3 MR. WILLIS: Our interest in this area was promul-
4 gated by California legislation to move forward on it,
5 and I dare say I might be concerned about what EPA would
6 come down with as they do not have the kind of public hear-
7 ings we are having here.

8 MS. ALLENDER: We are also concerned about that,
9 but we would like to see a cooperative, comprehensive pro-
10 gram that we feel can implement the intent of the law which
11 is to protect the groundwater of the State of California.

12 MR. WILLIS: That's exactly what we are trying
13 to do.

14 MR. NOTEWARE: Any more questions?

15 Thank you, Ms. Allender.

16 Next is Paul Stephany.

17 MR. STEPHANY: I am Paul Stephany, representing
18 the California Grain and Feed Association. We are 500
19 member companies who manufacture grain and feed products,
20 merchandise and handle products, and many of these members
21 do have underground storage tanks and are concerned as
22 to how the impact of these proposed regulations will affect
23 them.

24 Rather than reiterating the statements made before
25 or going into detail on my prepared comments that are
26 in writing, I thought I would just like to say we have

1 basically three areas of concern, the monitoring of exist-
2 ing tanks being one. We feel that that has already been
3 discussed adequately before this group and we also encour-
4 age the need for flexibility in the regulations to allow
5 for suitable alternatives.

6 As expressed before, we also are concerned about
7 the various procedures. We feel that the costs for apply-
8 ing for a variance is prohibitive and discourages considera-
9 tion for reasonable alternatives, and I would like to sug-
10 gest, although it may not be specific as far as the Sher
11 bill, but perhaps the Board could consider a program to
12 involve industry input, not only in the decision making
13 and developmental process of putting the regulations to-
14 gether, but also, in the area of implementing regulations,
15 something similar to an advisory panel that would allow
16 for industry and public input as the underground storage
17 monitoring program is put into place.

18 And thirdly, we do have a consideration for the
19 seasonal agricultural operations. We, as well, do repre-
20 sent a number of cotton gins and a number of companies
21 that own and operate cotton-ginning operations, and we
22 feel that is a necessary and vital part of the harvest
23 operation.

24 We would like the Board, in considering the agri-
25 cultural exemption, to consider the terminology of a farm
26 and agricultural use and perhaps realize that this is a

1 little bit narrowly defined in the regulations and perhaps
2 should be expanded.

3 And other than that, I really feel that in the
4 interest of time I would like to close my statement.

5 MR. NOTEWARE: Thank you.

6 Any questions?

7 I think this might be a good time to take that
8 break I mentioned. You should be able to find adequate
9 parking on the streets for the cars you have to move out
10 of the state garage.

11 (Recess)

12 MR. NOTEWARE: Let's reconvene this hearing.
13 Next we will hear from Jack Elgin, Thrifty Oil Company.

14 MR. ELGIN: My name is Jack Elgin. I thank you
15 for this opportunity. I submitted written comments, but
16 I would like to take this opportunity to emphasize two
17 particular features which have been mentioned but I think
18 not stressed enough.

19 One is the absolutely devastating impact this
20 regulation, if enacted as proposed, would have on the inde-
21 pendent gasoline marketing sector of which we are a member;
22 and secondly, I would like to propose some alternatives
23 for your consideration.

24 Thrifty operates approximately 300 high volume,
25 self-serve gasoline stations. Its high volume, no frills
26 marketing approach is typical of today's modern, self-

1 service, independent operator. Independence, in general,
2 and Thrifty in particular, utilize the most efficient means
3 to make gasoline available to consumers at low prices.

4 As competitive pricing is their principal market-
5 ing tool, independent gasoline marketers maintain a con-
6 stant downward pressure on gasoline prices. Accordingly,
7 the consumer is well served by the independent's presence
8 in the marketplace.

9 Over the past two and one-half years, the inde-
10 pendent sector has undergone drastic changes. Traditional
11 sources of independent supply have vanished as evidenced
12 by the bankruptcy filings of independent refiners Powerine,
13 Paramount and Marlex. These failures, combined with inade-
14 quate operating margins, have forced a substantial number
15 of independents to close their stations.

16 Consequently, the major oil companies have in-
17 creased their dominance in the marketplace at the expense
18 of the independents. The National Petroleum News Fact
19 Book issues for 1982 and 1983 reveal that during this period
20 the number of independent gasoline retail outlets in the
21 State of California fell 25 percent, from 1182 to 883.
22 This decrease of 299 independent stations was offset by
23 an increase of 294 major stations during the same period.
24 This trend has continued in 1984. Clearly, the independent
25 sector has already suffered significant erosion.

26 While Thrifty, as well as all responsible petroleum

1 marketers, is sincerely concerned about the dangers of
2 underground pollution land water contamination, the regula-
3 tions as proposed would result in the elimination of those
4 independent marketers which still remain. If the independ-
5 ent sector vanishes, the ultimate loser is the California
6 consumer who will surely pay more, no doubt considerably
7 more, for his or her gasoline purchases.

8 Based on a thorough review of the proposed regula-
9 tions and estimates received from drilling contractors
10 with respect thereto, Thrifty's compliance with the pro-
11 posed regulations within the stated time frame is practi-
12 cally impossible and prohibitively expensive.

13 The total cost for Thrifty's 1400 tanks would
14 approximate \$13 million. These costs approximate \$10,000
15 per tank and are virtually identical to those set forth
16 in the fiscal impact statement.

17 There is no means by which Thrifty, or any other
18 independent, could fund an undertaking of this magnitude.
19 Thrifty would be forced to either close its stations or
20 turn them over to the majors.

21 The proposed regulations are simply not cost
22 effective by any conceivably reasonable criteria. The fiscal
23 impact study estimates initial costs for private industry
24 at \$1.8 billion. Annual costs are pegged at \$940 million.
25 Assuming that this cost is passed on to consumers, as most
26 likely will be the case, in the long run it is equivalent

1 to a new gasoline tax of nine cents a gallon. The hue
2 and public outcry resulting from such a proposal would
3 be deafening and never ending.

4 In addition, we have a proposal which contemplates
5 puncturing five to six hundred thousand holes in the State
6 of California.

7 Notwithstanding the foregoing comments, I think
8 you can understand why we as a company are extremely con-
9 cerned over this bureaucratic solution to an admittedly
10 serious problem, but it seems to have gone completely out
11 of control.

12 Fortunately, there are much more reasonably priced
13 means available for improving the public's protection from
14 underground storage leaks. Thrifty would propose that
15 the Board give serious consideration to adopting a program
16 which contained the following key elements:

17 Daily reconciliation of storage tank inventories
18 with deliveries and sales;

19 Reasonable action steps in the event daily recon-
20 ciliations suggest a possible leak;

21 Installation of underground piping leak detection
22 systems. This is an area of technology which exists, is
23 extremely cost effective in our view, and would solve a
24 number of problems that exist at least in service stations
25 today, and we would endorse it;

26 Annual testing based upon a tank's type and age;

1 Secondary containment for replacements and new
2 tank installations;

3 Record-keeping requirements and random inspections
4 to ensure compliance; and

5 Finally, an extended compliance timetable for
6 independents which control only a small fraction of the
7 state's underground tanks.

8 A program such as that outlined above would pro-
9 vide significant improvement in industry's monitoring of
10 its underground storage. This, in turn, would ensure faster
11 responses in the event a problem should develop. Mandated
12 secondary containment for replaements and new tank installa-
13 tion would ensure reduced exposure in years to come.

14 There would still be significant costs. The fis-
15 cal impact studies suggested that secondary containment
16 would result in \$70 million a year in additional costs
17 for new underground storage tanks. Other features of this
18 proposal would increase the cost approximately \$100 million.
19 It is perhaps reasonable in light of the seriousness of
20 the problem at hand and thus probably acceptable to indus-
21 try.

22 In closing, I reiterate that the Board's proposed
23 regulations, if enacted, would almost assuredly destroy
24 the independent gasoline marketing sector. On an overall
25 basis, the cost to industry and ultimately consumers, would
26 be staggering, nine cents a gallon on an annual basis.

1 Nevertheless, Thrifty acknowledges that this is
2 a problem which must be addressed.

3 Accordingly, we have tendered a responsible pro-
4 posal which would provide for a significant reduction in
5 the potential exposure from the underground storage of
6 hazardous substances at a cost which industry and the pub-
7 lic could afford.

8 I thank you for your time.

9 MR. NOTEWARE: Thank you. I believe Ms. Ruiz
10 has a question.

11 MS. RUIZ: Was Thrifty involved in any way in that
12 tank spill in Davis recently?

13 MR. ELGIN: No.

14 MS. RUIZ: That wasn't anything related to Thrifty
15 Oil Company?

16 MR. ELGIN: No, we have no operations in Davis.

17 MS. RUIZ: Is it all Southern California?

18 MR. ELGIN: We have a handful, 20 stations, in
19 Northern California.

20 MS. RUIZ: How many outlets all told?

21 MR. ELGIN: Just over 300.

22 MS. RUIZ: Thank you.

23 MR. NOTEWARE: Mr. Finster?

24 MR. FINSTER: The way you read from your report
25 here, it looks like something was missed on the third page.

26 MR. ELGIN: You are right. Our word processor

1 added the line in the middle and dropped a line on the
2 back. I commend you for noting that. I handed to the clerk
3 an original copy which I wrote in in hand the line that
4 was missed.

5 MR. WILLIS: Mr. Elgin, I am glad to hear that
6 word processors run by state agencies are not the only
7 ones that make mistakes.

8 While you are standing there, two things: I was
9 just concerned, first of all, in the recommendations that
10 you make here, I just wanted to indicate that some of these
11 recommendations almost appear as some of the conversation
12 that we have had recently in our agency, although not ex-
13 actly in this order, and I would appreciate if staff could
14 give us some pretty good feedback on how you see this order
15 and whether or not, you know, it can be helpful.

16 The other thing is that I believe when we talk
17 about quality of the program, one thing, I know that staff
18 is very much well aware and this is just information for
19 you, Mr. Elgin, one thing that I know staff is very well
20 aware of is the clean-up problem with IBM and Fairchild
21 Camera over in the Silicon Valley, and, Harold, how much
22 money has IBM and Fairchild sapent?

23 MR. SINGER: I think each company in the order
24 of 20 to 30 million dollars.

25 MR. WILLIS: Even if they had, say, \$100,000 for
26 their tank, they would have been millions of dollars richer,

1 but obviously, we don't expect gasoline stations to have
2 the same problems as IBM and Fairchild.

3 MR. ELGIN: I think that's fair, but I would like
4 to follow up on your observation. We reconcile our sta-
5 tions daily right now. One characteristic of independents
6 as opposed to majors is we are company operated. Typically
7 the employees operate the stations work for us, they answer
8 to us. In the case of the majors, they are franchisees
9 and businessmen, and there is some difficulty in majors
10 telling them what to do from a legal standpoint.

11 We reconcile these matters daily, both manually
12 and with computers. If we see problems, we get after them.

13 As others have testified, it is worth a dollara
14 gallon plus when there is a problem, we have to bring in
15 local authorities, and to the extent we have caught it
16 quickly, our costs and our problems are really minimized.

17 It would be foolish to act in any other way and
18 thus, I don't expect we will ever have an IBM or Fairchild.

19 MR. FINSTER: Have you had a problem with leaky
20 tanks?

21 MR. ELGIN: Yes, we have had approximately one
22 a year where we are forced to go in and remove tanks. We
23 excavate some dirt and it depends on the nature of the
24 situation and what's required from local authorities that
25 you bring in at that point in time.

26 MR. FINSTER: Were those detected through inventory

1 control?

2 MR. ELGIN: Oh, sure.

3 MS. RUIZ: You indicate in your plan your extended
4 timetable for independents. I trust you don't mean where
5 you suspect or there is a high probability of leaking,
6 only in those tanks where they have recently been replaced
7 or they have the least chance or likelihood of leaking.
8 Is that what you are referring to there?

9 MR. ELGIN: I would like to amplify on that.
10 You know, there are lots of competing and diverse inter-
11 ests here and I would be very flattered if someone took
12 a program like this and made it agenda. Frankly, if one
13 were to adopt the top six or seven items, I don't think
14 a timetable is called for. I think the independent sector
15 can comply with that set of requirements, but if we are
16 to be required to start punching holes in the ground ran-
17 domly and searching, and if they are the kind of capital
18 costs envisioned as proposed, then I would say that the
19 independent sector needs some relief from that.

20 MS. RUIZ: There is an alternative?

21 MR. ELGIN: Right. I hope that clarifies it.

22 MS. RUIZ: Thank you.

23 MR. NOTEWARE: Any other questions? Okay, thank
24 you, Mr. Elgin.

25 Hank Martin?

26 MR. MARTIN: Hank Martin, California Manufacturers!

1 Association.

2 In the interest of time and everything having
3 been said already, I would like to submit these comments
4 for the record.

5 MR. NOTEWARE: Thank you. Good.

6 MR. WILLIS: He must want to go home.

7 MR. FINSTER: You agree with everything everybody
8 said.

9 MR. NOTEWARE: Jim Campbell, representing the
10 California Service Station Council.

11 MR. CAMPBELL: Mr. Chairman and members, I want
12 to first start by saying I have addressed many board before
13 and this is one of the first boards that really has shown
14 a great deal of attention and consideration for our needs.
15 I normally don't say that. We start off on a more combative
16 role.

17 I am Jim Campbell, Chairman of the California
18 Service Station Council. I represent 3,000 service station
19 dealers in California. I, myself, am a service station
20 dealer. I represent the service station dealer, some have
21 multiple operations, five or ten, but on the whole I repre-
22 sent one service station dealer on one corner with one
23 business. He doesn't pump 30 million gallons a year. He
24 pumps 30,000 or he pumps 50,000, or she pumps 50,000 gal-
25 lons a year.

26 One of the things that your report started out

1 with saying as to the small business impact statement,
2 and I quote:

3 "The State Board finds that the adoption
4 of this regulation may have a significant
5 adverse impact on small business."
6

7 You are correct. As a matter of fact, it is really
8 without exaggerating going to put many small business people
9 and families out of business. Beyond that, if these regula-
10 tions were promulgated as drafted, you would put whole
11 communities out of gasoline and let me explain why.

12 One dealer on one corner that owns his own prop-
13 erty, and many of the dealers do out there, cannot spend,
14 and I don't know what the number is anymore, I was going
15 to use \$7500, cannot spend \$10,000 to drill holes in the
16 ground. He simply can't do it.

17 If I am in Mendocino, if I am in Susanville, if
18 I am on the Mendocino coast and I pump 10,000 gallons a
19 month, and by the way, that is big for some of those ser-
20 vice stations, they make a few dollars off what they are
21 doing. They have a grocery store or repair facility, what-
22 ever it happens to be. If you implement or your suggestion
23 is that we have to put monitoring wells in, even if it
24 \$7500, those people must close their gasoline pumps, and
25 I suggest to you if you enjoy areas such as I do, Susanville
26 and Mendocino and such places, you go on a vacation, unless
you have a motorhome with a large tank or a car with a

1 large tank, that whole community will be put out of --
2 if there were 15 service stations in a community, then
3 one service station probably can make it and make a very
4 substantial living, but the impact on that community and
5 the people, am I not exaggerating, will be sitting in line
6 to get gasoline because the store down there doesn't have
7 gasoline to sell anymore because it cost them \$15,000.

8 If I pump 10,000 gallons of gas a month, I don't
9 make \$15,000 net profit in three years on my gasoline sales.
10 I may make it in the back room, so it is going to be easier
11 for me to shut down.

12 Also, if you come in and you bore -- and I have
13 been in this for 34 years -- every service station out
14 there has hydrocarbons, gasoline and oil under the cement.
15 If we have spilt gasoline for 25 years, it's in there.
16 It doesn't go away. Some of the hydrocarbons remain. If
17 you drop bore holes down there, you are going to shut down
18 or at least a lot of them.

19 If my tanks aren't leaking now, but ten years
20 ago they did leak and I have several stations that leak
21 gasoline, they have been repaired, fixed, but there is
22 something in the soil there. If you are simply going to
23 make me pull up my tanks or pull the dirt out, I can't,
24 I can't get the old dirt out unless I pull the tanks up,
25 and I start all over again.

26 Daily monitoring of gasoline, daily gaging of our

1 tanks works well.

2 Let me make a statement, and then I will explain
3 how I would like to get to this. In 34 years, I am not
4 aware of one incident of gasoline loss, excessive, 100
5 gallons a day, that within seven days resulted in we knew
6 we had a major spill. I am not aware of one incident that
7 was not detected within seven days by stick monitoring
8 and repair.

9 As a matter of fact, I challenge, and I do that
10 as a friend, I challenge this Board and I challenge this
11 staff to give me one example where monitoring of tanks
12 was done on a business-like basis that it wasn't taken
13 care of. I can't even think of one.

14 I also want to say Kim Lipper's statement from
15 Assemblyman Sher's letter left me a little appalled. We
16 testified against Mr. Sher's bill and withdrew our testi-
17 mony in exchange for a promise that's written in the bill,
18 and let me quote to you Section 25284.1:

19 "For every underground storage tank in-
20 stalled on or before January 1, 1984,
21 and used for the storage of hazardous
22 substances, the following actions shall
23 be taken."

24 I am not going to read it all, but it was based
25 on materials stored.

26 "The alternative monitoring methods

1 include, but are not limited to the fol-
2 lowing procedure."

3 I will just read this one last line, and this
4 is why we withdrew our opposition, not to the wells, we
5 didn't like that, but we were told, and I will read what
6 it says:

7 "For monitoring tanks containing motor
8 fuel gasoline, vehicle fuels, daily gaging
9 and inventory reconciliation by the oper-
10 ator if inventory records are kept on
11 file for more than one year and are re-
12 viewed quarterly, the tank is tested
13 for tightness and so forth" --

14 In other words, we withdrew our opposition to
15 the bill so that we could monitor these tanks on an intel-
16 ligent businesslike basis.

17 Now the proposal to you is very simple. It does
18 not need \$10,000, does not need monitoring that I don't
19 think works, at least not at this time, but might five
20 years down the road, I would like to submit.

21 We have a service station. We have three most of
22 the time, sometimes four tanks. Let's have an inventory
23 control that can be monitored by a local agency, whoever
24 that happens to be.

25 First, we must monitor daily, which most of us
26 do now. Second, that when there is a five-percent shortage

1 of product per tank, let's assume there are 2,000 gallons
2 in the tank, five percent is 100 gallons. I check my tanks
3 tomorrow, I have a hundred gallons loss. That's the first
4 day I have got a loss. I take that 2,000 gallons and two
5 hours later I go out and I monitor my tank again that
6 day, not a week later. Two hours later I have sold 500
7 gallons and now I have a loss of 15 gallons. Two hours
8 later I go out and I monitor my tanks once more. I have
9 sold another 500 gallons and I have lost ten gallons, really
10 simple.

11 I put a lock on my pump, I call the local agency,
12 whoever I am responsible to -- if I lease from an oil com-
13 pany, I call them. I close the pump, no more gas can be
14 sold. They come in that day or the next day and they
15 check the tanks for a leak.

16 Actually, the description I gave you is not a leak-
17 ing tank. If I am losing 25 gallons in a two-hour period
18 based on 500 gallons of sale, I have a broken line. Normally
19 the tanks do not leak that way. Tanks will leak 100, 200,
20 300 gallons and we would pick that up the same way. The
21 problem is solved at the service station as long as the
22 monitoring is done properly.

23 The gaging must be done on a temperature-corrected
24 basis and that's where we make our mistakes. Frankly,
25 my book's on my stations now, some of them and we would
26 have had an expert testify today, but he ran out of time

1 and we ran out of money, but on a service station that
2 in Sacramento, as an example, if you have temperature cor-
3 rection; so, if I do 100,000 gallons, three months out
4 of the year I have a loss. Three months out of the year
5 I have a gain -- pardon me, I have a push. Six months
6 out of the year I have roughly a one-percent gain, so if
7 I pump 150,000 gallons of gasoline, I actually gain 1500
8 gallons of gasoline for that month.

9 Now, it's a simple program to put together and
10 we will be glad to provide you wish the necessary forms.

11 Article VIII, the variance procedure, I have an
12 idea. I am an independent businessman out there and I
13 have got some of these guys that are really bright. They
14 have got an idea and they want to propose it to your Board
15 and maybe lighten the load here. It's going to cost them
16 \$7500 to come to you and say here is a good idea?

17 On the vapor recovery nozzle which were really
18 a fiasco, the Board put \$20,000 -- I don't say it was a
19 variance fee, but \$20,000, it was like a variance fee,
20 to get a nozzle approved. We had some bright young people
21 out there and a couple of bright older ones out there that
22 had nozzles, that didn't have \$20,000, so they were washed
23 down the tubes.

24 I am just saying, don't stop us from coming to
25 you. That's what this is all about. I don't think that
26 is your intention, but that's exactly what it is going

1 to do.

2 I don't even think it is right to throw \$26,000
3 bucks on the major oil companies and I am not in love with
4 them, but if they have got an idea, let them come forward
5 and give you that idea and don't charge them \$26,000.
6 They will try and get it from some place else.

7 No variance fee will stimulate creative minds.

8 Let me make just a couple of recommendations;
9 one, that monitoring be done at service stations by daily
10 inventory on a temperature-corrected basis;

11 Second, we must be able to close tanks. Let's
12 say in Mendocino County or in El Dorado County, or in com-
13 munities out there where we have got three gasoline tanks,
14 one of them has gone bad. That service station dealer
15 should be able to close that tank, fill the tank with sand
16 or whatever it is, and I think that is provided in the
17 regulations, but not remove the dirt and the tank because
18 he can still serve the community with the other tanks he
19 has left. Otherwise, he's got to close down. That 10,000
20 gallons just isn't going to do it.

21 If we have to get to removing the dirt from under-
22 neath the tanks, I don't care if we pump a million gallons
23 well, that isn't true. If we pump 50,000 gallons, if we
24 have to remove it because there is bad dirt under there,
25 we are going to have to get into super funds, be it state
26 or federal. There has to be some consideration for small

1 business people.

2 Section 2672 says that a closed tank, that the
3 individual dealer be required to remove the gasoline lines.
4 That's not right. My gasoline lines come from the pumps
5 to the tanks in back. If I have a tank that goes out,
6 we are not talking about the big boys, the 150 to the
7 200,000, we are talking about the small rural communities,
8 if my tank is bad, let me put it out of order, let me cut
9 the line, let me put it on the deed as we suggest and cut
10 the line so I can't use it, but for someone to come in,
11 remove the lines as has been suggested, all my lines are
12 together, so if I remove that one line with that backhoe,
13 I remove all lines and it isn't necessary.

14 This is not the intent of the major oil companies
15 this time, but these regulations, if they are adopted and
16 promulgated as suggested here, you will giving them a
17 virtual monopoly in California which they are not looking
18 for through this vehicle. This is going to cost them a
19 bundle, too, but that's, in effect, what you are doing.

20 Many small remote communities will find themselves
21 without many sources of gasoline in the next three to five
22 years, and I think this Board -- I know you can't do it,
23 I know it is beyond the scope of your authority, but if
24 we are going to continue in this direction -- by the way,
25 we think we have got to clean this up. I don't think I
26 heard anybody from industry saying other than that today.

1 This Board, perhaps, should, perhaps through staff,
2 work with the Governor's office or whatever to get funding
3 through the SBA, help from the super funds and establish
4 -- just recently the Small Business Administration granted
5 millions of dollars on El Nino to the fishing industry
6 because they were greatly impacted.

7 There should be low interest loans to put some
8 of these programs into effect.

9 Thank you very much for your time.

10 MR. NOTEWARE: Thank you, Mr. Campell.

11 Any questions or comments? Yes, Ed.

12 MR. ANTON: We have a couple of questions. I have
13 a couple and I believe Harold Singer has one at least,
14 too.

15 One question we would like to address is you indi-
16 cated that you don't believe that there are any major spills
17 where there was daily monitoring and reconciliation was
18 done. I may be misquoting you, but my concern is what
19 about the times when you have a slow leak, 25 gallons a
20 day that might go on for literally years? Will inventory
21 control pick up something like that?

22 MR. CAMPBELL: Absolutely. As a matter of fact,
23 let us take 25 gallons a day, and if we use 25 gallons
24 a day, you have 750 gallons in a month; is that right,
25 roughly? Seven hundred fifty gallons a month, we can pick
26 up 100 gallons -- I have some records that I would be glad

1 to share with you, but we pick up 100 gallons a month,
2 50 gallons a month, and if it were temperature corrected
3 it is simple to devise the form. It is simple to show
4 a dealer -- I heard someone testify it was a two-day pro-
5 cedure to teach the average intelligent businessman to
6 use temperature correction. I think it would take two
7 hours.

8 I never said, though, that where we monitored
9 on a daily basis that there weren't major spills, but I
10 did say that within seven days' time we picked up the spill.
11 I don't of one incident, do you, Mr. Singer?

12 MR. SINGER: No.

13 MR. ANTON: I have one other question. You are
14 basically proposing that we ought to address for filing-
15 station-type operation inventory control and reconciliation
16 on a daily basis. What about the waste oil tank? Do you
17 have any recommendations on how one should monitor that
18 facility to make sure it is not leaking?

19 MR. CAMPBELL: You know, that's a very very fair
20 question. I don't have an answer. I will try to get back
21 to you. I really don't know how to monitor the waste oil
22 tank.

23 MS. RUIZ: Backing up just briefly to your discus-
24 sion about daily inventory control, what you describe may
25 be true for the competent, responsible dealers, but how
26 do you deal with a very slow leak that's noted by a very

1 small operator who knows what the cost of having to shut
2 down or repair a tank is and decides that in doing a little
3 balancing -- one must keep the business open at all costs.

4 MR. CAMPBELL: It's really a fair question and
5 I guess my answer would be, and we have, I'm sure, dealers
6 such as you describe, in the communities, but regardless
7 of where I am, and let's assume that has to probably be
8 a rural situation where he is pumping 10,000 gallons of
9 gas a month, when you come in with your regulations to
10 punch the holes in, he is closed down anyway.

11 We figured for the County of Sonoma there are 160
12 service stations. To check the monitoring of the tanks
13 and to put two staff people in the field with those 160
14 service stations with a car and backup secretary and so
15 forth, we feel the cost is going to be roughly \$300 per
16 year just to monitor tanks, but we are prepared to pay
17 whatever the costs are on a local basis to do the job prop-
18 erly.

19 I wouldn't even really be sitting here today saying
20 we are just totally opposed to dropping wells and monitor-
21 ing and so forth, but that the state of the art is not
22 here yet, and all this requires is an intelligent business-
23 man that can monitor himself. The Bureau of Auto-
24 matic Repairs, as an example right now, we have 6,000
25 facilities in the state that smog inspect your cars.
26 They have / ^{undercover} cars and they have a series of people that

1 come out and check us. We are not afraid of that. As
2 a matter of fact, we welcome it.

3 MS. RUIZ: I still feel that there is still no
4 way yet that you have given us a handle on it.

5 MR. CAMPBELL: I am sorry. Let me try it once
6 more. Monthly I have to post those records. I send them
7 to the local office, whatever that happens to be. The
8 local office can themselves determine who they want to
9 check. They can check me monthly, they can check me three
10 times a week, they can check me at whatever time or whatever
11 interval they want. We would be paying for that ourselves.

12 MR. WILLIS: Let me ask you, Mr. Campbell, Ms.
13 Ruis brought up a question I wasn't thinking about, but
14 if you had somebody that was trying to get around the other
15 side of the barn, so to speak, if you, first of all, just
16 simply required a pressure check right up front on every-
17 body straight across the board within a year or 18 months
18 after these regulations are adopted, that would basically
19 catch most of these people; wouldn't it?

20 MR. CAMPBELL: I forgot about that. Thank you.

21 MR. WILLIS: If you had them following that, if
22 you had some sort of periodic pressure check, that would
23 add a little more insurance that nobody is going to get
24 away with it.

25 MR. CAMPBELL: Exactly.

26 MR. WILLIS: What I wanted to ask you is this,

1 on these inventory types of controls, I think that one
2 question that you know will arise from a lot of people
3 in just the general public is how can we give them assur-
4 ance that we know how these inventory programs are being
5 done?

6 I am not saying I intend to propose this, but
7 I would be interested in your comments to it, and that
8 would be perhaps in these regulations it would be worth-
9 while having not a mandated form, but a recommendation
10 form, for example, for inventory procedures.

11 I was wondering if we were to consider that would
12 your organization be willing to give us a little bit of
13 time between now and November 2 in making a proposal on
14 how that could be done so we can share it with the rest
15 of industry and let them have their say about it?

16 MR. CAMPBELL: By next -- give me five days and
17 we will have a form to you. We would accept a mandated
18 form. I don't like the word, and there are a lot of people
19 out there watching us now. I can't believe how many in-
20 spectors we have, but I think this is an area we would
21 be delighted to cooperate in. We will furnish our recom-
22 mendation with the temperature correction so it is simple
23 to do and we would be delighted to cooperate.

24 MR. WILLIS: Could you get together with Mr.
25 Singer, and I am sure that you could get him some informa-
26 tion.

1 MR. CAMPBELL: I will call him tomorrow or talk
2 to you tonight or whatever you want.

3 MR. SINGER: Just a few points of clarification--
4 maybe you can help us with this. When you say temperature
5 correction, do you mean they would take a temperature read-
6 ing of the tank every time they took a stick reading?

7 MR. CAMPBELL: No, that's not what I am saying.
8 The reason we even throw in temperature correction is
9 if you have a temperature corrected load, when the load
10 comes in, it will show the temperature of the gasoline
11 and if we monitor our tanks without temperature correction,
12 could have, as the example someone brought up, I think
13 I could have a 300-gallon-a-month gain. In the real world
14 I could be losing gasoline out of my tanks, so it has to
15 be temperature corrected.

16 But it is available to us. Our form shows the
17 temperature of the gasoline and I'm sure your staff can
18 help us in that area, but we will make the --

19 MR. SINGER: One other point you brought up during
20 your recommendation about a five-percent shortage, and
21 I think you said a day. The reason I said, wherever
22 you want to work, I was a little nervous with the 50 gal-
23 lons.

24 That's what I am trying to get to. What is your
25 comment on the 50 gallons?

26 MR. CAMPBELL: If we had a mandated form that

1 took into consideration the temperature correction, I am
2 not nervous with the 50 gallons, but the five percent would
3 be easier and would certainly within two days, actually
4 within one day, detect a problem, but give us three days
5 and I'd feel better.

6 MR. SINGER: Just to put it in perspective, when
7 we talk about an eight-to-ten-thousand-gallon tank, we
8 are talking about four to five hundred gallons if you con-
9 sider five percent of the tank.

10 MR. CAMPBELL: No, I didn't say the tank. If I
11 did, I'm sorry -- five percent of the quantity. If there's
12 2,000 gallons of gasoline in the tank, then five percent
13 would be 100 gallons.

14 MR. SINGER: But you could have a tank that had
15 eight to ten thousand gallons in it --

16 MR. CAMPBELL: Yes, that's right. What I'm offer-
17 ing to you, though, any reasonable formula that comes up
18 with something that we can work with -- I am not trying
19 to throw something in to get away with making the program
20 work.

21 MR. FINSTER: In your presentation you indicated
22 your association's opposition to 1362. Apparently based
23 on that, there were some changes made in the bill and you
24 indicated that Section, I think 25284.3, was added. Is
25 that the case?

26 MR. CAMPBELL: That is the part, 25284.3, that

1 is the one that allowed the daily inventory, yes, that
2 is correct.

3 MR. FINSTER: Based on that change in the bill,
4 you apparently withdrew your objection to 1362. Were both
5 of those done in writing? Did your association file a
6 written protest to the bill and did they withdraw it?

7 MR. CAMPBELL: It's interesting -- I can tell
8 you where we withdrew it the last time on this clean-up
9 bill this year, Mr. Sher jumped up and said, you promised
10 you wouldn't be here anymore if we allowed inventory con-
11 trol, and I said, we just want to make sure that this is
12 inventory control, that we can do it. He said, yes, and
13 we left the table and that was the end of our opposition.

14 MR. FINSTER: And that is in the public record?

15 MR. CAMPBELL: You can call Mr. Sher himself.

16 MR. NAGLESTAD: In response to your question,
17 I am Fred Naglestad, Legislative Advocate for othe Service
18 Station Council, and I was with them every step of the
19 way on this thing, and it is a matter of common record
20 that the service station dealers were opposed to this meas-
21 ure, but in exchange for the prosivion of monitoring, daily
22 monitoring, we withdrew our opposition.

23 However, the other gentleman raised a question
24 about some other form of testing other than daily sticking,
25 and I realize you are in an awkward position of trying
26 to implement last year's bill while at the same time Mr.

1 Sher has two more bills that become effective January 1,
2 and I might call to the staff's attention that one of those
3 bills, Assembly Bill 3781, Chapter 1584, that supersedes
4 all of this stuff as of the first of the year, says in
5 Section 25292, which is a renumbering of this 25284.1,
6 to which Mr. Campbell referred. The three has now become
7 a four, but it says:

8 "For monitoring tanks containing motor
9 vehicle fuels, daily gaging and inventory
10 reconciliation by the operators, if all
11 of the following requirements are met,"
12 and this goes to your concern, "inventory
13 records are kept on file for one and
14 are reviewed quarterly, the tank is tested
15 using the precision tests as designed
16 by the National Fire Protection Associa-
17 tion Pamphlet 329, recommended practice
18 for handling underground leakage of flam-
19 mable and combustible solids as amended
20 for proving the integrity of an under-
21 ground storage tank at time intervals
22 specified by the Board."

23 That's you, and whenever there is a shortage
24 greater than the amount which the Board shall specify by
25 regulation -- so it does call for in Mr. Sher's new bill
26 which you will be wrestling with the first of the year,

1 the testing as a backup for the daily inventory control.
2 It's that combination of events that caused service sta-
3 tion dealers to withdraw their opposition to Mr. Sher's
4 measure.

5 MR. FINSTER: Thank you.

6 MS. RUIZ: One comment. You understand, of course,
7 and I hope that some of the people that were representing
8 others, that this Board doesn't get the luxury of being
9 able to see into the room where people were negotiating
10 all this, and so and so says such and such. We are stuck.

11 MR. NAGLESTAD: You are faced with cold print.

12 MS. RUIZ: That is right and statutory interpreta-
13 tion then guides us and directs us to where we must go
14 and while it might be nice to be able to understand all
15 these things, but then perhaps it means you need to go
16 back and talk to Assemblyman Sher and perhaps clarify your
17 arrangements in further legislation as opposed to putting
18 in this record what you had hoped he understood.

19 MR. NAGLESTAD: We are not asking you to rewrite
20 the statutes. We are asking, and you are being asked to
21 interpret and implement the statute, and what we are sug-
22 gesting is that the inventory control measures, daily in-
23 ventory sticking, is given as a specific way to go for
24 motor vehicle fuel and that only.

25 And, in fact, Mr. Sher in his bill, the one you
26 are dealing with, says based on materials stored and based

1 on materials stored it says for monitoring tanks containing
2 motor vehicle fuel, and I am simply saying that we are
3 comfortable that you have in the first Sher bill, but the
4 question was raised as to how about some additional testing
5 for the integrity of the tank, and I wanted you to know
6 that we picked that one up in the new Sher bill that be-
7 comes law the first of the year.

8 MS. RUIZ: We understand that, but we also under-
9 stand that we are dealing with that language and how we
10 want to interpret it as opposed to how you understood the
11 agreement was.

12 MR. NAGLESTAD: It has been my experience that
13 administrative bodies, if they know that the Legislature
14 has passed a bill that becomes effective on January 1,
15 1985, take that legislative intent into consideration when
16 working on regulations, even though they may be adopted
17 in December of '84, rather than having to redo them.

18 MR. NOTEWARE: Could we have your name again?

19 MR. NAGLESTAD: Fred Naglestad, Legislative Advo-
20 cate for the California Service Station Council. I was
21 on as your last witness, if necessary. I felt the if
22 necessary had arrived, so you can scratch me at the end.

23 MR. NOTEWARE: Now we will ask Hank Martin to
24 come back. Mr. Willis has a question before you get away.

25 MR. WILLIS: Hank, I wanted to ask you, I haven't
26 had a chance to read the comments you turned in, but I

1 think that you picked up today that a vast majority of
2 this conversation has had to do with Article IV, monitoring
3 in regard to service stations, but your organization repre-
4 sents more than oil companies.

5 MR. MARTIN: Yes, we do.

6 MR. WILLIS: You also represent stationary indus-
7 tries such as computer companies, et cetera. Probably
8 a few of your members are over in Silicon Valley spending
9 a few million bucks this year.

10 MR. MARTIN: That's right.

11 MR. WILLIS: I wanted to ask you a question with
12 regard to, does your organization, in your comments, or
13 do you wish to add to your written comments, something
14 with regard to how you view Article IV as it pertains to
15 those stationery industries? We really haven't talked
16 very much about that today.

17 MR. MARTIN: I would say the fundamental concerns
18 that have been expressed by WOGA, by CIOMA and by a number
19 of the other individual companies are there. You are talk-
20 ing about problems requiring a number of specifics, where-
21 as, perhaps one or two of the specifics could as easily
22 suffice.

23 So those sort of fundamentals are across the board
24 regardless of whether you are storing petroleum or whether
25 you are storing some solvent.

26 The ability for maximum flexibility at the local

1 level is essential as far as all of my members are con-
2 cerned.

3 Does that answer your question? That is the funda-
4 mental problem from our point of view with Article IV.

5 MR. WILLIS: Comments that were made informally
6 as I move around the State of California in the past have
7 been that service station operators are more inclined to
8 be conscientious about inventory control because if it
9 leaks badly, it is their profits that are leaking.

10 If a stationery industry has a leak, it's just
11 that much less stuff they have to take to a class 1 facility.

12 MR. MARTIN: Well, I would have to disagree with
13 that across the board in the fact that I would say that
14 105 percent of my members are in here for the long haul,
15 and the liability provisions the way they are, if you just
16 want to consider that, regardless of the fact everybody
17 wants to be good corporate citizens, everyone wants to
18 do as good a job as they possibly can, but just from the
19 liability problems which everybody discussed here, the
20 problems IBM is having, the problems Fairchild is having,
21 the problems Aerojet is having, those sort of things are
22 in the minds of everybody who is operating any sort of
23 facility whatsoever, and I would say that to state that
24 some portion of industry, because they are not as visible
25 as your corner gas station operator, are not going to care,
26 that is ludicrous.

1 MR. WILLIS: Do you think that because of liability
2 alone a stationary industry would just as soon pull the
3 tank out of the ground and replace it with a new conforming
4 tank to ensure that in the future they won't have a prob-
5 lem or --

6 MR. MARTIN: I can't speak across the board.
7 I can tell you that as far as I know the largest non-utility
8 employer in the state is indeed doing that. Hughes Air-
9 craft will no longer have any underground tanks after a
10 given amount of time. They are moving everything up so
11 there are a number of programs in the works, so that you
12 are either going to put in the double-walled, double-shell
13 tanks with sensors in between them or you are propping
14 all the tanks up that you can. I know gas stations can't.

15 MR. WILLIS: Okay, I appreciate that.

16 MR. NOTEWARE: Thank you, Mr. Martin.

17 Next is Cecil Harlan.

18 MR. MARTIN: Cecil is the expert that was going
19 to testify this afternoon who had to leave.

20 MR. NOTEWARE: Thank you, Mr. Campbell.

21 Robert Cleveland, California Fire Chief.

22 Todd Murray.

23 We are sure going through them.

24 Richard Gray.

25 MR. GRAY: I turned in my original before five
26 o'clock, by the way.

1 MR. NOTEWARE: You must be an attorney.

2 MR. GRAY: As a matter of fact, I am. I am Richard
3 Gray, corporate attorney for Wickland Oil Company here
4 in Sacramento and I think that being near the very end,
5 almost everything has been said at least once today.

6 A couple of points have not been emphasized and
7 I would like to emphasize them briefly.

8 Getting back to Mr. Lipper's comments this morning,
9 I, too, like Mr. Campbell, was extremely upset when I heard
10 his final comment. I felt betrayed also.

11 I thought I understood him to say that Mr. Sher
12 did not intend that inventory control be the only monitor-
13 ing method for all underground storage tanks whether they
14 be new or existing. So, what I did immediately after or
15 on the first break is I went up to Mr. Lipper and I got
16 a copy of his comments, and as it turns out, that's not
17 what he said in his comments, anyway in his written com-
18 ments, because in his written comments he cites on his
19 last point, Section 2634 of the regulations, which deals
20 with monitoring standards for new motor vehicle fuel tanks,
21 and he also cites Section 25284(a)7 of the statute again
22 which deals with new tanks.

23 So, Mr. Lipper and Mr. Sher were not talking about
24 existing motor vehicle fuel tanks this morning when that
25 comment was made, and I think if you do look at both the
26 regulations and the statute regarding existing motor vehicle

1 fuel tanks, I think the legislative intent in the statute
2 comes out very clear that for existing tanks the only re-
3 quired monitoring method is the daily gaging and inventory
4 reconciliation, assuming those other requirements that
5 were just mentioned are met.

6 So I think the legislative intent regarding exist-
7 ing motor vehicle fuel tanks is clear. I don't think
8 there's an ambiguity to interpret there. I think the word
9 "alternative" is self-evident.

10 Webster defines "alternative" as offering a choice
11 between two or more things, only one of which may be chosen,
12 so I think the Legislature used the term "alternative"
13 meaning one of the following, not more than one.

14 That's the point I wanted to make. Thank you.

15 MR. NOTEWARE: Mr. Willis.

16 MR. WILLIS: I think you have done better with
17 the dictionary than Mr. Bush did.

18 I wanted to ask you, it seemed to me that Mr.
19 Lipper made a comment and apparently we both interpreted
20 his comments the same way, and you have had an opportunity
21 to chase him down, but I just reaffirm that what Board
22 Member Ruiz stated, and that is irrespective of what he
23 thought, he intended, how he wrote it down is the final
24 say on the matter as far as any regulatory agency is con-
25 cerned, but your bringing to mind the dictionary definition
26 of "alternative" is also very helpful. Thank you.

1 MR. GRAY: Thank you.

2 MR. NOTEWARE: Richard Casagrande, Environmental
3 Health Specialist, Kern County Health Department.

4 MR. CASAGRANDE: Thank you for entertaining me
5 at this late hour. We didn't expect to be giving testimony,
6 but we thought it may be important for the Board since
7 no other local agency other than El Dorado County was here
8 for you to ask questions.

9 Kern County has a program dealing with underground
10 tanks both for existing and new facilities.

11 So, if there are questions the Board may have re-
12 garding our program, it was sent in just prior to January
13 1; in fact, it was an emergency ordinance December 30.

14 We have a program that deals with probably 85 per-
15 cent of the problem this year now with realistic goals
16 and in time we are going to deal with 100 percent of the
17 problem, and the point we would like to make is that the
18 state's regulations as we see them impacting on local
19 counties, because primarily local counties will be the
20 permitting authority, although much effort has been put
21 into the regulations, we feel that you are going to be
22 missing the mark in dealing with the problem. They are
23 just not going to be set up to provide what is needed given
24 these regulations, both for the permitting of new tanks
25 and for the permitting and the regulation of existing tanks

26 I, personally, and I think I can speak for .

1 probably six other counties, large counties that have an
2 ongoing program, take exception to one of the comments
3 that was made, and it's the implication that it's just
4 this staff that has worked hard, has worked long hours
5 and that is environmentally concerned, and that is aware
6 of the cost to industry.

7 I want you to know that there are many other coun-
8 ties and staff within those counties that have those same
9 concerns. I know I have worked -- well, our county, as
10 some of the other counties, especially in Southern Cali-
11 fornia, have worked, tried to work closely with Harold
12 Singer and he has been a real good person to work with,
13 and we appreciate that, but from our perspective, I know
14 the Board can't do much about it now, but it is a lot like
15 going horseback riding and saddling a horse up and not
16 putting a bridle on him.

17 What we have done, we have no direction as far
18 as what to do when a leak occurs. The regulations don't
19 address what we can realistically assume would be reasona-
20 ble soil clean-up levels for gasoline, primary groups of
21 solvents we are dealing with, gasoline and diesel, and
22 we begged the Department of Health Services to come up
23 with some criteria by which we could gage that, and I mean
24 begged, because we are dealing with a realistic world.

25 We have people, and we look at abandoned tanks,
26 and I should have drug the old man up here because he would

1 have great as testimony. He could have told you what kind
2 of impact we had on him and his little mom and pop indus-
3 try. It was a small market, small tank, it did leak.

4 But water is almost at 400 feet, usable water.
5 It's perched water, but it is 400 feet deep, but still
6 we had to have him go through the area at costs that he
7 had not thought of in his day-to-day operations, and when
8 we looked at this like we should have and we did, he turned
9 to us and said, you just bought my store, here are the
10 keys. I can't do it.

11 So we had to go into other imaginative ways rather
12 than have him hire a consulting engineer, and there are
13 a lot of good consulting engineers out there, but they
14 are very expensive.

15 Local counties should be brought up to speed and
16 educated as to what they can expect both from these con-
17 sulting engineers and how they can help some of these people
18 who can't afford it.

19 Some training and education should be a large
20 part of whatever else you do, and if you can get it into
21 the regulations, then it should be done. Money should
22 be set aside for that. How the money is spent is another
23 subject I want to get down to later, but the magnitude
24 of the problem relating to historic leaks is quite a serious
25 thing.

26 Abandoned tanks -- in our county we probably have

1 70 percent, between 65 and 70 percent of those tanks have
2 had historic leaks. What do you do with it? Is there
3 microbial degradation of an accelerated rate enough so
4 that the plume stabilizes and will never impact on
5 groundwater. And if that's the case, do we want to start
6 yanking the soil, essentially mining soil? Is that one
7 of the mitigative options that we should be entertaining
8 or should we leave it entombed and with the deed on the
9 property that the property has suffered an historic leak,
10 and that's the end of it?

11 So, you see, those are the hard questions that
12 we have to answer for when we deal with that owner. There
13 is a lack of technical data supporting the effectiveness
14 of various monitoring techniques and the ability of local
15 enforcement personnel to evaluate currently available tech-
16 nological approaches and materials and constructions.
17 Someone needs to be a clearing house to look at what works.

18 There are a lot of snake-oil salesmen out in the
19 field and we can't individually, 58 counties, and I don't
20 know how many cities within the state that have adopted
21 these things, we can't individually, and it is redundant
22 to go through and evaluate each one of these pieces of
23 equipment as to its effectiveness. There is a lack of
24 complete definition required to make determinations on
25 a local level.

26 To give you a good example "sumps," "significant."

1 You can't put that kind of definition in the regulations
2 because if you leave it up to this county or my adjacent
3 county, we may have a different approach, and there should
4 be some uniformity throughout the state because it is al-
5 ways more important for local counties to say, this is
6 a state-wide program and although we are addressing the
7 uniqueness of our county, the unique features of our hydro-
8 geological conditions, we are also addressing some uni-
9 formity, what we are impacting on you here in Kern County
10 is going to be impacted throughout the state.

11 So, if we are regulating sumps or what is
12 essentially a sump, then it should be done throughout the
13 state.

14 There is an ambiguity and we are going to take
15 full advantage of the latitude afforded to local authori-
16 ties, permitting authorities, to make exceptions for exemp-
17 tions from provisions in order to attain the equivalent
18 degree of protection.

19 It's good for those of us who have looked at this
20 issue in depth, but for other counties that haven't, it
21 is a real chore. It doesn't give them the clear direction
22 they may need, but if we are looking for equivalency to
23 the regulations, we feel we will accomplish that in our
24 draft regulations.

25 And how the Board concluded that the motor vehicle
26 fuel deal with things on the highway is absolutely beyond

1 me. We are looking at a different approach. In other
2 words, the diesel tank that uses No. 2 diesel fuel that's
3 adjacent, or it is an ancillary unit for a backup to a
4 hospital generator -- okay, this is commonly done. There
5 is no difference in the diesel that's put in the tank in
6 a motor vehicle fuel, and yet, they are required to do
7 more under the regulations than motor vehicle fuels. It
8 is just not fair.

9 Some way the regulations should look at the prod-
10 cut, and I realize that gasoline is one of the more danger-
11 ous products we are dealing with. Either the exemption
12 should have never been there or it should be viewed as
13 both motor vehicle fuel and other adjacent or like indus-
14 tries that use that same type product.

15 Waste oil tanks -- waste oil being a very viscous
16 fluid, being not large in volume, to regulate that in the
17 form that the regulations point out, I don't know if that's
18 cost effective. I have not heard of a waste oil tank leak-
19 ing waste oil and impacting anything. What they generally
20 do is overflow upon the street.

21 I think the key thing, and Ron Duncan
22 brought this up, is how are the moneys to be used. We
23 have some real needs. I mean, it's your draft regulations,
24 but we are the permitting authority. We have some real
25 needs and we want to be a part of how those moneys are
26 spent.

1 If we are going to be collecting, and it appears
2 we may be just that, if we are going to be a collection
3 agency, we should have some input on how those moneys are
4 spent to address both your needs and ours also.

5 Without going into any more specifics, we have
6 a problem, I see a problem in the regulations that we have
7 addressed by just taking it out completely.

8 Repairing a tank, if a tank has suffered a leak
9 and you repair that tank, that leak may be because of cor-
10 rosion. You repair that leak, how long is that tank going
11 to last? A tank goes in under some UL listing for stress
12 and structure, and yet, if it starts to leak and you allow
13 that thing to be repaired, there is no data to show that
14 it is proper repair.

15 We have addressed some of the other issues like
16 a fiberglass-clad tank. How do you test that?

17 There are other things in our regulations that
18 are more stringent possibly than yours. We have reviewed
19 your draft quite fully and they are more stringent and
20 address raceways in the product lines because industry
21 is telling us that most of the leaks occur in the product
22 line. So we are capturing that leak and monitoring for
23 it.

24 Also, in our program we have made it a point to
25 have industry at the beginning of our draft regulations
26 and a part of those draft regulations so that we have the

1 state of the art, we feel, because on a local level we
2 pump gasoline like every other citizen, and yet the indus-
3 try are the key people that are knowledgeable both on prod-
4 cut reconciliation, on the monitoring methods, on the in-
5 stallation, and what will work. We have a primary goal
6 and that is protection of the groundwater, at least in
7 our county.

8 Now we are meeting that goal, but we are using
9 industry experience and technology to put into our draft.
10 I have noticed some people here we're going to be wanting
11 to talk to and deal with in our meeting on Friday down
12 in Kern County.

13 So, we feel attending this hearing was an impor-
14 tant item for us. So, with that, I will stop and answer
15 any questions you may or may not have.

16 MR. NOTEWARE: Thank you, Mr. Casagrande.

17 Any questions? Mr. Willis.

18 MR. WILLIS: A couple. Mr. Casagrande, I would
19 like to, first of all, extend an apology if either you
20 or Mr. Duncan think that my comment was reflective of all
21 local government staff. I can only speak to personal ex-
22 perience with some people in some communities I have had
23 to work with, primarily in planning offices.

24 MR. CASAGRANDE: Your apology is accepted and
25 I will convey that to the rest of the counties.

26 MR. WILLIS: I would like to ask a couple of

1 questions, if I could. First of all, you raised the ques-
2 tion of basically how clean is clean when replacing a tank,
3 I assume?

4 MR. CASAGRANDE: That's correct, or replacing
5 or dealing with a leak and it goes beyond how clean is
6 clean. It goes into, you know, if you are dealing with
7 environments, you have to deal with air. We have had
8 literally giant mounds of dirt that have been excavated
9 from leaking tanks, knowing full well that historically
10 the chances of that leaking anywhere are absolutely nil.
11 This leak has stabilized, but because constituents of
12 gasoline are generally construed as RCRA violations, we
13 had them dig this up.

14 And I think the effects of benzene and other
15 chlorinated hydrocarbons on the air were significant, which
16 are not addressed in air pollution control districts because
17 it's not a permitted facility.

18 MR. WILLIS: You indicated that you had made in
19 Kern County an attempt to get some information from the
20 health services with regard to this issue.

21 MR. CASAGRANDE: That's correct.

22 MR. WILLIS: How long ago was that?

23 MR. CASAGRANDE: How long ago did I what?

24 MR. WILLIS: How long ago was the inquiry made?

25 MR. CASAGRANDE: I don't know -- probably six
26 to nine months ago when we realized this was an important

1 issue, and I know that the Berkeley labs are working on
2 recommended clean-up levels for one constituent, benzene,
3 dealing with it from a RCRA violation.

4 MR. WILLIS: And basically, what have you been
5 told by health services? Have they said when they would
6 get back to you?

7 MR. CASAGRANDE: At least for that constituent
8 they are working on it, but for the rest of them, and it
9 goes into other issues, and I don't mean to expand on it,
10 but you have to know that there are very few laboratories
11 that can even test for diesel.

12 We had one well known soils engineering firm do
13 a study because they had a diesel leak, and they tested
14 for diesel, grabbed the soil samples and they tried to
15 find a lab that would test for diesel in soil, and there
16 are just very few labs will do that. One is up here in
17 Emmeryville. So, it is not something that's easily done.

18 And then with gasoline, what analytes do you test
19 for? Do you test total hydrocarbons and make an assumption
20 from that or do you test for BTX and try to make an assump-
21 tion from that? You see, it's there, you know, stabilized
22 in the soil. If it is wet soil, we can deal with that,
23 we can yank it, and we going to literally end up with
24 another mountain range near the Sierra if all the soil
25 is yanked that has had historic leads.

26 MR. WILLIS: Well, hopefully, Kern County can

1 get rid of its alkaline soil at the same time.

2 I want to ask you, you indicated also that there
3 was a concern on your part as to how do you make an analy-
4 sis of what kind of equipment works or doesn't work. Were
5 you referring to the electronic monitoring devices?

6 MR. CASAGRANDE: Both electronic and some of the
7 reconciliation electronics that are both for vapor sniffing
8 and for record reconciliation, also for lining, product
9 compatibility, things like that.

10 We have come up with innovative things simply be-
11 cause it appeared it would work and they are being used,
12 and we will see if they will work.

13 MR. WILLIS: What about the issue you raised with
14 regard to abandoned tanks? What was the percentage you
15 gave us again?

16 MR. CASAGRANDE: The percentage was based on when
17 someone comes into our office and wants to abandon a tank,
18 before we can abandon a tank they have to come into our
19 office, get a permit, because we want to see if that tank
20 has leaked. What I am saying is 65 to 70 percent of those
21 people coming in, unbeknown to them how expensive it is
22 going to be, they come in wanting paper. We give them
23 paper and they take soil samples. Now we have a leak and
24 70 percent of those people that come in have had an his-
25 toric leak in those tanks, and something needs to be done
26 so we can get some idea of what to do with them when soil

1 conditions are not remarkable. Hydrological conditions
2 are such that water is not impacted, it is not going to
3 be impacted. In other words, we can't have every person
4 coming in going to these great expensive studies. We should
5 have some criteria to help them reach a decision or help
6 us reach a decision as to whether it is significant or
7 not.

8 But it is a large majority, at least in Kern County
9 and we do have alkaline soil.

10 MS. RUIZ: I was wondering, has our staff reviewed
11 the current county regulations?

12 MR. SINGER: You are still in the process of draft-
13 ing them?

14 MR. CASAGRANDE: We are on our final draft. We
15 have met with all the industry groups. We have had our
16 last meeting with them and we will be meeting Friday to
17 address both fees and product reconciliation, but essen-
18 tially, we thought we would wait and hear what was said
19 at this hearing before we actually made the final draft,
20 but for the most part they are.

21 MR. SINGER: We have talked, but I don't think
22 we have actually looked at your draft ordinances.

23 MR. CASAGRANDE: I could make those available
24 to you, and input from industry has been positive. Of
25 course, they have been a part of it. But it's been a give-
26 and-take issue knowing full well we will have a requirement

1 which is protection of the groundwater.

2 MS. RUIZ: Has Kern County, similar to Mr. Duncan
3 with El Dorado, has Kern County made an analysis of what
4 the impact on the county is going to be in the proposed
5 regulations?

6 MR. CASAGRANDE: For the same reason Ron mentioned,
7 we just absolutely cannot afford the staff time to do that
8 kind of a statistical cost analysis to the industry. I
9 know it is significant.

10 MS. RUIZ: Okay, thank you.

11 MR. NOTEWARE: Any other questions?

12 MR. CASAGRANDE: Thank you.

13 MR. NOTEWARE: Okay. You have the distinction
14 of being the last person on this stack of cards.

15 Yes.

16 MR. MEACHAM: You should have a card. I am Bob
17 Meacham which says "if necessary." Do you have that card?

18 MR. NOTEWARE: I didn't catch it. "If necessary"
19 cards may be with Ms. Onorato. We are certainly anxious
20 to hear what you have say.

21 MR. MEACHAM: I am Bob Meacham. I am with South-
22 west Tank Liners. I was just going to sit back and be
23 quiet.

24 Mr. Sher did address tank linings in his bill
25 as did the Boatwright bill a couple of years ago. Tank
26 liners are recognized by the Legislature.

1 I just heard testimony saying that there has been
2 no evidence supporting the use of tank linings. That is
3 false. There is evidence from the American Petroleum In-
4 stitute which indicates that tank linings are a very way
5 of stopping leaks. Out of a quarter of a million tanks
6 there is a failure rate of less than one-half of one per-
7 cent which is excellent.

8 I also would like to suggest as you develop your
9 regulations that you look at the law that was implemented
10 in the State of Florida. The State of Florida has required
11 that tanks that were installed or are in the ground already,
12 that they be either replaced or interior coated with the
13 interior coating process by a certain date. I suggest
14 that for obvious reasons.

15 And I would be willing to answer any questions.
16 I have provided Harold with information from both API and
17 from Southwest Tank Liners, and also, some further engi-
18 neering data supporting the tank lining position.

19 MR. NOTEWARE: Any questions?

20 Thank you very much, Mr. Meacham.

21 Anyone else?

22 MR. DAVIS: I was another "if necessary," Mr.
23 Chairman.

24 MR. NOTEWARE: All right.

25 MR. DAVIS: I am Dick Davis, Executive Director
26 of the Chemical Industry Council, and in the interest of

1 time and the feelings of the Board Members, I will forego
2 my prepared remarks, but Mr. Willis asked one question
3 of Hank Martin that I would like to underscore.

4 In our written submission, which in appreciation
5 for my dropping my prepared remarks today, I hope each
6 Board Member will read, we raised most of the same concerns
7 that were raised by the other segments of industry with
8 the exception of the claim that the regulations will put
9 our members out of business.

10 I believe all the rest of our concerns are there,
11 the redundancy of the requirements, the going past the
12 legislative intent, in effect, making all underground tank
13 operators set up a state-wide water quality monitoring
14 system -- those concerns are of concern to our members
15 also.

16 I would like to leave you with one suggestion
17 in light of the really serious impact that these regulations
18 are going to have, and also, in light of the fact that
19 we need these regulations to be properly put together,
20 I think staff has done an excellent job of presenting things
21 for everybody to consider, but I think there needs really
22 to be time now to develop these into a sound set of regu-
23 lations which (1) will protect our groundwater quality
24 and at the same time will serve the welfare of the people
25 of California.

26 I would urge the Board to approach Mr. Sher and

1 ask for emergency legislative relief from the time con-
2 straints in 1362. Legislative vehicles are available. It
3 could be done, and at least I would like to offer that
4 as a suggestion for consideration.

5 Thank you very much.

6 MR. NOTEWARE: Thank you, Mr. Davis.

7 Would anyone else like to be heard whether or not
8 you filled out a card?

9 Do you have any closing comments, staff? Board
10 Members?

11 MR. WILLIS: I would just like to express appre-
12 ciation for those who stayed here with us through the pro-
13 cess and some appreciation for those who have already left.
14 But also, I think that we have got a pretty good idea of
15 some of the major concerns and some of the substantive
16 concerns that have been raised, and hopefully, with the
17 schedule that we have identified, we will be able to try
18 to meet those within the responsibilities we assume under
19 the law that was adopted; and in addition, also try to
20 meet the time line.

21 However, I would just like to reiterate it is
22 more important in my opinion, just as one Board Member,
23 that we get the regulations right the first time as opposed
24 to, even if we have to go into January to do it.

25 MR. NOTEWARE: Thank you. I certainly want to
26 thank everyone for coming today.

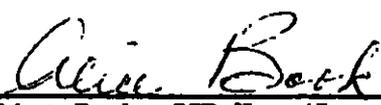
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REPORTER'S CERTIFICATE

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THIS IS TO CERTIFY that I, CALICE BOOK, a Certified Short-
hand Reporter, was present during the proceedings of the STATE WATER
RESOURCES CONTROL BOARD, STATE OF CALIFORNIA, held in Sacramento,
California, on Tuesday, October 23, 1984; that as such I recorded in
stenographic shorthand writing the testimony given and evidence
presented in the hearing in the matter of Proposed Resulations
governing underground storage of hazardous substances; that I there-
after caused my stenographic shorthand to be transcribed into long-
hand typewriting and that the preceding pages 1 through 258,
constitute said transcript; that the same is a true and correct
transcription of my stenographic shorthand writing for the date
herein specified.

Dated this 5th day of November 1984.



Alice Book, CSR No. 43

2. November 2, 1984 Workshop Session

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WORKSHOP

STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA

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In the Matter of Proposed)
Regulations Governing Underground)
Storage of Hazardous Substances)

--oOo--

Held In
Resources Building
Sacramento, California

--oOo--

Friday, November 2, 1984

10:00 A.M.

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Received DTS

NOV 20 1984

ALICE BOOK
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2 **BOARD MEMBERS:**

3 **CAROLE S. ONORATO, Chairperson**

4 **WARREN D. NOTEWARE, Vice Chairman**

5 **KENNETH WILLIS**

6 **DARLENE RUIZ**

7 **E. H. "TED" FINSTER**

8
9 **STAFF:**

10 **ED ANTON**

11 **HAROLD SINGER**

12 **WALTER PETTIT**

13 **JOHN RICHARD**

14 **KATHY HARDING**

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I N D E X

| | | | |
|----|------------------------------|--------|------|
| 1 | | | |
| 2 | | | |
| 3 | Opening Remarks | | Page |
| | Warren D. Noteware | | 1 |
| 4 | Staff Explanation | | |
| | Ed Anton | | 2 |
| 5 | John Richard | | 6 |
| | Harold Singer | 13 32 | 165 |
| 6 | Walter Pettit | | 151 |
| | Kathy Harding | | 184 |
| 7 | | | |
| 8 | Public Comments or Questions | | |
| | Noel Fletcher | 29 | 69 |
| 9 | Hank Martin | | 30 |
| | Richard Reese | | 31 |
| | Richard Zipp | 52 | 146 |
| 10 | Tom Robinson | 52 126 | 181 |
| | Bob Payne | | 75 |
| 11 | Cecil Harlan | | 77 |
| | Robert Short | | 82 |
| 12 | Michael Bouton | | 91 |
| | Ed Boswell | 97 | 188 |
| 13 | Gerry Hagy | 99 | 175 |
| | Bob Johnson | | 116 |
| 14 | Mike Bonkowski | | 135 |
| | Ron Duncan | 144 | 180 |
| 15 | Bob Shuster | | 163 |
| | Richard Fay | | 168 |
| 16 | Margaret Allender | | 173 |
| | Roger Peterson | | 176 |
| 17 | David Attwater | | 183 |
| | Michael Chan | | 190 |
| 18 | Bert McCormack | | 191 |

---c0o---

19
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1 FRIDAY, NOVEMBER 2, 1984

10:00 A.M.

2 --oOo--

3 MR. NOTEWARE: Good morning, ladies and gentlemen.
4 This is the workshop of the State Water Resources Control
5 Board and we are holding it to discuss the significant
6 changes on our Subchapter 16 regulations. These are the
7 regulations pertaining to underground tanks.

8 Now this is a workshop session and it's by defini-
9 tion an opportunity for the board and the staff to work
10 together and determine what changes, if any, are to be
11 made in these regulations.

12 We want to go into a fair amount of detail with
13 our staff presentation in the beginning and then our plan
14 is to discuss these regulations among ourselves publicly
15 here before we have any input from anyone else. We think
16 this way probably a lot of the things that you are wonder-
17 ing about will probably be answered in the earlier part
18 of the meeting.

19 Following that, depending upon the time that's
20 available we would like to hear input, but we are most an-
21 xious to wrap this up today, this portion of it, and so
22 Carole Onorato, our chairperson, will be here shortly and
23 I'm sure she will be quite heavy-handed with the gavel.
24 If she is not, I will be.

25 And we are going to limit the testimony, and we
26 don't want to hear things that we've heard before. There

1 just isn't time for the type of session that we had the
2 last time around.

3 Now I am Doug Noteware, vice-chairman of the State
4 Water Resources Control Board and the other board members
5 are all here, Ken Willis, Ted Finster and Darlene Ruiz.
6 Ms. Onorato should be joining us probably within a half
7 hour or so.

8 Now we would like to start off with the staff pre-
9 sentation and I will ask Ed Anton to carry this.

10 MR. ANTON: Thank you.

11 As a brief background, I think most of the people
12 know, but I will cover it anyway, the fact that we did
13 hold a hearing on October 23 where the proposed regula-
14 tions that had been circulated were discussed in detail.
15 We analyzed the comments we have received from that hear-
16 ing as well as the written comments we received.

17 We have not, however, got a detailed summary of
18 those comments yet. We just simply haven't had time to de-
19 velop that. However, we have paid attention to all the
20 comments and have boiled down what we have heard into es-
21 sentially six major issues.

22 We have prepared a staff report that discusses
23 those significant issues and we have made copies of it
24 available. I hope that everybody that wanted one has one.

25 We were working until the late hours last night
26 getting it put together and reproduction was a little

1 slow, but we have a number of copies available. I think
2 everyone that needs one should have one.

3 I recognize that no one has had a chance to read
4 it in detail and digest it. Because of that I am going to
5 ask Harold Singer, who has been doing the major work on
6 that coordinating this effort as well as much of the ef-
7 fort on the regulations, to go through it issue by issue
8 and at the same time the people in the audience will be
9 able to hear better what we expect to do and are recom-
10 mending to do in these regulations.

11 In some instances we have come up with some fairly
12 specific recommendations for change. In other issues we
13 have identified a couple of alternatives or three alterna-
14 tives. We have recommended one course of action, but we
15 recognize there are other alternatives that may be equally
16 acceptable and we will certainly seek your input to us as
17 to which way we should go in modifying the proposed regu-
18 lations.

19 I want to also reiterate that after this workshop
20 it is expected that there will be a hearing held on Novem-
21 ber 27th at which time if you are satisfied with the regu-
22 lations you may adopt them. If you want to wait and leave
23 the record open for some more time or make further changes,
24 that will be your decision at that time.

25 With that, I will turn it over to Harold Singer
26 to go over the six issues and what we are proposing on

1 them.

2 MR. NOTEWARE: Thank you, Ed.

3 MR. SINGER: Good morning. The staff report in
4 front of you today is laid out so that the first two pages
5 contain a brief description of each of the six issues and
6 a brief evaluation of what our recommendation is on each
7 one of the issues. The remaining part of the report is a
8 detailed description of each issue and a rationale for our
9 recommendations.

10 I would just like to reiterate one point that Ed
11 made and that is that we have tried to be somewhat spe-
12 cific in certain areas where we feel you need that speci-
13 ficity in order to make the decision on the recommenda-
14 tions that we are making.

15 We may make some minor changes in some of those
16 numbers. An example might be where we have said ground
17 water monitoring should be to 30 feet, we might say well,
18 maybe 35 or 25, but it is in the ball park of 30 feet that
19 we are talking about. We are not talking about 130 feet.

20 So we tried to be as specific as we can to give
21 you a good understanding of where we are headed.

22 With that, I would like to go through a few of the
23 issues. John Richard will cover issue number 2 and Kathy
24 Harding will cover issue number 6.

25 The other point also let me make, as Ed pointed
26 out, these were the significant issues. There are a lot

1 of other minor issues that are contained in the comments
2 that we feel we can handle and make some valid recommenda-
3 tions to you and these were not in the issue paper so we
4 want to make it very clear these are not all of the issues
5 that have been raised, but these are the really signifi-
6 cant ones that we are looking for direction from you on.

7 The first issue that we have uncovered is the area
8 of the definition of "underground storage tank". During
9 the testimony specifically from Byron Sher's representa-
10 tive, there is an indication that the definition that we
11 had included in the draft regulations was not restrictive
12 enough, that it excluded a number of tanks, and the point
13 that was brought out during that presentation was that
14 there is a proposed federal regulation that we have heard
15 has now been signed into law that does put regulations at
16 the federal level on underground tanks and that statute
17 does contain a definition of underground tanks.

18 They have used a different method of calculating
19 what is an underground tank. They have used a volumetric
20 requirement, that is, if a certain volume of the tank is
21 underground, it is considered an underground tank, where
22 we have used a side wall area as opposed to the volume.

23 We would propose to modify the regulations to be
24 consistent with the federal definition and therefore we
25 would propose that we define an underground tank as that
26 that has 10 percent of the volume or more under the ground

1 surface.

2 Now we want to again make it quite clear we are
3 looking at all tanks that are under the ground surface.
4 That means if a tank is in a basement of a building and
5 that basement is below the ground surface, that is an un-
6 derground tank.

7 However, to go further on that, obviously most of
8 those tanks could be visually monitored and that provision
9 will be provided in the regulations.

10 One other point we want to make is that we are not
11 intending to include normally above ground tanks, those
12 cylindrical tanks that sit on the ground surface. That
13 would not be the intent of these regulations, to include
14 those tanks. We would be specific in the regulations to
15 say where a dyke has been built up above the normal ground
16 surface, that should not be considered as a ground surface
17 for the purpose of determining whether that tank is under-
18 ground, so again it's 10 percent of the volume or more be-
19 neath the ground surface, and that would be our recommend-
20 ation to you for the revised definition of an underground
21 tank.

22 With that, I think I will let John Richard now
23 cover number 2.

24 MR. RICHARD: Issue number 2 is definition of
25 "motor vehicle fuel tank", which created a problem because
26 motor vehicle fuel tanks are entitled to certain special

1 provisions under the statute and in the regulations relat-
2 ed to what kind of monitoring is appropriate for motor
3 vehicle fuel tanks.

4 The statute does not, however, provide a defini-
5 tion of what a motor vehicle fuel tank is.

6 When we originally prepared the regulations we
7 looked to the Vehicle Code which provides definitions for
8 motor vehicles and in that code the definition is a very
9 restricted one which requires that motor vehicles be used
10 upon the highway.

11 The commentators who objected to the stringency of
12 that definition emphasized the fact that many fuels suit-
13 able for use in motor vehicles are also used for other
14 things such as weed suppression, and in engines of one
15 kind or another and proposed that the definition be ex-
16 panded to include any tank which could be used for a fuel
17 which could be used in a motor vehicle.

18 That broad a definition has some problems that
19 staff feels are unacceptable, and we would recommend re-
20 taining the original definition. As an alternative, we
21 would also note the possibility that we could go with the
22 definition that deleted the highway use requirement from
23 the definition of motor vehicles and we would define a
24 motor vehicle therefore for the purposes of Subchapter 16
25 to be motor-driven vehicles and motor vehicle fuel tanks
26 then would be tanks containing fuel to be used in motor

1 vehicles. That would be slightly broader than the current
2 definition, but would not extend to every situation in
3 which certain kinds of fuel would be stored.

4 One of the concerns that we had with broadening
5 the definition entirely is that there are many substances
6 which might be used as a fuel for certain kinds of motor
7 vehicles, but which do not fall within the physical and
8 chemical parameters that distinguish gasoline and diesel
9 fuel, the common motor vehicle fuels, and somebody who
10 uses those fuels for other than motor vehicles might then
11 claim he had a motor vehicle fuel tank and that would
12 create significant problems.

13 Note also that since we are dealing with an excep-
14 tion to the ordinary provisions of the Sher bill and of
15 the regulations, that any exemption that we use should be
16 construed narrowly to preserve intact as much as possible
17 the intent of the Legislature to protect the ground water
18 from leakage which might go undetected as a result of more
19 lenient and detection monitoring programs.

20 MR. NOTEWARE: Thank you, John. Do you have a
21 comment?

22 MR. WILLIS: I am not an expert in the Motor
23 Vehicle Code, but I would assume since it is a California
24 code dealing with highway transportation that the authors
25 of the code would not normally be expected to take into
26 consideration water or air vehicles; in other words, boats

1 and planes, but I think that the word "vehicle" can take
2 in those two types of transport.

3 I see on page 6, the very last paragraph, an al-
4 ternative which states that,

5 "The board could modify the regulations
6 to provide that 'motor vehicle' means a
7 self-propelled device by which any person
8 or property may be propelled, moved or
9 drawn."

10 And then it goes on to say,

11 "Deletion of the condition relating to
12 highway transportation would broaden the
13 applicability of the motor vehicle fuel
14 tank provisions of the regulations,"

15 which is correct.

16 This satisfies a concern I would have in that
17 while it broadens it, it also helps, I believe, limit it
18 to those specific types of transportation. I would be con-
19 cerned if we attempted to identify motor vehicle fuel by
20 the chemical elements of the fuel because we would not
21 have a very good handle on how many such facilities out-
22 side the realm of our reasoning could be found, and I'm
23 not sure that the legislation, as I read it, was intended
24 to include those facilities.

25 I think you touched on that in your comments. I
26 think I would be curious as to how the other board members

1 might feel about that as well as your comments on that al-
2 ternative. Apparently you wrote it.

3 MR. RICHARD: That is offered as an alternative.
4 We still recommend the more restrictive definition because
5 we feel that that is more consistent with the letter and
6 intent of the Sher bill. When we looked at the Vehicle
7 Code we did so because the Sher bill itself does not con-
8 tain a definition, and while it is true that the authors
9 of the Vehicle Code may not have considered the use that
10 that definition in the Vehicle Code might eventually serve,
11 the authors of the Sher bill and the Legislature in con-
12 sidering the Sher bill has to be deemed to be aware of the
13 definition of motor vehicle which already existed in Cali-
14 fornia law in the California Vehicle Code, and we would
15 start with the presumption that by using that term in the
16 Sher bill that they would without making any modification,
17 without saying, for the purposes of --

18 MR. WILLIS: I think the language of the bill is
19 a little dubious in the extent that it doesn't prohibit
20 marinas or airports from being included. It used the word
21 "vehicle". I think that that alternative you provided
22 would allow us to have a uniform policy with those two
23 specific types of activities, marinas and airports.

24 MR. RICHARD: That was the intent of the alterna-
25 tive, to include vehicles other than highway vehicles.
26 That was the intent. ~

1 MR. NOTEWARE: Mr. Finster.

2 MR. FINSTER: Yes, I would like to reconfirm the
3 position that Mr. Willis has taken. I might report that
4 I am living in a beach area where boats are prevailing.
5 They are registered by the Department of Motor Vehicles,
6 if I am not mistaken, so they consider boats under their
7 jurisdiction in the Department of Motor Vehicles.

8 I don't know about airplanes. I am not familiar
9 with airplanes, but I see no basic distinction between a
10 service station that's available to service boats as well
11 as -- in fact some of them service boats and cars. I think
12 that the boats and the airplane situation should be in-
13 cluded in the regulations, the same as other vehicle sta-
14 tions are concerned.

15 I do have one question regarding stationary situa-
16 tions that might have some concern. Let's take a rural
17 location where some development or some single installa-
18 tion might have a generator which is required to be run
19 by gas, a gasoline generator. I take it what you are say-
20 ing here is the regulations do not exempt them in this
21 particular case as a vehicle storage situation; is that
22 correct?

23 MR. RICHARD: That's correct. Even under the modi-
24 fied language that's proposed in this paper, tanks fueling
25 stationary engines, generators, or pumps, et cetera, would
26 not be entitled to the provisions set aside for motor

1 vehicle fuel tanks.

2 MR. WILLIS: I just would be concerned, Ted, I
3 think that the kind of activity that surrounds gasoline
4 stations, airports, marinas, in terms of the use of their
5 tanks supports the concept or the argument that indeed
6 these facilities are in regular use. There are people in
7 attendance on a daily basis, and it is very easy to an-
8 ticipate thorough and complete logs can be kept recording
9 these types of tanks; whereas, a generation facility I
10 feel less confident about.

11 MR. FINSTER: Well, I think that could also apply
12 to a situation where people have individual storage tanks
13 at their place of business. I know at the time a company
14 I used to work for had a tank in the rear of the parking
15 lot. I assume we have never, I don't know, I didn't do it,
16 but I assume we never daily inventoried that particular
17 tank.

18 I think what we did is every once in a while after
19 we used it for a while we would check to see how much was
20 in it and call the bulk people and say, come on over and
21 dump another couple hundred gallons or something.

22 So I think there is somewhat the same kind of con-
23 notation in the situation that these individual -- the
24 smaller installation from rural areas are going to be go-
25 ing to be hit hard then with possibly some of this moni-
26 toring facility required in that stationary situations.

1 MR. NOTEWARE: Do you have any comment?

2 MS. RUIZ: I would say briefly that if you look
3 to the underscoring policy, I think I would agree with Ken
4 that what they were attempting to accomplish with the over
5 all legislation would suggest that the alternative might
6 be far more appropriate than the more restricted language
7 recommended by staff at this time.

8 MR. NOTEWARE: What we are faced with here is
9 zeroing in on what should be included in the exclusion and
10 I think from the feeling I get is that we definitely want
11 to include marinas and airports along with service sta-
12 tions that service highway vehicles, but for stationary
13 equipment and so forth, it's not our intention to include
14 that in the exclusion; right?

15 MR. WILLIS: Yes.

16 MR. FINSTER: The majority rules.

17 MR. NOTEWARE: Okay. Then are we up to item number
18 3 here?

19 MR. SINGER: Right. Issue number 3 starts on page
20 7 of the staff report. This issue was brought up as being
21 a key area that in the draft regulations there was a re-
22 quirement that the space between the primary and secondary
23 container for new facilities only be monitored on a con-
24 tinuous basis, and there were two areas that were brought
25 up in these comments.

26 One is what do you really mean by "continuous"?

1 Does that mean it has to be all the time or could it be
2 on a cyclic or periodic basis or some other form using
3 automated type equipment.

4 And secondly, was continuous monitoring really
5 something that was necessary in order to protect the water
6 quality given these types of facilities.

7 We have looked at this issue quite closely and
8 have gone back to the law itself. We believe that the in-
9 tent of the law for new facilities was that the secondary
10 container was not intended to become a primary container
11 for any length of time, and that's exactly what would oc-
12 cur once a leak in a primary container happened; that is,
13 the secondary container would be required to contain that
14 material.

15 Going further, there is no monitoring that is re-
16 quired either in the law or in the proposed regulations
17 on the outside, the exterior, of the secondary container,
18 so there's no way of determining that once a leak occurred
19 from the primary into the secondary, that in fact over any
20 length of time that the secondary container was providing
21 containment and therefore protection to the environment.

22 Looking back further, we feel that first of all
23 the definition of "continuous" we believe that automated
24 type equipment that does cycle through, let's say, a se-
25 ries of tanks where you might have a vapor monitoring de-
26 vice between the layers of the two tanks, the primary and

1 secondary, and you might have ten tanks in a system that
2 cycles through that.

3 That would be from our point of view within the
4 definition of "continuous", and we would intend to revise
5 the regulations to make that apparent in the regulations.

6 Secondly, we have looked at it also and we feel
7 that there are other types of monitoring that would be ap-
8 propriate between the primary and secondary that would not
9 be under this definition of "continuous".

10 We feel that other types of monitoring such as
11 visual monitoring, such as daily analysis or daily stick-
12 ing or daily gauge reading or other types of monitoring
13 that could be performed between that space, between the
14 primary and secondary container, was appropriate and
15 should be allowed.

16 However, we also felt that the frequency of that
17 monitoring should be on a daily basis, that is at least
18 once a day somebody should check to make sure that there
19 is no material between the primary and secondary that has
20 leaked out of the primary container.

21 And again, what we are looking at is daily, seven
22 days a week. Now this does not require that a facility be
23 operated seven days a week. It would only require that
24 someone be available and be at that facility at least one
25 time during each of those seven days to perform this func-
26 tion.

1 Now again this function could also be performed
2 through some type of telephone communication whereby a
3 system would be cycled to go on once a day and the results
4 of that could be telephoned into a central location. So
5 it doesn't even require somebody be there, provided that
6 the inspection is performed either by a person or by
7 equipment and that information is made available to some-
8 body who could respond to it within that short period of
9 time.

10 One of the other aspects of this issue was the
11 fluid level that was required to be monitored. In the
12 draft regulations we had called for the ability to monitor
13 to a minimum of one half of an inch of fluid between the
14 primary and secondary container.

15 On further evaluation we have looked at this and
16 there are many different situations out there that may oc-
17 cur that may cause either a larger or a smaller measure-
18 ment to be appropriate in specific situations.

19 An example would be that if you had the secondary
20 container draining into a very small sump, let's say a
21 sump that was a foot by a foot in area, it would take a
22 very small amount of liquid to build up to maybe six inch-
23 es or a foot of height within that containment and there-
24 fore something in that order might be an appropriate mon-
25 itoring device for that type of facility.

26 Another type of facility where you would have a

1 flat bottom to a secondary container over a large area,
2 maybe the size of this area in the front of the room,
3 where you had two or three tanks in it, half an inch might
4 be too much in that it might take too much liquid to build
5 up to half an inch of liquid within that area.

6 So for this issue we proposed that the local
7 agency be given the responsibility of determining the ap-
8 propriateness of a monitor within this area between the
9 primary and secondary and that that be based on the size
10 of the facility, the type of facility and the type of mon-
11 itoring that is proposed to go into that facility.

12 To just go through this very briefly, on page 9
13 there is a table that we have put together and I would
14 just like to walk you through it pretty quickly. These are
15 the types of monitoring that we would be looking at and
16 these would be other than the visual monitoring and other
17 than the continuous type monitoring. In other words, this
18 would be the monitoring that might go on once a day or
19 possibly a little more frequently during the day, but not
20 be on a continuous basis.

21 Let me first make one correction in the table.
22 Under the column labelled "Hazardous substance sensor"
23 there should be two asterisks there, not one.

24 Going through the table, first of all the first
25 column is the "Condition of secondary system". Again now
26 we are talking about the space between the primary and

1 secondary wall of a double contained facility. What we
2 mean by "dry" is that there is no liquid present in this
3 area under normal circumstances. That is, the area is
4 totally dry.

5 When we say liquid is present, that means that
6 there has been allowance for some type of fluid to be in
7 that primary/secondary space as part of the normal opera-
8 tion, and this could be very typical of some operations
9 where people want to have water in that area such that if
10 a leak occurred and let's say the leak was a material that
11 generally floated on the water, that ability to monitor
12 the floating material would be a very useful type of
13 sensor.

14 So there could be situations where people would
15 want a liquid to be in that primary/secondary facility.

16 The second column relates to type of product and
17 we have divided into volatile and non-volatile for vapor-
18 type sensing that would not be appropriate for non-vola-
19 tile type material.

20 The last four columns talk about methods of moni-
21 toring. The first method is obviously only appropriate in
22 areas where you have a dry area; that is, you are looking
23 at a liquid level. In this case this would be looking at
24 either like a dip stick type device where you would be
25 monitoring to see if any liquid at all is in there, or a
26 type of either mechanical device such as a float that

1 would be activated once a certain level was reached or a
2 situation where you might have an electronic device that
3 might monitor a certain liquid level in the bottom of that
4 sump.

5 So that's what we would mean by "liquid level in-
6 dicator".

7 "Hazardous substance sensor" is the second device
8 that would be useful, and this would be something where
9 it would actually indicate the presence of a substance,
10 and this is other than vapor monitoring which is the third
11 type of monitoring. But there are devices out there that
12 can differentiate between different types of liquid such
13 as a petroleum product and water, and therefore that type
14 of sensor would be appropriate in either an area where it
15 was dry or an area where it was wet because that sensor
16 could distinguish between petroleum and water.

17 This would also be the type of situation where
18 again if you had a water system or a liquid system and you
19 were looking for a floating type of product a daily bail-
20 ing of that area and a visual monitor of that material
21 that was pulled out of that for the purpose of looking for
22 a sheen or floating material given that the sampling pro-
23 cedure was adequate, would fit under this definition in
24 this regulation area.

25 Under vapor monitoring, obviously this is an area
26 that would only be applicable to types of materials that

1 are volatile, and again this would be monitoring the va-
2 pors that may emanate from a spilled or leaked product.
3 This could be done on a routine basis, it would not have
4 to be a continuous basis, by portable type vapor sensor.
5 But again someone could pull off the shelf two or three
6 times a day and put it into the opening to determine if
7 in fact there was vapor present in that area.

8 Finally, the last one is the suction lysimeter.
9 This would be an applicable type monitoring in an area
10 where the space between the primary and secondary was back-
11 filled with the material and you would want to be drawing
12 the liquid out of that backfill, so this type of lysimeter
13 would be appropriate in that type of instance.

14 MR. ANTON: I would like to also point out that
15 there may be conditions that we will have to modify this
16 type of table. I know there are sensors available that
17 utilize the concept of filling the annular space between
18 the inner and outer walls of a double-walled tank with a
19 liquid and then measuring whether or not the level of that
20 liquid has changed as an indication of a leak.

21 The fact that there's no x under the "Liquid level
22 indicator" when liquid is present is not intended to pre-
23 clude that type of system, and we will have to work a way
24 around the regulation so we can utilize that kind of sys-
25 tem.

26 MR. NOTEWARE: Do you all understand that that

1 system Mr. Anton just described would be where the space
2 between the two tanks could conceivably be filled with a
3 liquid higher than the level of the liquid on the inside
4 tank so that if there were a leak in the inside tank, the
5 liquid would flow from this space into the inner tank and
6 you would know it because the level would drop off then.
7 That's something that has been suggested.

8 Now, I want to make sure we all understand that
9 these are for new installations and they also apply to
10 motor vehicle fuels as well.

11 MR. SINGER: Yes. I was just going to continue.
12 On page 10 there is a section of application of this to
13 motor vehicle fuels. Even though it is not mentioned in
14 the report itself, we would indicate that the same types
15 of procedures and monitoring would be applicable to the
16 motor vehicle fuel tanks that are constructed using the
17 drip pan type approach, that is the interceptor system
18 rather than the full volumetric secondary type contain-
19 ment.

20 So in this area we would indicate similar types
21 of monitoring that would be useful for full secondary con-
22 tainment facilities would also be useful for these other
23 types of facilities.

24 MR. NOTEWARE: Thank you. Mr. Finster.

25 MR. FINSTER: Yes. I have a little difficulty in
26 understanding the necessity of continual monitoring of the

1 annular space between the inner tank and the exterior
2 tank, only from the standpoint that my understanding of
3 the purpose of the secondary tank is to eliminate the
4 escape of materials into the ground or into the ground
5 water. It's difficult for me to see that both tanks would
6 rupture at the same time and it would escape to the ex-
7 terior part, so as a result a leak into the annular space
8 between the two tanks is not an emergency type situation.

9 . It's a situation where it tells somebody who owns
10 the tank that there is a leak in the major tank holding
11 the material which we are concerned with.

12 The fact that it gets into that annular space,
13 doesn't create in my mind an emergency situation where
14 something has to be done immediately and requires continu-
15 al monitoring. It requires monitoring, I'm not saying it
16 doesn't require monitoring. That's the way you determine
17 whether or not there is a leak in the primary container.

18 I don't know whether there is some other alterna-
19 tive, but continuous monitoring, for example, that re-
20 quires somebody to go down there seven days a week and
21 check that annular space where the station might be closed
22 on Sundays or something like that, it just seems an odd
23 situation.

24 MR. SINGER: Just two points on that. I agree with
25 you from the perspective that the secondary container is
26 the backup containment. However, there is no requirement

1 to monitor the suitability of that container over the long
2 period of time to contain that liquid.

3 In other words, five years after that tank has
4 been installed, no one has been monitoring the ability of
5 that secondary container to contain anything, and so
6 therefore we don't know whether that secondary container
7 in fact ruptured two years ago, so in fact a leak does
8 occur.

9 Again, we have backed off from the continuous to
10 the daily and we feel that daily is an appropriate fre-
11 quency for monitoring.

12 Ed just indicated one other point that in the
13 definition of "releases", there is a definition that said
14 the release must be cleaned up within eight hours of its
15 occurrence from the primary into the secondary, otherwise
16 it becomes a reportable type release. So there is some in-
17 dication that the Legislature was trying to assure that
18 the secondary container would not provide for long-term
19 storage of any leak of a hazardous substance.

20 MR. FINSTER: What section is that in?

21 MR. SINGER: 25284.3.

22 MR. NOTEWARE: I am wondering frankly just how
23 practical it is to expect people to check these things
24 daily and to honestly fill out some report forms that have
25 to be checked by somebody else. Who is really going to
26 know whether or not somebody is looking at this thing on

1 a Sunday or checking it every day? Who is going to police
2 this?

3 MR. SINGER: Like anything else, this would have
4 to be policed by the local agency that issues the permit
5 for this facility and this was one of the reasons why in
6 the initial draft regulations we were looking for a con-
7 tinuous type monitoring which would force most tank owners
8 into the position of using either electronic or mechanical
9 type devices which would not rely on the human element.

10 MR. NOTEWARE: I would assume before very long
11 there will be many things appear on the market that would
12 trigger some sort of alarm or something like that at a
13 remote location so you wouldn't have to physically person-
14 ally check it.

15 MR. SINGER: There's equipment on the market right
16 now that would provide that.

17 MR. FINSTER: I read this section you referred to
18 here as a physical imposition to do it within eight hours.
19 In other words, if you detect leakage into the secondary
20 container area, there is no way you are going to clean up
21 that secondary one until you repair the tank, and the tank
22 can't be repaired in eight hours.

23 There's no way to my knowledge you can clean up
24 that secondary area and it says, shall be done within
25 eight hours. It's impossible.

26 MR. SINGER: I think the key distinction is that

1 is the requirement for it to be a recordable type release,
2 that is a release that just is indicated on the monthly
3 record at the facility. It is not directly reportable to
4 the local agency.

5 I think the perception that it could be cleaned
6 up in eight hours in that the material can be removed from
7 the secondary and primary containers and both facilities
8 could remain empty, and that possibly could be done -- for
9 instance, if another storage facility was available for
10 that material to be pumped into, if a tank truck was
11 brought in and that material was pumped into it, physical-
12 ly that could be done.

13 It doesn't require repair per se. It only requires
14 that the material be removed from the secondary container
15 and obviously, therefore, the primary container, if the
16 primary container had ruptured down to the lowest level.

17 MR. ANTON: We are really only using that in this
18 instance as an example. We are searching for legislative
19 intent which is difficult to find, but that was part of
20 our basis for sticking with the frequent monitoring.

21 MR. NOTEWARE: Any other comments? Mr. Willis.

22 MR. WILLIS: No, I don't have a comment on this.
23 I will be looking to hear comments when the time comes.

24 MR. NOTEWARE: I don't know if you heard Mr.
25 Willis. He said he would be receptive to hearing comments
26 on this when the time comes. At this point I feel we are

1 ready to move on to the next.

2 MR. SINGER: The next item we will discuss is is-
3 sue number 4 which starts on page 11 of the report. We
4 have decided to lump together a number of issues that re-
5 late to the monitoring of existing tanks, that is those
6 tanks that do not have secondary containment of any type.

7 MR. NOTEWARE: Excuse me, Mr. Singer. I think Ms.
8 Ruiz had a real good suggestion here, and that is that we
9 might tend to lose the flow of what we are trying to ac-
10 complish here by not permitting the input while we are go-
11 ing along. But we don't want to hear from everybody either.
12 It's a dilemma.

13 I am wondering, maybe somehow, for instance we
14 have a short recess and there could be several people may-
15 be designated as spokesperson for interested groups or
16 something like that.

17 MS. RUIZ: It wouldn't have to be. It could be
18 only a couple, but simply to allow a give and take so we
19 can consider these matters.

20 MR. WILLIS: I think if the gavel is well control-
21 led and a few people would like to come to the podium and
22 make technical comments to the specific items, but if they
23 begin to get drawn out, I think we would just have to ask
24 them to give up the podium for somebody else, and in any
25 event I would like to keep it down to no more than 15
26 minutes total, and then after we are through going through

1 all these items, if there's more comment about specifics
2 that people wish they could have said, I will be willing
3 to stay here the appropriate amount of time to accomplish
4 that.

5 MS. RUIZ: That is okay.

6 MR. NOTEWARE: Let's try that.

7 MR. DUNCAN: After you finish the particular item,
8 why don't you ask people to raise their hands on those is-
9 sues where they think they might have input. You may have
10 various ones where there is no input necessary. It will
11 give you an idea how many people are concerned about that
12 item.

13 MR. NOTEWARE: Let's have a show of hands now of
14 those who are concerned about this very last item we have
15 been discussing, the monitoring of the space between the
16 two tanks.

17 Okay, I see about 12, maybe 15. Let's start off
18 with anyone who would be say an engineer or a technical
19 person who would like to address us.

20 MR. WILLIS: Mr. Chairman, I think it would also
21 be advisable to keep a sign-up sheet or use the cards for
22 the record.

23 MR. NOTEWARE: Right. We will ask you to put your
24 name on a card, please. Would you introduce yourself?

25 MR. SHORT: Yes, I am Robert Short with Goodrich
26 Oil Company in Turlock, California.

1 I specifically would like to address the issue of
2 daily monitoring. We call on a number of accounts where
3 it is physically impossible to monitor their tanks on a
4 daily basis because they are above the snow line and in
5 the winter other than possibly when the weather is good,
6 getting in with the weasel or snowmobile or a helicopter,
7 you can't get in there on a daily basis, and when the
8 weather is bad no one can get in there daily. There are
9 a number of tanks and you simply can't get to them daily.

10 I would recommend that instead of saying daily say
11 on a working day or on a normal business day, a business
12 day for that particular business.

13 We have people with underground tanks of hazardous
14 materials, and also in resort areas where the business is
15 closed in the middle of November when the snows are heavy
16 and the storms are bad, and the highways and the roads are
17 closed such as, and I am specifically referring to 108
18 gets closed at Cow Creek which is outside of Pinecrest,
19 and it is closed all the way over into Nevada, and in the
20 Dardanelles and Eagle's Meadow area they simply can't get
21 to those tanks until next May.

22 That's my point. Thank you.

23 MR. NOTEWARE: Thank you. I think a logical
24 question here then would be, would it be your thinking
25 that the tanks could be made empty prior to the snow
26 season?

1 MR. SHORT: They can be made empty or they can in
2 some cases where they are underground and there's a prob-
3 lem with them popping out, sometimes they are filled with
4 any one of a number of materials, either completely filled
5 or completely emptied or something, but I think some pro-
6 vision needs to be made other than monitoring them daily.

7 MR. NOTEWARE: All right. Thank you.

8 The next speaker.

9 MR. FLETCHER: Good morning. My name is Noel
10 Fletcher and I am with Arco. I am not an engineer but I
11 have put tanks in the ground with a secondary container
12 around the primary container, and you monitor the second-
13 ary, the space between, once a day, that should be suf-
14 ficient. If you have a leak, you are not going to correct
15 it in eight hours because you are going to have to empty
16 the tanks, get into the tank, find the leak, fix it, or
17 dig the tank out and replace it.

18 So continuous monitoring of the area between the
19 walls of the two tanks would be really superfluous. If you
20 can check it once a day and there is liquid or vapor, it
21 will almost always be liquid in the space between the two
22 walls, the tanks that will be in use in the future, the
23 secondary containment capability of the outer shell will
24 be equal to the capability of the inner shell.

25 If you are concerned about time, unless there's
26 a earthquake or something like that, a pinhole leak, which

1 is the most likely in the inner primary container, will
2 drip or whatever into the space between the two. If
3 there's vapor or liquid in that vacuum area, it will show
4 up very quickly on a once a day inspection.

5 You are not going to cure the problem again in
6 eight hours, so you are going to have to report it.

7 MR. NOTEWARE: Thank you, Mr. Fletcher. Okay.

8 MR. MARTIN: Hank Martin, California Manufacturers
9 Association.

10 MR. NOTEWARE: I think Mr. Willis had a question.

11 MR. WILLIS: I was going to ask how would a daily
12 check not be construed as a continuous monitoring under
13 the definition?

14 MR. SINGER: As we proposed in the staff report,
15 we believe that daily type of monitoring as described by
16 the previous speaker would be acceptable and appropriate
17 for monitoring facilities.

18 MR. WILLIS: That's fine.

19 MR. MARTIN: I would like to make my comments both
20 on the visual monitoring portion which would require vis-
21 ual monitoring seven days a week and to continuous moni-
22 toring of the annular space.

23 One point to recall is that the law does require
24 that secondary containment, be it a vault or basement or
25 double shell, be adequate to contain the release for what-
26 ever amount of time is necessary to get to cleaning up

1 that release, so there is requirement to keep that second-
2 ary containment.

3 To require that you do this seven days a week
4 rather than on an operating basis, is just unnecessary,
5 and you end up getting folks who would have been able to
6 implement a visual monitoring technique who now would not
7 be able to and it's a great expense that's unnecessary.

8 MR. NOTEWARE: Thank you, Mr. Martin.

9 One more.

10 MR. REESE: I am Richard Reese. I am an engineer
11 and I am employed at Modern Welding Company. I have a
12 question to the staff. Maybe I am misreading it, but the
13 staff is considering a double walled tank separate and
14 monitoring requirements from a plastic container.

15 Am I reading that correct or incorrect?

16 MR. SINGER: We have indicated that a double wall-
17 ed tank, whether it be a plastic double walled tank or
18 steel walled tank be monitored continuously as opposed to
19 the other types of monitoring, that is correct.

20 MR. MARTIN: In my question, I wasn't referring
21 to the FRP double walled tank, I was referring to a plas-
22 tic liner which is installed under tanks.

23 MR. SINGER: No, that would be handled differently.
24 We are saying double walled tank.

25 MR. MARTIN: I do not see the difference. As a
26 matter of fact, I think it's the opposite, if anything.

1 MR. NOTEWARE: Any response? Okay.

2 Thank you, Mr. Reese.

3 Let's move on to issue number 4.

4 MR. SINGER: Issue number 4 relates to the moni-
5 toring for existing tanks, that is those tanks that do not
6 have any form of secondary containment. The comments that
7 we have received on -- this would be article 4 actually
8 of the draft regulations, fall into about three or four
9 different categories and we put them all in this one issue
10 for the purpose of addressing them.

11 Basically the four different comments that we have
12 divided them up into, or the four basic issues, are the
13 fact that the initial draft regulations did not provide
14 for monitoring alternatives. They required given monitor-
15 ing methods and required the installation of as many of
16 the methods as were implementable at any specific facili-
17 ty, and therefore did not actually allow alternative meth-
18 ods at the various facilities.

19 The second aspect of that which obviously without
20 giving people alternatives, there was no flexibility
21 available to the local agencies, that is those people that
22 would be issuing the permits to specify a specific moni-
23 toring alternative for a specific site. So that would be
24 the second issue that we are trying to cover.

25 The third issue related to the costs involved in
26 installing and complying with the monitoring requirements

1 of article 4.

2 And the fourth issue related to a few of the spe-
3 ifics of certain of the monitoring methods that we had
4 called out in article 4, that is, that the commenters felt
5 many of the methods or many of the standards that we had
6 imposed were overly restrictive for complying with that
7 specific method of monitoring.

8 To give you a little background on the rationale
9 as to how we got into, or how we approached the original
10 version of the regulations, and then I will get into a
11 little bit as to how we proposed to modify the regulations.

12 We initially believed that multiple monitoring
13 methods were really necessary for assuring reliable mon-
14 itoring of existing tanks. We also felt that ground water
15 monitoring was an important aspect of those multiple
16 methods in that it provided a pretty reliable assurance
17 whether ground water was clean or had been contaminated.

18 The second portion of that related to the fact
19 that many of the monitoring methods such as inventory con-
20 trol really provided indirect methods of monitoring wheth-
21 er a leak had occurred.

22 That is, you really weren't monitoring outside of
23 the tank, you were just determining whether or not there
24 was a change in the amount of liquid that was put in ver-
25 sus what was taken out, and there was some inference as
26 to how you actually performed that and some errors that

1 are associated with that type of monitoring.

2 Based on that, as I indicated, we had proposed in
3 the original draft regulations a number of monitoring
4 methods with certain exemption criteria that would elimi-
5 nate those methods in certain cases.

6 Based on our review now of the law itself and the
7 comments that we have received, we propose to revise our
8 article 4 quite extensively. We propose to provide moni-
9 toring alternatives and at least three of those alterna-
10 tives will be those alternatives specified in the law it-
11 self.

12 At this point I would like to move on to a few
13 other issues and come back and walk you through the actual
14 alternatives that we will be proposing.

15 The second issue relates to local agency flexibil-
16 ity. By providing alternatives for monitoring we believe
17 that the next step is then to allow the local agencies the
18 ability to specify specific alternatives for specific
19 sites. And we propose to modify the regulations to allow
20 that.

21 We also believe, however, that some criteria
22 should be given to the local agencies by which to evaluate
23 the acceptability of monitoring alternatives.

24 In doing so, we are looking at certain aspects
25 where we feel that ground water monitoring is essential,
26 and we believe that in certain cases, for instance where

1 a tank is in a recharge area and where the ground water
2 has an actual potential beneficial use that ground water
3 monitoring be included if possible as part of the monitor-
4 ing alternative appropriate for that site.

5 Again, going back to our initial rationale we feel
6 that most other methods of monitoring give you an indica-
7 tion of a leak, but do not provide the assurance that we
8 feel the legislation demands in order to protect the water
9 quality of the State.

10 We also believe that in those certain instances
11 the costs associated with that additional level of moni-
12 toring are appropriate in order to provide that assurance
13 that the beneficial uses are in fact being protected.

14 One of the other concerns that came out relates
15 to the numerous wells that were required or numerous bores
16 that were required as part of the original draft regula-
17 tions. We believe that the comments that have been brought
18 forward provide some justification for reducing the number
19 of wells or boring required.

20 We intend to address that concern first of all by
21 providing alternative monitoring methods, some of which
22 will not require the installation of wells or borings.
23 Furthermore, we intend to revise the requirements to re-
24 duce the depth to which ground water monitoring was re-
25 quired when it would be part of the monitoring alterna-
26 tive.

1 One of the other aspects of a similar concern was
2 the concept of puncturing low permeability clays and
3 thereby providing a conduit for material that might be
4 leaked in the upper zone to move down through the well or
5 the boring into a deeper zone.

6 Again, we realized there is some concern in the
7 installation of wells that they in fact in cases where
8 they are installed incorrectly or by inexperienced people
9 can provide conduits for downward migration.

10 We believe again that by providing alternatives
11 which in certain cases reduce the number of wells required
12 or reduce the depth of those wells that are required, we
13 believe that partially addresses the problem.

14 However, we again go back to the point that in
15 some instances we believe that ground water monitoring
16 wells are appropriate, and we again put some examples
17 where certain contaminants or substances that are contain-
18 ed in tanks are known to react with clays and are known
19 to migrate significantly different than the water would
20 migrate through the soil mantle, that they would penetrate
21 clays much more rapidly.

22 In addition, given that geology is not a perfect
23 science, that clay layers are in some cases very extensive
24 and in other cases are broken up and are only in certain
25 areas, and the possibility that you may puncture a clay
26 zone, but that clay zone may be very discontinuous, the

1 ability for that material to move down through the wells
2 is no greater than the ability of that material to move
3 down through the discontinuity in the clay.

4 Furthermore, in other areas of the State there are
5 many older wells, maybe in agricultural areas, that have
6 now been converted to industrial use. An example of that
7 is in the Santa Clara Valley area in northern California.
8 In that area there are many older wells that were abandoned
9 incorrectly or were performed over numerous zones and
10 therefore we believe again that ground water monitoring
11 in those instances is essential to determine whether or
12 not the beneficial use is in fact protected.

13 And again, by minimizing the number of wells re-
14 quired we believe that we are in the situation where those
15 wells will be installed that there will not be the rush
16 to install them with any driller they can find, but that
17 more safe installation procedures can be utilized and we
18 believe there are procedures out there that will preclude
19 to the greatest possible extent that wells being utilized
20 for downward migration of materials that may be leaked in
21 the upper zone.

22 Just one other footnote on this. We are looking
23 at sealing these wells from the water surface or above the
24 highest water surface to the ground surface, so again it
25 is not as if we are allowing an open conduit all the way
26 down. It would have to result from an improperly sealed

1 and constructed well.

2 The next issue that we want to talk about within
3 this area is the area of background monitoring. The regu-
4 lations, or the draft regulations as originally proposed,
5 implied that we were getting information on historic leaks.
6 It was the staff's position in the drafting of those regu-
7 lations that the primary objective of background monitor-
8 ing was to determine whether or not a proposed monitoring
9 method would in fact be effective.

10 Obviously if you are looking at a monitoring meth-
11 od that looks at, let's say hydrocarbon vapors and you
12 have an upper level of that detector that you are propos-
13 ing to install, if the background concentrations within
14 the soil around the tank were already above that back-
15 ground level or upper level that the detector was achiev-
16 ing, that detector would obviously not be useful in that
17 type of situation.

18 These were the type of situations we were trying
19 to investigate and uncover early before a detector actual-
20 ly was put in place and would not provide the adequate
21 results.

22 We are now proposing some revisions to the regu-
23 lations which would eliminate the background type monitor-
24 ing where it is not actually needed to determine whether
25 or not a proposed monitoring method will be effective.

26 An example would be, you obviously don't need to

1 know whether or not there are contaminants in the area
2 around a tank if you are instituting inventory control.
3 In those types of situations background monitoring would
4 not be required.

5 I would like to take this one step further and
6 that is that we believe that based on the history that we
7 have seen at some of the regional boards and as part of
8 the testimony that was presented at the hearing, we all
9 know that many of the existing tanks out there are leaking
10 and have leaked in the past. We believe that the board
11 should evaluate a means of determining whether those tanks
12 have been leaking regardless of whether or not it's part
13 of this program or some other program.

14 As I said, we have stated that we feel that that
15 type of evaluation would be beyond the scope of these reg-
16 lations, but based on the history that we have seen when
17 we start looking at whether or not tanks are leaking, we
18 feel that's an area that should be addressed through other
19 means that would be available to the board.

20 The other issue that we want to talk about is soil
21 sampling, basically related to slant drilling. As you
22 know, this was one of the other issues that was brought
23 up during the comments.

24 Again, looking back at the statutory language, it
25 appears that the Legislature intended for soil samples to
26 be taken and analyzed as part of the installation of wells

1 or borings for the purpose of vapor analysis. Based on
2 this we proposed to revise the regulations to only require
3 soil sampling as part of the installation of wells or bor-
4 ings for the purpose of ground water or vapor analysis,
5 and to indicate that it is still our preference for slant
6 boring, but the determination as to whether it should be
7 a slant or a vertical boring should be based on the need
8 to install the monitoring equipment and not based on the
9 need to take the soil sample.

10 In this case most ground water type monitoring
11 would be through vertical type installations. It is pos-
12 sible that some vapor type analysis could be installed in
13 a slant type boring, and in those cases that might be an
14 alternative that would be allowing soil samples to be
15 taken from slant borings, but again the primary determina-
16 tion would be based on the ability to install the monitor-
17 ing, that is vapor or ground water, in the boring or hole
18 that is drilled.

19 Based on that, I think I would like to now get in-
20 to the monitoring alternatives that we are proposing and
21 it would probably be easier to look at the table on page
22 24 rather than the text.

23 Again just briefly, these are six alternatives
24 that we propose to include in the regulations. These are
25 six we would include in the regulations and it would then
26 be up to the local agency to determine which one was the

1 most appropriate for a specific site.

2 In addition, these are the six that we felt really
3 jump out at us today and we felt comfortable with recom-
4 mending them.

5 There might be a few other types of alternatives
6 that we may develop before the regulations are actually
7 put out in draft form that may address some of the issues
8 that might come up in the meantime so we don't want to be
9 held to these six, but we feel these six are at least very
10 promising and probably cover most of the tanks out there
11 at this point.

12 Alternatives 1 through 3 are the three alterna-
13 tives that are called out in the legislation. Alternative
14 number 1 is tank testing. The legislation calls for a type
15 of test using pressure, vacuum or hydrostatic testing.

16 In the discussion we have talked about the prob-
17 lems with pressure testing, especially with a flammatory
18 liquid, and most tests that we have seen utilize what is
19 called the precision test procedure that is outlined in
20 the Uniform Fire Code and we would propose that the tests
21 that be acceptable utilize that procedure because it does
22 increase the accuracy of that type of test.

23 As you will note in the table we have required
24 this test to be performed on a monthly basis, at no less
25 frequency than monthly. The basis for the monthly is two-
26 fold. One is that it's the minimum monitoring frequency

1 allowed in the law itself. That is, the law does not allow
2 frequency less than monthly.

3 Secondly, this type of test gives you no indica-
4 tion of what is happening to the tank between the testing
5 times. That is, you can test the tank today, and tomorrow
6 it could develop a leak and you would not know that for
7 a period of 30 days beyond that, so we felt that that type
8 of frequency was at a minimum allowable to detect leaks.

9 Given the cost of this we felt that moving the
10 frequency to a more frequent basis would not be appropriate
11 given that in most cases the tank would have to be taken
12 out of service for a period of time while the test was
13 performed.

14 If this test was required on a weekly basis it
15 would mean one day a week the tank would be out of service
16 and there would be a loss of both revenue to the user of
17 that tank and also the cost of performing the monitoring.

18 The second alternative is again directly out of
19 the law itself. Again it requires soil sampling when the
20 installation of a well or vapor monitoring is installed
21 and any combination of vapor or ground water or both type
22 of sampling.

23 We proposed in this alternative that where you can
24 utilize vapor monitoring that vapor monitoring should be
25 done on a daily basis and that ground water monitoring is
26 mainly a back-up to that vapor testing and should be done

1 on a semi-annual basis. Where vapor monitoring cannot be
2 installed due to the nature of the material or other prob-
3 lems, then we feel that ground water monitoring if it is
4 utilized should be done on a weekly basis.

5 Now in addition to that we have determined that
6 in certain instances we don't feel that this is a viable
7 monitoring alternative, and let me just cover those very
8 briefly. Basically, where vapor monitoring cannot be in-
9 stalled, that is where your primary method of monitoring
10 is not in the vadose zone, that is above the ground water
11 table, and where this alternative would then rely on
12 ground water monitoring as your primary means of monitor-
13 ing, we felt that this monitoring alternative should not
14 be utilized when one of three situations exists.

15 First of all, when the perennial ground water is
16 deeper than 30 feet and the reason for this is that your
17 first indication of a leak would be when you are monitor-
18 ing ground water at a depth. By providing a depth of
19 greater than 30 feet you are providing a very large un-
20 saturated zone that is going to have to be contaminated
21 before this material would reach the ground water, and you
22 are providing a buildup of additional contaminants that
23 will have to be dealt with over the long term before this
24 problem will be eventually be corrected once a leak is
25 discovered.

26 The second instance where we feel this is not an

1 appropriate method of monitoring is where the first ground
2 water encountered is hydraulically connected to ground
3 water suitable for domestic or municipal supply.

4 Again. in these cases where you are relying on
5 ground water monitoring as the primary means of monitor-
6 ing, that ground water should not be the same ground water
7 that is actually being used by somebody adjacent to that
8 facility. That is really too late to be a primary method
9 of monitoring.

10 The third instance where we are saying ground
11 water monitoring cannot be used is where the wells cannot
12 be screened within the area above or in the 30-foot area.
13 There are some local ordinances that are adopted by health
14 departments that require sealing of all wells down to a
15 depth of, in some cases, 50 feet. Monitoring in this case
16 would not be appropriate since you would be monitoring
17 potentially below the water surface and would not be pro-
18 viding the easy detectable method for ground water moni-
19 toring, so we felt in those three instances again when
20 vapor monitoring cannot be installed that this monitoring
21 alternative would not be appropriate in those instances.

22 The third alternative that we are proposing is
23 again directly out of the law itself, and it talks about
24 a combination for motor vehicle fuel tanks of inventory
25 control, tank testing and pressure pipeline leak detectors.

26 Going back to this proposed alternative, we again

1 are looking at the inventory control and our feeling on
2 that is first of all it is an indirect method of monitor-
3 ing. We have heard some comments that the originally pro-
4 posed variation that would be acceptable before further
5 leak detection was implemented that we have proposed in
6 the regulations of 50 gallons a day was too small, that's
7 too low a number to be applicable in most cases where a
8 dip stick or other type of liquid level monitoring is
9 utilized.

10 Also we have been in discussion with numerous
11 people who have systems available that are capable of mon-
12 itoring the liquid level in tanks to one-tenth of an inch
13 which thereby minimizes the variation of inventory control
14 over the short and long term periods.

15 And it appears that the liquid level monitoring,
16 that is monitoring of the liquid level in the tank, that
17 provides the primary variability in the inventory control
18 process. Therefore our belief is that if inventory control
19 is really going to be the ride on as a sole means of mon-
20 itoring, we feel that it should be as precise as is tech-
21 nically available today to do that.

22 We have proposed that the regulations require a
23 variation of no more than 30 gallons per day, and we feel
24 that this is attainable utilizing new types of liquid
25 level monitoring in tanks.

26 This again would be a performance standard that

1 would then probably require most people if they wanted to
2 use this alternative to go to a means of monitoring the
3 liquid level other than sticking the tank.

4 In addition to this, obviously tank testing would
5 be required, again going back to the precision test, and
6 this would be required on an annual basis and additionally
7 to use this alternative the pipeline must be a pressurized
8 pipeline and must have a leak detector on it, that is a
9 detector that would be tripped if the pipeline lost
10 pressure during the period of delivery.

11 The reason behind the pipeline having to be pres-
12 surized is that the inventory control mainly monitors the
13 tank itself and monitors what goes out of the tank. There
14 would be losses in the pipelines that might be picked up
15 in inventory control, but we felt again a pressure loss
16 detector was the primary means of picking up losses in the
17 pipelines.

18 Alternative number 4 is very similar to alterna-
19 tive number 3. However, in this case we believe that we
20 will allow a larger variation in inventory control. That
21 is we feel that in this case this would utilize the stick
22 method of monitoring and we would allow a daily variation
23 of up to 100 gallons. That is, they could have plus or
24 minus 100 gallons in any day with inventory control and
25 would not be required to move into another method of moni-
26 toring to determine if they had a leak or not.

1 But in addition to this we feel that some form of
2 other method of monitoring such as vapor monitoring or
3 vadose zone monitoring or ground water monitoring should
4 be appropriate and would be implemented as part of this
5 alternative in that we have included a frequency for that
6 additional monitoring to be a variable frequency and that
7 would be based on the type of monitoring that would be in-
8 stalled and other conditions that might be site-specific.

9 Alternative number 5 is very similar to alterna-
10 tive number 2 with the exception that in the vadose zone
11 we will allow any form of vadose zone monitoring as op-
12 posed to strictly vapor monitoring as is required in al-
13 ternative number 2.

14 So again, they are almost exactly alike, but the
15 difference being that in this case there are other forms
16 of vadose zone monitoring that would be appropriate.

17 Finally, alternative number 6 is an alternative
18 that we are proposing that actually fits into some issues
19 that we will discuss later. We are proposing this as an
20 interim type of monitoring, that is, something that could
21 be used in the short time frame while a tank owner was
22 implementing some other form of monitoring or raising the
23 capital necessary, let's say, to replace the tank or elim-
24 inate the tank and move into some other type of hazardous
25 substance storing.

26 In this case we are looking at a precision test

1 that would be performed once a year and inventory control
2 at the level of accuracy similar to alternative number 4,
3 or a form of tank gauging, and tank gauging would be a
4 situation whereby a tank owner could lock out his tank
5 over periods of time during the week, that is not put any-
6 thing into the tank and not take anything out of it and
7 monitor the liquid level during that period and therefore
8 see if there was any change in liquid level which would
9 be an indication of release from the tank.

10 Now we realize that these are somewhat inaccurate
11 measurements of losses. However, they would be only imple-
12 mented under short periods of time and we are recommending
13 no more than three years and they would allow a tank owner
14 to move into another form of more effective monitoring or
15 replace the tank by either closing it or changing to a
16 double containment tank which obviously would provide more
17 long term reliability and protection to the environment,
18 so we feel some form of short term monitoring was an al-
19 ternative to implementing the major monitoring that is re-
20 quired above.

21 That probably concludes our discussion of issue
22 4.

23 MR. NOTEWARE: Before we get into the discussion,
24 I think it would be helpful if you could explain if
25 there's any exceptions here for motor vehicle fuel tanks.

26 MR. SINGER: There aren't really exceptions per

1 se. Obviously alternative 3, which is directly out of the
2 law and the law does relate to motor vehicle fuels --
3 probably both 3 and 4 would be applicable to motor vehicle
4 fuel tanks to the degree of accuracy of the inventory con-
5 trol that they are willing to assume at that facility.

6 MR. NOTEWARE: Thank you. First any comments from
7 board members?

8 MR. WILLIS: I would like to ask a question. Under
9 option number 3, Hal, how did you arrive at the figure of
10 30 gallons a day being detectable under inventory control?

11 MR. SINGER: We had numerous representatives from
12 the equipment suppliers that would be providing the type
13 of monitoring equipment that would provide for the one-
14 tenth of an inch type of monitoring and we were shown some
15 simulations of what would happen on a daily basis if a
16 tank was filled up and emptied at a typical, say, gas sta-
17 tion, and based on those simulations we utilized the cen-
18 ter of the tank, that is the tank roughly about half full,
19 which is the worst case for liquid level monitoring be-
20 cause it has the largest surface area, and therefore each
21 inch of measurement would give you the largest variation,
22 and they indicated that they would probably be able to
23 achieve a variation in the range of 15 gallons a day, so
24 we doubled that and put in 30 gallons to give them some
25 flexibility.

26 MR. FINSTER: In your meetings with them and dis-

1 cussing this, do they have any actual installations that
2 indicate this accuracy?

3 MR. SINGER: I believe they do have. They weren't
4 able to provide actual records of facilities. They didn't
5 provide it to us at the meetings, but they indicated that
6 they would be sending that to us.

7 MR. FINSTER: I have had experience where people
8 have indicated that they can do things, but when you put
9 it into practical application it doesn't always exist. I
10 would like to hear that question answered maybe by some
11 of the people in the industry.

12 MR. SINGER: That's one of the reasons again why
13 we doubled what we saw in the simulation. Also that does
14 bring you considerably below what can be achieved through
15 normal sticking operations.

16 MR. WILLIS: Let me ask you, Hal, we have here
17 under item 3 you have daily 30 gallons, a 30-gallon varia-
18 tion and weekly 2 percent and on a 30-day basis .5 percent
19 of throughput. Which of these three would be predominant
20 in calculating whether or not there was a problem, all
21 three?

22 MR. SINGER: They would all have to be used. In
23 other words, you would have to be looking at it on a daily
24 basis first of all, and if your fluctuation on a daily
25 basis was more than 30 gallons, you would move into some
26 other form of leak detection.

1 Over the weekly basis, the 2 percent of throughput
2 and the 1/2 percent of throughput are reduced down below
3 the 30 gallons; in other words, they do reduce over the
4 long term because again inventory control is an average
5 and it averages out over the longer period of time, so the
6 longer you look at that system, the more refined that
7 number becomes.

8 One other point that was raised also that I failed
9 to mention before was the fact that in some cases where
10 you don't have throughput, obviously that would not be a
11 useful measurement; that is, 2 percent of throughput if
12 there was zero throughput, or very small throughput, that
13 would be maybe a very small number.

14 We would probably propose that actually in the
15 regulations we would have some volumetric requirement also
16 to go along with that, that might address situations where
17 you had no throughput or very small throughput.

18 MR. WILLIS: If the tank operator were to discover
19 that he were out of variance with only one of the three
20 time tables identified here, either daily, weekly or
21 monthly, but he was within variance in the other two, or
22 even one of the three, would that suggest that there was
23 a greater potential that the problem rested with the meth-
24 od of testing, or the equipment, as opposed to whether or
25 not there was a leak?

26 MR. SINGER: I'm not sure. I'm not that familiar

1 with getting into the details of these. However, in the
2 draft regulations as we have had them proposed and we
3 would propose to continue it, there is a procedure that
4 would be followed once one of these variations was exceed-
5 ed.

6 And one of the first things that would be looked
7 at would be re-evaluation of the data to determine whether
8 or not it is a problem with the monitoring or the inven-
9 tory control procedures versus a leak itself.

10 In other words, we would not be requiring people
11 to immediately perform a precision test or immediately in-
12 stall a ground water monitoring well.

13 There is a procedure that would be followed that
14 is in fact recommended in the Uniform Fire Code for what
15 happens if inventory control is exceeded.

16 MR. WILLIS: Thank you.

17 MR. NOTEWARE: Now, could I see a show of hands
18 of people who would like to talk to us about this very
19 briefly? Okay.

20 Let's start with the gentleman in the front row
21 with the brown coat.

22 MR. ZIPP: Mr. Chairman and board members, my name
23 is Richard Zipp. I am an engineer geologist representing
24 California Independent Oil Marketers Association.

25 I have several comments on Mr. Singer's comments.
26 I will start with the background monitoring where he is

1 still maintaining that there is a need to monitor for all
2 of the constituents that were historically stored in that
3 tank. I have a question as to whether or not it is neces-
4 sary to sample for everything that was stored historically
5 in the tank.

6 I think the intent of this program is to monitor
7 for currently -- I think maybe compounds will be detected
8 using an analysis procedure, i.e., a volatile analysis,
9 gas chromatography type for volatile solvents. If a non-
10 volatile material was historically kept in that tank it
11 will not be picked up.

12 However, if we detect a leak, then we might want
13 to go back in and ascertain the length of time that that
14 leak existed; in other words, keep the intent of the law
15 in mind that we are looking for existing leaks and if we
16 find a problem, then we are going to have to back up and
17 see how old it is and what the magnitude of our problem
18 is.

19 So I think if we are using a procedure that will test
20 for the existing material, I think that should be ade-
21 quate, that we don't need to go on a witch hunt.

22 If there is a leak out there we will find it, and
23 then we will have to back up.

24 With regard to the slant drilling, I'm happy to
25 see that the board staff is making some reasonable conces-
26 sions in this area. I would like to add on page 16 a fifth

1 factor here and that factor is that it is very difficult
2 in many soils to get representative samples that can be
3 analyzed for constituents that need to be analyzed for and
4 this is something that is ignored here.

5 Many times you can slant drill but you can't get
6 good samples, so you really haven't benefitted from those
7 slant drillings.

8 It has been our experience in conducting many, many
9 studies that we can get good samples adjacent to the tank
10 that will indicate a leak. Fortunately our success ratio
11 has been quite good. If there is a leak there we have been
12 able to detect it.

13 With regard to your monitoring alternatives, your
14 table on I believe 24, your frequency unfortunately is ex-
15 tremely unrealistic. If you can do field analysis, then
16 your daily or weekly analysis may be appropriate.

17 However, if you have to collect samples and send
18 them in to a laboratory for analysis, the typical turn-
19 around time for lab work is two to three weeks. If we
20 deluge the labs with samples coming from the number of
21 tanks that are estimated to be buried under California
22 soil, that turn-around time will go probably from two to
23 three weeks to maybe four to six weeks and potentially out
24 to ten to twelve -- who knows how long after these labs
25 have been swamped.

26 There's just no way we are going to get a reason-

1 able turn-around time with the frequency that has been re-
2 quested here.

3 The same factor applies for vapor monitoring. The
4 turn-around time for sampling and analysis is going to be
5 far beyond the frequency that has been recommended by
6 staff.

7 Also, I would like to add that the sampling costs
8 for monitoring ground water or vadose zone is far more
9 prohibitive than is indicated by staff. You are going to
10 have people out there to sample with suction lysimeter as
11 mentioned and you just can't have somebody off the street
12 come in and conduct that sampling.

13 It's going to be time-consuming and is going to
14 be very labor-intensive and hence very expensive.

15 MR. NOTEWARE: Mr. Willis.

16 MR. WILLIS: Sir, irrespective of that, there are
17 six alternatives altogether. If one alternative appears
18 to be too difficult to implement such as your -- are you
19 referring to alternative number 2?

20 MR. ZIPP: Actually I believe you'll find that the
21 frequency here -- anywhere you have ground water monitor-
22 ing you have a potential for having a very difficult and
23 expensive turn-around time on analysis. You have ground
24 water monitoring in alternatives 2, 4 and 5. Four is vari-
25 able, but consistent with staff's intent, I would venture
26 to say that the frequency wouldn't get any further away

1 than weekly.

2 MR. WILLIS: What about alternative number 3?

3 MR. ZIPP: Ground water monitoring, that's not in
4 there.

5 MR. WILLIS: Do you in your organization find that
6 to be an appealing alternative?

7 MR. ZIPP: I am going to defer to another member
8 of CIOMA ad hoc committee to comment on that.

9 MR. WILLIS: That's fine.

10 MR. NOTEWARE: Mr. Zipp, you talk about the cost
11 of these. What is a typical cost in a laboratory now for
12 a sample of ground water?

13 MR. ZIPP: Okay. If it is a volatile or organic,
14 anywhere from probably 50 to 500 dollars.

15 MR. NOTEWARE: That's after it gets to the labora-
16 tory?

17 MR. ZIPP: That's after it gets to the lab. De-
18 pending on the location and the sophistication of the pro-
19 cedures required to collect the sample, you could add up-
20 wards of several hundred dollars more to that.

21 MR. NOTEWARE: I see. Mr. Singer.

22 MR. SINGER: I just want to ask two questions. One
23 is, let's assume we are looking at alternative number 2
24 which requires, assuming we are not installing vapor moni-
25 toring or ground water monitoring on a weekly basis, ob-
26 viously the minimum would be monthly. We can't go less

1 frequently than monthly.

2 Would that also put a large burden on laboratories
3 in your opinion?

4 MR. ZIPP: I'm sure it would in light of some of
5 the other legislation that's either recently enacted or
6 is pending. I think I'm going to get into the lab analysis
7 business.

8 MR. SINGER: Also I guess from the other point of
9 view, are there methods other than laboratory analysis,
10 let's assume, to measure specific constituents in both the
11 ground water or a vapor sample other than taking it to a
12 laboratory for analysis?

13 MR. ZIPP: Yes, in some instances there are, and
14 I think I mentioned if you can perform the analysis in the
15 field using different types of kits, then that might be
16 a reasonable alternative. But again the sophistication of
17 some of that analysis equipment and the cost might make
18 that somewhat prohibitive.

19 MR. SINGER: I think we would propose to give that
20 variability in the regulations and not require specifical-
21 ly laboratory analysis of every single sample.

22 MR. ZIPP: In some cases that would be required.
23 If you were to go in with a hydrocarbon vapor analyzer in
24 many areas you will get a positive reading and you would
25 have to revert back to a laboratory analysis to tell you
26 what hydrocarbons were present, so if you are going with

1 a field detector, you are going to get a lot of false
2 positives or you are going to get a lot of positives, and
3 have to make determination as to what they are.

4 MR. FINSTER: With the removal of the majority of
5 gasoline stations, for example, from this particular cate-
6 gory, I don't have an idea of the volume of tanks we are
7 talking about, are we talking about a major volume com-
8 pared to the number of gas tanks?

9 MR. SINGER: Well, if you do remove the gas tanks
10 and I'm not sure if you actually would --

11 MR. FINSTER: Well, some of them might fall in
12 that category.

13 MR. SINGER: Many of them might fall in the cate-
14 gory of 4 which might require ground water monitoring on
15 a semi-annual or annual basis. From our inventory records
16 so far I think we are finding that over 70 to 80 percent
17 of the tanks are in fact gasoline tanks, so we are looking
18 at again an area of about I think 200,000 tanks in Cali-
19 fornia, so there are still a significant number of other
20 tanks out there.

21 MR. NOTEWARE: You suggested there was someone
22 else from CIOMA who might have some input here. Let's take
23 him next then.

24 MR. ROBINSON: Good morning. My name is Tom Robin-
25 son, representing CIOMA.

26 I am not sure I caught that question as I was

1 feverishly trying to write down some comments looking at
2 this thing this morning and trying to give you an intelli-
3 gent type response.

4 Just looking at number 1, basically if you are
5 talking about service stations, that's not going to work
6 because you are talking maybe \$400 per tank per month, and
7 you're talking maybe \$14,000 per year, so it is not really
8 an alternative.

9 I won't address number 2.

10 Number 3, basically for anything except maybe a
11 very, very low volume type of outlet, that's really not
12 going to be practical either.

13 MR. NOTEWARE: Why?

14 MR. ROBINSON: Because you can't meet 30 gallons
15 a day. You would be notifying the local agency regularly.

16 They were talking a little bit about the electron-
17 ic tank gauges that will inventory down to a tenth of an
18 inch. We have one. We still couldn't. There is just no way
19 we can meet something like that.

20 You have to understand, too, that the electronic
21 tank gauge costs about \$5,000 and if you hadn't already
22 done the initial plumbing, if you went in to retrofit a
23 station, it would cost another \$5,000 to do the installa-
24 tion.

25 So assuming that something will come on the market
26 that's cheaper -- you know, right now, the stuff I think

1 he's referring to is going to cost in the neighborhood of
2 \$10,000.

3 MR. FINSTER: What kind of figure are you talking
4 in terms of instead of the 30 gallons per day? What kind
5 of figures do you think your accuracy can provide?

6 MR. ROBINSON: Let me make one more point and I
7 will come back to that if I could.

8 What I seem to have run into is that there seems
9 to be a very big paranoia on inventory control because in
10 one day's time it is very, very difficult to determine a
11 leak. In other words, I haven't run into a regulatory
12 agency yet that has felt comfortable with the fact that
13 within 24 hours you can't know that you have a problem.

14 I think it is important to understand how inven-
15 tory control works. It's a trend analysis. You have to
16 look at fluctuations over a period of time. When you tie
17 it back in to a specific amount on a per day or per two
18 day or per week basis, depending upon the throughput, you
19 end up making some very ridiculously high and easy re-
20 quirements are something that has a very, very low through-
21 put and you quite possibly make some unrealistically low
22 type of requirements for a higher throughput.

23 What typically happens with inventory control is
24 you are over some and under some, over some and under some,
25 and you trend toward a particular direction, and it does-
26 n't mean that inventory control doesn't work. It just

1 means it's very difficult to say as of day two you have a
2 problem.

3 Say, for example, you said, we are going to make
4 whatever the trigger amount occur after one week or after
5 two weeks or after thirty days, that doesn't preclude the
6 operator that was 300 gallons short yesterday or 400 gal-
7 lons short or whatever amount, to actually start doing
8 something.

9 In other words, there seems to be an assumption
10 that unless you require an operator by the requirements
11 in there, they won't do anything until thirty days or af-
12 ter seven days or whatever.

13 And I don't think that you are going to find that
14 to be the case. I think what you are going to find is
15 that, you know, if say, for example, you put the require-
16 ment of thirty days, we in one of our service stations are
17 100 gallons short today and 100 gallons short tomorrow and
18 we are 300 gallons short the following day, we are going
19 to be doing something to try to determine where our prob-
20 lem is and there's a number of steps that you have to go
21 through.

22 So it doesn't preclude us from doing something,
23 but when you get a situation where today we are 100 gal-
24 lons over and tomorrow we are 50 gallons short and the
25 next day we are 75 gallons over, and you kind of fluctuate
26 back and forth, and if you're looking after seven or eight

1 days, I might be 30 gallons over or 30 gallons short and
2 that's basically as accurate as you can be.

3 So basically I guess what occurs is after you
4 eliminate 1 and 3, you leave 4, which I think with those
5 type of numbers are more reasonable, although I really
6 hate to see you tie it down to a daily trigger. I don't
7 think a daily trigger is necessary because that goes on
8 the assumption that the operator is not going to operate
9 his or her best interest, and I don't think that's neces-
10 sarily the case.

11 So you end up with 4 or 6 as the two real alterna-
12 tives for a going installation.

13 MR. NOTEWARE: Mr. Robinson, why should it cost
14 \$400 for a pressure test on a tank? It would seem to me
15 all you would have to do is just --

16 MR. ROBINSON: I'm glad you asked that question.
17 One thing that is very important that hasn't been brought
18 out, is most of these tank tests require that you have the
19 tank filled right up to the full neck and to do that you
20 basically have to be out of business during that period
21 of tank testing.

22 To get your tank full, you know, is not the easi-
23 est thing. It's very difficult to come in with an eight
24 or nine thousand gallon tanker that typically doesn't
25 meter off, you have to get like the bobtail type truck to
26 bring it in.

1 MR. NOTEWARE: You are assuming it has to be full.
2 Let me ask staff, is this the case on a pressure test?

3 MR. SINGER: Well, that's the key point of this.
4 You can't do a pressure test on a flammable liquid tank.
5 It is extremely undesirable, and is not recommended by the
6 Uniform Fire Code. It is in fact discouraged because of
7 the problems they have had with those type of tests.

8 So you do have to run a hydrostatic type test
9 which does require filling up the tank as Mr. Robinson
10 said.

11 MR. NOTEWARE: I just visualized it that the ser-
12 vice station operator would take an air compressor
13 and --

14 MR. ROBINSON: Basically I think you're talking
15 about 350 to 500 dollars for a tank test and I assume if
16 you were doing in higher volume like if I could give some-
17 body 100 tanks or 300 tanks, I would probably be able to
18 negotiate something more reasonable.

19 MR. FINSTER: I'm not sure you answered my ques-
20 tion but I think you did, but what time frame, you say in
21 thirty days you can pretty well average out -- I think
22 that was presented in testimony during the initial hear-
23 ing, and I think there is some indication there is a prob-
24 lem because of temperature and lots of other things that
25 you do get daily variations.

26 ---

1 What kind of time frame on a daily inventory con-
2 trol would give you some kind of an average? Is it three
3 days, five days, or does it take thirty days to do it? I
4 think it could be done in a shorter period of time, but
5 let's say within three days or five days of inventory con-
6 trol, what type of variance do you see?

7 MR. ROBINSON: It really depends on your volume.
8 If you take say a high volume service station that might
9 be doing 200,000, 300,000 gallons a month which means that
10 of your primary grades you are doing 100,000 to 150,000
11 gallons, and you may be doing 5,000 gallons per day
12 through that tank, and your possible variation is consid-
13 erably different than the person that has a commercial
14 facility and might be going through a thousand gallons per
15 month and so, you know, I feel pretty comfortable on a
16 seven day period.

17 MR. FINSTER: The only example you used, the only
18 variance between the high volume and low volume is you are
19 measuring the tank once a day and you are checking your
20 meters once a day and you've got your input. Those are the
21 only three variables.

22 MR. ROBINSON: No, you also have temperature
23 and --

24 MR. FINSTER: You have the same variance whether
25 it is high volume or low.

26 MR. ROBINSON: The other thing you run into, say,

1 for example, if you have a pump that's on meters that is
2 off on one of its dispensers.

3 Well, inventory control in some respects, especi-
4 ally outside the industry, has a bad name. It's sort of
5 like, I think, what happens any time there's ever a leak,
6 and the fire department or whoever came in, the first
7 thing they ask the operator is, have you been keeping your
8 inventory and do you have any leaks, and the first thing
9 he or she says is, yes, I keep my inventory, no, I don't
10 have any leaks.

11 And then all of a sudden there's a leak, it wasn't
12 necessarily that inventory control didn't give them that
13 information. It's more than likely that he or she was just
14 not doing it.

15 MR. FINSTER: Let's quantify this a little bit.
16 Let's say based on seven day inventory control, you said
17 you feel comfortable with it, but let's say seven day in-
18 ventory control, what kind of variance would you think you
19 would be able to detect on a high volume and a low volume?

20 MR. ROBINSON: This is off the top of my head. I
21 would say like five percent of throughput type of thing,
22 something like that. That's basically what's in number 4
23 and I just haven't multiplied it out. Under pressure I
24 can't do it in my head.

25 MR. FINSTER: Thank you.

26 MR. NOTEWARE: Mr. Willis.

1 MR. WILLIS: One last question, Mr. Robinson. Dur-
2 ing our last hearing I took a quote in my notes from Mr.
3 Short from Goodrich Oil Company. He said that his organi-
4 zation could spot a 100 gallon leak over a thirty day per-
5 iod for a 12,000 gallon tank. Do you concur with that type
6 of observation?

7 MR. ROBINSON: It all depends on the throughput.
8 The size of tank in my opinion basically doesn't matter.
9 I would much rather try to inventory a large tank that had
10 low throughput than a small tank that had large through-
11 put. The throughput is the bigger criteria.

12 MR. WILLIS: Well, Mr. Robinson, we don't want to
13 tell gas stations how to design the gas tanks in terms of
14 size.

15 MR. ROBINSON: No, it's throughput, not size. I
16 don't think you could do it on a service station that was
17 doing, you know, a normal service station doing 80,000
18 gallons a month, 60,000 gallons a month, 120,000 gallons
19 a month, 200,000 gallons a month, whatever.

20 MR. FINSTER: You've got it down to a problem of
21 meters then because at the end of the thirty days you have
22 a tank that's got so much gas in it and at the start you
23 had so much and it's immaterial how much went through it
24 during that period except for the volume used and that's
25 a metering problem.

26 You've got a starting point and a finishing point,

1 you know what the two of them are and what happened in be-
2 tween, I don't think it accounts for it. It would have to
3 be your metering then.

4 MR. ROBINSON: You can also run into the problem
5 all of a sudden that a driver doesn't deliver everything,
6 I don't mean intentionally, I mean the situation where
7 they cut it off a little bit earlier.

8 MR. FINSTER: A metering problem.

9 MR. ROBINSON: The other thing, too, is typically
10 when you look at the inventories, you might have a short-
11 age, but what you are looking for is some kind of contin-
12 uous shortage. If all of a sudden you are a hundred gal-
13 lons off or 200 gallons off and you don't have another
14 problem -- if you have a hole in your tank, it should leak
15 continuously unless it is maybe up on the top, but assume
16 you put the product back up there high in your tank
17 again --

18 MR. FINSTER: What you are saying is if you have
19 a hundred gallon leak per day, at the end of thirty days
20 you would have a 3,000 gallon loss plus or minus.

21 MR. ROBINSON: No, I don't have any problem with
22 3,000 gallons a month.

23 MR. FINSTER: Okay. I do have the same note that
24 somebody in the industry did indicate that over a period
25 of thirty days it could be a hundred gallons a day.

26 MR. NOTEWARE: - Mr. Robinson, I want to ask you now

1 to be real specific about how you feel the inventory con-
2 trol should be set up or should be specified to be work-
3 able?

4 MR. ROBINSON: Inventory control has a little bit
5 of mystique about it. You basically have to start off with
6 an actual inventory. You have to add in your deliveries
7 and subtract out your sales and you end up with a new book
8 figure which you have to compare to the actual.

9 MR. NOTEWARE: I am asking you to be specific
10 about the type of language that you feel could make this
11 workable in the regulations.

12 MR. ROBINSON: Do you mean trigger mechanism or
13 do you mean --

14 MR. NOTEWARE: You have given us a lot of food for
15 thought here and at our previous discussion there were a
16 great many people felt inventory control was going to be
17 the most workable answer on this problem, and I haven't
18 heard you specify exactly how often the reading should be
19 taken or how they should be taken or what should be done.

20 I just want to hear something more specific about
21 your recommendation.

22 MR. ROBINSON: Okay. Being around the industry,
23 a lot of times, maybe I am assuming something, I'm jumping
24 on you or something like that, I apologize if I am doing
25 that, but basically you should be sticking your tank every
26 operating day. There's no reason not to be doing that.

1 MR. WILLIS: Could I ask -- Mr. Chairman, I think
2 I understand your question. With regard to options 3 and
3 4 where you have inventory included, as well as 6, perhaps
4 we ought to just allow the audience in general -- there
5 must be a few people -- I remember there was a gentleman
6 from the Independent Operators that was pretty informative
7 on inventory control and maybe they could give us some-
8 thing specific, anybody that would like to give specific
9 comments on inventory control could be of help to us.

10 MR. NOTEWARE: All right. Thank you.

11 MR. FLETCHER: Again, thank you. I am Noel
12 Fletcher from Arco. Could I show you how inventory recon-
13 ciliation works?

14 MR. NOTEWARE: Thank you, Mr. Fletcher.

15 MR. FLETCHER: I am sorry I don't have one of
16 these for everybody. It is a simplified flow diagram of
17 the daily reconciliation of inventory in the service
18 station.

19 You've got a totalizer on the meter on the pump
20 in the upper left. You have an opening inventory over
21 under inventory control one day. That is the previous
22 evening's tank reading. That's when you stuck the tank,
23 that's what was in it.

24 You bought gasoline that day so you add the amount
25 from the invoice which you purchased. You have a total
26 available. Your sales figure which here is 1774 gallons,

1 is the difference between the totalizer reading on the
2 pump one day to the next.

3 You deduct from today's ending totalizer reading
4 yesterday's ending totalizer reading. You have a book in-
5 ventory number which results. You go out and stick the
6 tank which is depicted in the drawing to the lower left,
7 and there's an expansion of the actual detail of the liq-
8 uid level as it appears or would appear should you be able
9 to see the gauge stick which is depicted again lower than
10 that.

11 Now we only require that our dealers measure to
12 the nearest eighth of an inch on that stick and there can
13 be a fair sized variation in the 12,000 gallon tank if the
14 liquid level is in the center as indicated by the staff.

15 Now you check the difference between the book in-
16 ventory and the tank inventory and you are over or short.

17 In this instance you are short 42 gallons. Now
18 let's go down to the cumulative inventory record which is
19 in the center right. You started off with 14 gallons over,
20 then you had 20 under, 12 under, a plus 19, a minus 24,
21 plus 51, then we hit this 42, but cumulative-wise, the
22 right-hand column, you are only short 14 gallons for seven
23 days.

24 This is sort of representative of what goes on in
25 a service station dealer's bookkeeping system.

26 Now depicted below is a graph of both the daily

1 and cumulative overs and shorts. Now if we were to use the
2 staff's recommendation we would have had in this particu-
3 lar example several instances where we had exceeded 30
4 gallons in a tank for a day. However, in the cum. we would
5 never have exceeded 30 gallons.

6 Now the gentleman who spoke before me said the
7 trend line is what you look for. If you have got an in-
8 creasing loss or an increasing gain or loss, whichever,
9 that's what you want to look for and you want to look for
10 it about seven days so that you kick out the variations
11 which occur daily due to the imprecision of the equipment
12 used and the possible imprecision that results from theft,
13 under-delivery, over-delivery, or a meter totalizer which
14 is cockeyed.

15 They allow you, I think, 5 cc's variation in five
16 gallons on the totalizer. It has to be plus or minus or
17 the sealer won't seal that meter, or he will throw it out.
18 And you are either giving away gasoline or you are short-
19 ing your customer if you are beyond that.

20 I did some real rapid mathematics here and at 30
21 gallons a day, that's pretty tight in a 12,000 tank. That
22 doesn't accommodate our one-eighth of an inch possible or
23 potential variation on a stick. However, you have been ex-
24 tremely liberal on the weekly two percent of throughput
25 which would let me lose 233 gallons in a 12,000 gallon
26 tank.

1 Assuming I had three tanks, I am pumping 150,000
2 gallons a month, which is our service station average, and
3 you would let me lose 233 or gain 233 gallons in a week
4 under those conditions assuming again simplified that each
5 product moved the same volume, which they don't, as the
6 gentleman prior to me mentioned.

7 So you have a potential disaster on your hands and
8 I am still within your limits.

9 Now when you go to the thirty days at half of one
10 percent of throughput, you have given me the right to dump
11 250 gallons of product into the ground and still be within
12 your regulations.

13 You are going the wrong direction, gentlemen.

14 What we need to have is about a reasonable per-
15 centage of throughput per day, or raise the number up so
16 it is representative of the capability of the equipment
17 and the people who have to use these systems.

18 First of all, I hate the word "inventory control".
19 What you are really talking about is daily inventory
20 reconciliation, what is in the tank to the book inventory.
21 What's the difference. That's what is really critical. If
22 you have a three day loss, loss, loss, then you should be
23 out there with a backhoe digging up the tank probably.

24 I mean in practicality if you lose 100 gallons a
25 month net, net, net, out of a tank, you better be checking
26 your meters or you better be looking for a leak or you

1 better be looking for a dishonest truck driver, and all
2 three of those things can happen.

3 But if you have a dishonest truck driver, it will
4 show up one day. If you have an employee theft, it can be
5 clear across the spectrum of the month, but if you have
6 an accumulative loss, then you precision test the tank and
7 if it isn't leaking and your lines aren't leaking, then
8 you start looking for the guy that is stealing your gaso-
9 line.

10 Please, if you're going to set a daily limit, set
11 it so it is practical. I don't know what it is. Maybe it
12 depends on the throughput. Take it as a percentage of the
13 throughput.

14 Your point, sir, was not quite accurate. If you
15 had 10,000 gallons going through the tank and you had a
16 10 gallon loss, through a month's time that's not bad.
17 That's pretty good.

18 But if you are doing 200,000 gallons and you are
19 down to 10 gallons, you've got a system that's absolutely
20 unreal because you will have a bigger variation than that.

21 But tailor it to the throughput, if you will,
22 please.

23 Let us get professional and give you -- there's
24 dealers in here, standing in this room that can tell you
25 a lot more than I can as to how it works or should work,
26 but I would say if you have to have a gallon figure per

1 tank, try 50. If you want a percentage of daily through-
2 put, make it come out about 50 gallons.

3 Weekly, no way two percent. That's way too high.
4 Half of one percent in thirty days, ridiculous. You should
5 be able to be much more precise than that or you've got
6 something wrong with your equipment or you have got some-
7 body stealing.

8 I am sorry for the quality of this, but I will try
9 to have our graphics put it in finished form.

10 MR. FINSTER: I think this is the type of figure
11 we are looking for and I was in hopes something would come
12 up for item 3 -- alternative 3 is the one that the indus-
13 try appears to be concerned with and I think it is inter-
14 esting to note that the weekly and monthly ones are quite
15 liberal, but --

16 MR. FLETCHER: That's right.

17 MR. FINSTER: You didn't allow for temperature
18 variation in here so that might account for some of it,
19 too.

20 MR. FLETCHER: Temperature variation gets a lot
21 of discussion, but since the gasoline in the ground, once
22 it's been in the ground for 24 hours, you don't get much
23 temperature variation until you dump the next load in. If
24 it is warm, it warms up everything and then it cools down.

25 If you are delivering cold gasoline into the
26 ground, give it 20 hours and it will equal out.

1 MR. NOTEWARE: Mr. Willis.

2 MR. WILLIS: I seem to understand what the witness
3 is saying and my suggestion would be that on the daily and
4 weekly, item 3, the daily and weekly and thirty day varia-
5 tion numbers could be adjusted to represent what would
6 amount to 100 gallons per month loss out of a 12,000 gal-
7 lon tank and I think unless there's substantial disagree-
8 ment over that, wonder why we can't footnote it as to the
9 size of the tank we would be referring to and take it down
10 to that amount of loss and I am not exactly sure what the
11 daily loss ought to be, but it seems reasonable based on
12 the testimony presented here and at the hearing.

13 MR. NOTEWARE: All right. We might get some more
14 input from some others before the day is over.

15 MR. WILLIS: I would be interested to know whether
16 or not there is any more input on this particular item
17 from the audience.

18 MR. NOTEWARE: Okay, we will have one more before
19 we break for lunch.

20 MR. PAYNE: My name is Bob Payne with the Plumbing
21 Piping Industry of Southern California representing sever-
22 al hundred contractors and several thousand employees, and
23 we have tanks of our own in the ground which we are con-
24 cerned about, plus the installation of tanks, and hope-
25 fully I can sit down with your staff later and maybe we
26 can come up with a method of testing that is acceptable

1 that we can do economically on ours and other people as
2 well.

3 But I used to load trucks for Standard Oil back
4 in the Fifties, and I didn't come up here to step on some-
5 body's toes, but we used to load about a quarter of a mil-
6 lion gallons a day out of there and I used to keep track
7 of that gas and if I loaded a truck in the morning, and
8 this is in the beach area, and hauled it to the desert,
9 we would dump 100 gallons or more, more than we had put
10 in that truck.

11 All right. Now once that gas is back in the ground
12 it shrinks back down that hundred gallons. A true gallon
13 is I think 60 degrees, so if you're going to start stick-
14 ing a tank and watching control, you must take into ac-
15 count temperature control variance so far as I am concern-
16 ed.

17 One of my very good friends who owned a station
18 was constantly running short of gas and I simply told him
19 to buy his gas first thing in the morning, get the early
20 morning load and he would stop losing gas; and if you had
21 a long distance haul where you are talking about a three-
22 or four-hour haul that service station is going to con-
23 stantly show a loss on his gas and most oil companies do
24 not give a credit until you are a very major account on
25 temperature variance, but I would like to get together
26 with some of the people on methods of testing the tanks

1 and see what we can come up with.

2 MR. NOTEWARE: Thank you, Mr. Payne.

3 You are next after this gentleman.

4 MR. HARLAN: My name is Cecil Harlan and I am the
5 licensee for the Evan K. Williams Company in Sacramento
6 who has a world-wide accounting services business and
7 specializes in service stations, jobbers and the like.

8 I was kind of thrust into this by Keith Hamilton
9 and it has consumed a lot of time, but I think I have some
10 ideas that might be addressing some of the things I have
11 heard you gentlemen ask questions about, and there does
12 have to be rigid quality and procedures implemented in the
13 inventory control method of controlling leakage.

14 In item 3 Mr. Singer had outlined I, too, noticed
15 there was a discrepancy there insofar as control is con-
16 cerned because I have some stations on my accounting ser-
17 vice that pump as much as 500,000 gallons a month, and
18 those equations would be disastrous for a leak.

19 Am I to assume item 3 addresses the leakage in
20 each tank?

21 MR. SINGER: Yes.

22 MR. HARLAN: Single tank, okay. The method that
23 I had come up with was designed on the amount of volume
24 left in the gasoline tank and not the throughput or sales
25 and I assume that's what you are speaking of.

26 The amount of leakage, overage or shortage, that

1 occurs in a gasoline tank when it is stuck, and I have
2 stuck them for 30 years, I have three stations of my own
3 and have had them for about 30 years and I have stuck
4 thousands of tanks, is predicated on two things.

5 One is the temperature, the other is the volume
6 of the tank. And most guys that have stuck tanks will af-
7 firm when a tank is full after a dump you will come over.
8 Hot, cold or otherwise they either won't lose any or his
9 corrected temperature overage will be greater. If the tank
10 volume is low he is more apt to have losses in that par-
11 ticular tank.

12 Now getting back to actually what could be done
13 to control those is not an easy matter, but I came up with
14 some percentage calculations according to volume and some
15 rigid controls that could detect a leak in 24 hours if it
16 was large enough.

17 I don't think it is practical that it could, and
18 being the person who would have to implement these or see
19 that my employees did, I would have to be very careful not
20 to suggest something that's too rigid that I could be run
21 out of town, but I think according to volume that there
22 is a practical way to control this and discover a leak
23 quickly, and I didn't have time to formalize them.

24 And I am going to copy these and give them to Mr.
25 Singer. I didn't have time to formalize them but I will
26 later if you would like.

1 But for example, and I will do this briefly. A guy
2 has 500 gallons left in a tank and if he has that little
3 volume it would probably be the premium tank. He can't
4 have a variance of more than 50 gallons.

5 If a guy has 10,000 the percentage factor that I
6 employ would allow him 117 gallons.

7 Now, whenever the tanks are stuck every day if a
8 shortage exists that is in excess of the minimum shortage
9 allowance, he would be required immediately to do two
10 things:

11 Number one, to double-check his arithmetic and
12 gasoline sales calculations and the arithmetic in his in-
13 ventory control, and if there was no discrepancy there or
14 even if there was, go out and stick the tank immediately
15 again.

16 Now this has to be done immediately. He can't go
17 ahead and sell a whole bunch of gas and come back. It's
18 going to be a little cumbersome for a single operator who
19 gets customers, but it can still be accurate.

20 So he takes his meter readings, he sticks his
21 tank, does his inventory control and sales and discovers
22 a shortage. If it exceeds these he is required to go out
23 and stick it again right away. If he discovers he made an
24 error, he is 50 gallons short and it comes 50 gallons over
25 he has to go back, he can go ahead and sell product
26 through that tank, go back four hours later, stick that

1 tank again. If it is even he can fill out, he has to fill
2 out a report, the product shortage report and show that
3 there was a discrepancy for that day.

4 Okay. Now that takes care of days where the guy
5 stick it and comes back over, and he goes out four hours,
6 sticks it again, records it on the report it's five over,
7 five short or within the minimum. Everything is cool.

8 Let's say he comes 100 gallons short and is over
9 the minimum allowance. Goes back and sticks it, he does
10 his sales calculations, does inventory control, goes back
11 and sticks the same way, facing the same street with no
12 cars going back to shake up the gas. He sticks the tank
13 again, wipes off the stick, he doesn't get the gas back.

14 Okay. He has to go back then in two to four hours,
15 depending upon the degree of gallonage short, take a meter
16 reading again, pumps gas through the dispenser, takes a
17 sales calculation on the dispenser, does the inventory
18 control method again, checks all these figures, goes back,
19 sticks the tank again.

20 Okay, we got four hours down here. If he does not
21 get the product back, if it doesn't come over, then it may
22 be for some reasons it was short, but still even more
23 short, which is a possibility, or even, then he has to
24 report that on his formula, has to go back again in four
25 hours, take the gas meter reading, does the inventory con-
26 trol, sticks the tank again, it's short, he shuts the pump

1 down, calls the leak test people, completes a report and
2 takes care of it.

3 It's not conclusive, but it would be as conclusive
4 and as fast as anything that I have heard yet.

5 And in the case of a 24-hour station -- most sta-
6 tions are open either 24 or 18. When he shuts that pump
7 down he can go back 12 hours later or every four hours and
8 stick it again. If there is no difference, it is zero, he
9 can pretty well assume it has gone through the lines. If
10 it keeps going down you can eliminate the lines.

11 That's the process these guys use when they check
12 my tanks.

13 So if he has on his report the results that dic-
14 tate that there is even a possibility of a leak, it isn't
15 concluded yet so it is tested. He has to shut the dispens-
16 er down, call up the responsible company and have it
17 tested.

18 There are some factors working on the effect of
19 temperature controls which I have tracked for a number of
20 years and this formula can be worked with temperature con-
21 trol as well.

22 MR. FINSTER: Thank you. Please present it to the
23 staff, but it sounds like you are going to be sticking the
24 tank all day and not selling any gas.

25 MR. HARLAN: I have discovered a lot of leaking
26 tanks taking monthly reports out to dealers that I repre-

1 sent and some of them do go a long time, and if you don't
2 really watch the inventory control, the over, short and
3 variation in product, it can get away, but it can also be
4 controlled effectively through this means, and I think the
5 regulations and policies procedures could be whittled down
6 to where the man on the street couldn't get too mad. I
7 think it is worth at least a try.

8 MR. NOTEWARE: Thank you, Mr. Harlan.

9 Now your comment.

10 MR. SHORT: I am Robert Short, Goodrich Oil, again.
11 I would like to give a simple analogy which I think would
12 clear part of this up.

13 If you have a family of four and you are going to
14 serve baked potato tonight, you go down to the store and
15 bring a truckload of potatoes. If you lost three on the
16 way home you probably wouldn't find them.

17 If you buy a bag of potatoes and you lose three
18 on the way home, you can find it if you look for it. If
19 you go to the store and you bought four potatoes and you
20 lost three on the road, you are sure as heck going to find
21 it, I think that's really a key to part of the problem we
22 are talking about.

23 We are talking about the amount of volume you are
24 dealing with. You talk about 30 gallons a day, that's 900
25 gallons a month. If my customers were short 900 gallons
26 in a month, number one, they would probably be out of

1 business; number two, they would be after me. They can't
2 show those kinds of losses.

3 We talked about a five percent loss. Most of my
4 customers who are retailers gross four cents a gallon,
5 which is less than four percent. That means if they had
6 a five percent loss, they would be losing money on their
7 product.

8 Ten gallons a day is 300 gallons in the course of
9 a month and we can certainly detect 300 gallons.

10 In terms of temperature correction, that's a very
11 simple procedure. We buy from most of the major oil com-
12 panies and independent companies. Any gasoline which we
13 buy, we get the temperature of it when it is loaded in the
14 truck and we know how many gallons were at that tempera-
15 ture.

16 For over 50 years it has been the normal thing to
17 do when it comes into our bulk plant, we put it into our
18 tanks, we stick our tanks every day and we take the tem-
19 perature, everything is corrected to 60 degrees.

20 If we bought 9100 gallons at 90 degrees, we tem-
21 perature correct it and we don't enter 9100 gallons into
22 the inventory in our tanks if the temperature is 60 de-
23 grees. We enter a number which is significantly less to
24 indicate, or more, depending on if the temperature is
25 above or below 60 degrees, which would indicate at a tem-
26 perature corrected figure what we actually bought in terms

1 of what the temperature is when it enters our tanks.

2 Most of our places are close enough that an under-
3 ground tank in Turlock or Modesto is generally speaking
4 going to have approximately the same temperature as it
5 does somewhere else, but Mr. Robinson was talking about
6 a throughput of a station with 200,000 gallons. We don't
7 have any tanks -- in my comments, most of our customers'
8 tanks, with the exception of maybe two or three, are all
9 with a throughput of less than a thousand gallons a day.

10 The key is, are you trying to find 30 gallons in
11 200,000 gallons or are you trying to find 30 gallons in
12 1,000 gallons. The lower the volume, the easier it is to
13 find the small shortages.

14 MR. NOTEWARE: I think you made your point very
15 clear.

16 MR. SHORT: The second thing I wanted to address
17 was on your item 3 you talk about pipelines must be pres-
18 surized and have leak detectors.

19 On a suction system, and most of the small mom and
20 pop units have a suction system, less than two percent of
21 our service stations have a pressurized system, and on a
22 suction system you are not going to leak any gasoline out
23 of the line other than what's in it when the pump is turn-
24 ed off because gasoline doesn't run uphill. It runs down-
25 hill, number one.

26 Number two, when a pump is turned on, if a suction

1 system has a leak, the pump doesn't work. The pump does
2 not work properly. It doesn't pump gas or if it is a die-
3 sel line it is pushing foam out the air eliminator section
4 of the pump and the guy says, how come my pump is smoking.
5 It's not smoking, it is the air and the vapor; but suction
6 systems, and I think if you talk to some of the equipment
7 manufacturers, they would verify what I am saying, suction
8 systems just don't pump gasoline from underground tanks
9 if they have a leak in the line.

10 Number three, if they did, and if they leaked,
11 which they don't, but if they did, your leak detection
12 system in your lines would still detect the leak.

13 There again we get at the point, if it is leaking
14 at 30 gallons a day, you are going to be up to that 900
15 gallons a month, but you're going to detect your leak just
16 the same. If the leak is in the tank or the leak is in the
17 line, it doesn't matter.

18 In fact if you are leaking gasoline out of the
19 system, it's not going to go through your meter and you're
20 not going to find it -- or if it does leak, it's going to
21 show up in the inventory control, and I think when you
22 talk about inventory control, I think you need to ask for
23 certified calibrated metering devices that have been ap-
24 proved by Weights and Measures.

25 If you're going to keep track with inventory con-
26 trol, you have to work with an accurate way to deal with

1 what goes in and what goes out.

2 Any question on that point? I have one other I
3 want to address.

4 All right, the next one, and that is the question
5 you asked me earlier about and I had a chance to sit down
6 and think about emptying an underground storage tank in
7 an area where you have to close the area. Specifically,
8 I was referring to the snow area.

9 There are four problems with that. Number one is
10 frequently these places are opened and closed very rapidly
11 depending upon weather conditions. The California Highway
12 Patrol, as the gentleman beside me pointed out, has asked
13 us to keep our trucks off the road if possible hauling
14 petroleum products which are flammable in extremely ad-
15 verse weather conditions, and it would be a matter of run-
16 ning up and pumping out the tank and hauling that stuff
17 back, and I really don't consider it an emergency situa-
18 tion to pump out a tank that's not leaking.

19 Number three, the ground is frozen in these in-
20 stances and if the tank did have a leak, it probably
21 wouldn't run out because the ground is frozen and it can't
22 get out.

23 Number four --

24 MR. FINSTER: You don't have a frost line that
25 deep, do you? That tank is pretty well underground. Go
26 ahead.

1 MR. SHORT: We're talking about up around the Dar-
2 danelles or on the high Sierras is where I am specifically
3 referring.

4 Number four, the thing I wanted to mention was
5 there are times when people are stuck in an area and when
6 all your people can't get out of areas and it is snowed
7 in, the roads are closed, and frequently they find these
8 petroleum products in our tanks, the ones we are selling,
9 they have to use in space heaters, generators, gasoline
10 motors which pump the water that they drink until they can
11 get out of the area, and there needs to be, if they are
12 stuck in an area, they need to have some access to fuels
13 so that they can keep warm and safe until they can get
14 out.

15 That's all.

16 MR. NOTEWARE: Okay, those are all real good
17 points.

18 MR. WILLIS: Before we go out to lunch I wanted
19 to suggest a couple of thoughts I would like to ask staff
20 to think about during their lunch, and first of all is
21 that on items 3, 4 and 6, I, too, prefer the word "recon-
22 ciliation", not the word "control" and I would suggest
23 that inventory control be changed to inventory reconcilia-
24 tion.

25 It seems to be more to the point and I believe I
26 understand what we are talking about.

1 Secondly under item number 3, I would like to sug-
2 gest that we would consider changing that to 50 gallons
3 weekly loss or 100 gallons monthly loss or thirty day loss
4 and that that would be predicated on a 12,000 gallon tank,
5 and if staff could take a look at how that would be work-
6 able and whether that has any other problems, they can
7 tell us after lunch and we can discuss it at that time,
8 if that's allowable.

9 MR. NOTEWARE: Okay.

10 MR. FINSTER: I think with respect to the 50 gal-
11 lon weekly loss, I think that's probably all right. There
12 might be something you might look into and give us some
13 advice on is a running average. In other words, apparent-
14 ly the presentation by one gentleman showed you are up,
15 you are down, you're up, you're down, you keep a seven day
16 running average all the time and you have a loss of less
17 than 50 gallons not per day or any time, but during that
18 seven day you have a 50 gallon loss, you are probably
19 within the limits and maybe a running average would be
20 more satisfactory.

21 MR. WILLIS: Pardon me, I meant to phrase it the
22 way Mr. Finster just described it.

23 MR. NOTEWARE: Okay.

24 MR. SHORT: Inventory reconciliation is something
25 we do every day. Can you possibly base that on throughput
26 and tie it in some way? I don't know how you would want

1 to write it, to a percentage of throughput because where
2 a hundred gallons is easy for me to find in a 500 gallon
3 tank or 500 gallon throughput, it might be tougher for
4 someone who has a gigantic tank.

5 I don't have real big throughput. I talk about
6 tank size, I mean throughput.

7 MR. FINSTER: I have a difficult problem in my
8 mind in determining the volume control, but I think it is
9 what is in the tank at every given point in time, and if
10 it is a throughput loss, it has to be the metering system
11 not in the reconciliation, and I think that if we could
12 have some kind of running average, whether you sell a hun-
13 dred gallons a day or 1200 or 5,000 gallons a day doesn't
14 seem to have any control in my mind.

15 MR. WILLIS: I don't want to suggest being close-
16 minded about it, but I think that it is necessary to try
17 to make this simple enough for people basically to under-
18 stand, and I would prefer, as Mr. Finster indicated, to
19 try to do that.

20 I think that suggesting we base it on a 50 gallon
21 weekly loss and a hundred gallon thirty day loss based on
22 tank size, and I understand that ten or twelve thousand
23 gallon tanks are pretty average throughout the industry,
24 and I would base it on 12,000 in light of the testimony
25 and consequently I'm not convinced that throughput will
26 do much more than confuse the situation.

1 We have four hundred and ninety-some incorporated
2 cities in fifty-eight counties that have to figure this
3 out.

4 MR. SHORT: The amount that you are giving me I
5 can deal with, but I am a small marketer and I don't want
6 to speak for the large ones.

7 MR. WILLIS: It would be footnoted on a 12,000
8 gallon tank and you would make your percentages down from
9 that. And if that's a problem, could you explain it after
10 lunch.

11 MR. SHORT: It's not a problem for me.

12 MR. NOTEWARE: We are going to take a lunch break
13 now and reconvene here at 1:30.

14 (Noon recess)

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1 FRIDAY, NOVEMBER 2, 1984

1:30 P.M.

2 --oOo--

3 MS. ONORATO: I would like to continue the meet-
4 ing, and there are two people who wish to address the is-
5 sue of requirements for ground water monitoring, Mr.
6 Michael Bouton, of Genelco.

7 MR. WILLIS: Madam Chair, just when we broke for
8 lunch we were in a discussion on inventory -- actually I
9 wanted to change this from inventory control to inventory
10 reconciliation and we were discussing this and we were
11 discussing under option 3, 4 and 6, page 24, primarily op-
12 tion 3 and we were discussing maximum inventory variations
13 and we went into a discussion of how to view this with
14 some simplicity yet meet the goals that were established
15 in the legislation.

16 MS. ONORATO: Thank you.

17 MR. BOUTON: For the record, I am Michael Bouton,
18 with Genelco in Dallas, Texas.

19 I have some comments based on things I heard this
20 morning that kind of confused me. One of the problems that
21 I have personally with alternative 3 is that that is look-
22 ing at inventory control as the only way that is required
23 to detect leaks.

24 Now Genelco, among other things, is in the level
25 detection business for liquids, so we have some expertise
26 in this. Our primary product in that is point indication,

1 and we intend to get into continuous monitoring, not nec-
2 essarily for this type of market, but for other markets
3 we are in, and I was reading just yesterday that one of
4 the problems that continuous -- I was reading what's
5 available in continuous monitoring, and the statement was
6 made that what is needed in the industry right now is
7 something with more accuracy.

8 They expected that ultrasonic control or ultra-
9 sonic level indicators was going to take over the market,
10 but they suffer from one thing, and that is accuracy, and
11 that may not be universal in that there are some cute
12 things they can do to get it more accurate, but it is the
13 basic problem.

14 The most accurate level device is a plumb bob type
15 of thing that is a very mechanical device that requires
16 a lot of maintenance and so on and is very expensive.

17 But what we are looking for is some way to put the
18 accuracy in it. Now our point in that is what I am hearing
19 about inventory control, especially the sophisticated
20 things, we think the sophisticated devices will find big
21 leaks. We don't have a problem with that. Those are easy
22 and they need to be found, and the electronic devices they
23 have out now are pretty nice but there's all kinds of tol-
24 erances.

25 There's metering tolerances of pumps pumping it
26 out, there are tolerances on the actual level gauges. And

1 if you look at those tolerances over a period of time you
2 can actually lose a lot of material and never know it.

3 Now we are more concerned about over the long per-
4 iod of time, a little bit of leaking every day from a very
5 small leak builds up into a lot of material. If you can't
6 detect it, the only way you are going to find out about
7 it is when it does something you don't want it to do.

8 In Texas we have been having a lot of rain recent-
9 ly. About a week ago they had to evacuate a hospital. The
10 reason they had to evacuate a hospital was because of gas
11 line fumes. The tremendous amount of water we had was
12 driving the gasoline into the sewer system and then forced
13 the evacuation of a hospital.

14 They still don't know where it came from. They are
15 investigating several gasoline stations.

16 So the problem is not only here, it's everywhere.

17 But some of the things I have looked at in our
18 looking at this thing is piping system leaks. These are
19 numbers, they are not mine, they are what people have told
20 me, account for 60 to 80 percent of the type of leaks that
21 they discover.

22 Now I heard this morning if you have a leaking
23 system, then your suction system won't work and that does-
24 n't go with some of the people, what they are saying. I
25 don't understand that, it's just a data point that we have
26 gotten.

1 In most of the systems, the biggest problem we
2 have, of course, is there's no redundancy. I mean you are
3 depending strictly on a secondary type of indication. You
4 are looking at inventory and reconciliation thereof.

5 Now some of these tricky methods they talked about
6 require some numbers being tabulated, added, subtracted,
7 temperature compensation, multiplied and so on, which is
8 a lot of paperwork. My question is who is going to audit
9 the paperwork? Who is going to make sure the numbers are
10 tabulated?

11 My experience with even myself in multiplying a
12 lot of things, I make mistakes and somebody is going to
13 have to check and make sure the mistakes aren't made.
14 Where is the control?

15 Sure, there are ways of doing it, but who wants
16 to pay for it. How much does it cost.

17 With our type of system, like I mentioned the last
18 time, the vadose monitoring system, we don't think it
19 should be the only way of doing it. We think there should
20 be two ways of checking.

21 But there has been a lot of talk about expense.
22 And we had a system which I mentioned last time which goes
23 in the ground for six grand. That's what we are figuring
24 right now.

25 We heard some people saying, well, you know, I've
26 got a clean balance sheet and I can't afford that dent and

1 so on. Well, systems like this can be leased as a piece
2 of capital gear in the ground. It does not affect the bal-
3 ance sheet at all. It's not an asset, it's a liability.
4 It's an operating expense.

5 Over five years that's \$165 a month. For a high
6 volume station, what is that? Very little. It's a few
7 tenths of a cent per gallon.

8 We are now looking at, we've got another thing on
9 the board for single tank applications where we have in-
10 stead of 12 ports and all the sophistication we think is
11 needed for high volume sophisticated outlets, we have a
12 single tank application which takes two to three ports.
13 That goes in the ground for about half that cost and it
14 gives you reliable automatic monitoring.

15 And what our whole intention was when we got in-
16 volved in this was to give something that is more auto-
17 matic and not people-dependent.

18 We also have been, and of course this gets a lit-
19 tle off the subject, and I'll just mention it because I
20 may not have another chance, but we are prepared on our
21 type of technology to warrant it for at least a year and
22 give a five year service policy. We are that convinced.

23 MR. WILLIS: Excuse me, Madam Chair, I don't need
24 to be told the device. I don't own a gas station and I
25 would just, you know, like to indicate, Mr. Bouton, I
26 think that it's important to give the owner an option.

1 MR. BOUTON: Absolutely.

2 MR. WILLIS: If he wants to buy a device and use
3 that, I would like to see that he has the option to do it.
4 On the other hand, I don't think that it's necessary to
5 cram it down his throat.

6 I don't personally have a great deal of familiar-
7 ity with the devices you are talking about and I realize
8 that you are also selling these devices, and on the other
9 hand, option number 3, inventory reconciliation, is not
10 a lone method of control. Tank testing annually and pres-
11 sure pipeline leak detectors I think are more than ade-
12 quate backups for the system.

13 MR. BOUTON: Well, my intention there is again on
14 the tolerances for the tank testing and so on. It allows
15 a certain amount of tolerance to be leaked out; in other
16 words, it allows for small leaks which over time can
17 amount to a lot, and that's our point, is that there's no
18 outside detection. There's no monitoring of the water or
19 the soil.

20 MR. WILLIS: Our concern is to make available op-
21 tions.

22 MR. BOUTON: I understand.

23 MS. ONORATO: Please continue.

24 MR. BOUTON: I have basically made my point. We
25 are concerned about the lack of redundancy.

26 MS. ONORATO: -Fine. Thank you very much.

1 After the next gentleman testifies, staff has in-
2 dicated that they wish to comment on some of the concerns
3 expressed and so perhaps they will answer your questions
4 then or address it.

5 Thank you very much, Mr. Bouton.

6 I would like to call Mr. Ed Boswell from Cali-
7 fornia Service Station Association.

8 MR. BOSWELL: Good afternoon. I am Ed Boswell. I
9 am assistant executive director of the California Service
10 Station Association.

11 A lot of our concerns have already been addressed
12 and so I will be very, very brief.

13 We are a little bit concerned about the lack of
14 wording in there for the suction pump versus a turbine
15 type. There are many, many stations out there with a suc-
16 tion pump and so some wording need to be put in there to
17 take care of that situation.

18 Now I don't know what big difference it makes,
19 probably none in our young lives, but we should at least
20 be aware that they are out there.

21 The 50 gallon shortage per week we can live with.
22 The association has no problem with that. I don't think
23 any of our dealers do.

24 I might just suggest that you use a 10,000 gallon
25 tank instead of a 12,000 gallon because the preponderance
26 of tanks out there are 10,000 gallon tanks.

1 The one thing that really bothers me though is
2 the equipment. I heard the gentleman from CIOMA, I think
3 it was, say that they had a gauge that cost \$5,000 for the
4 piece of equipment, \$5,000 to put it in, and that comes
5 out to \$10,000 a tank.

6 In this state in the service station industry
7 there are probably 30 to 40 thousand tanks out there and
8 that's a lot of money.

9 I would say this, we were in the forefront on the
10 gasoline nozzle problems with the Air Resources Board. One
11 of their problems was mandating a piece of equipment that
12 was not in existence at that time.

13 I would hope that this board would at least make
14 sure if that piece of equipment is okayed or made manda-
15 tory or whatever, that it is something that will work and
16 will do the job for us.

17 MS. ONORATO: Mr. Boswell, Mr. Willis wanted to
18 say something on that comment of yours.

19 MR. WILLIS: I just wanted you to understand that
20 we said previously we are not, at least I am not, and I
21 don't believe the rest of the board is and correct me any-
22 one, of a mind to force anyone to accept equipment that
23 is not standard and is not proven, but if you want a
24 choice, if you want to do that, I don't think we should
25 stop you from doing it.

26 MR. BOSWELL: Right. I agree, and I thank you so

1 much.

2 By the way, the gentleman from Arco was talking
3 about losses in a tank over a period of a month and if
4 there were 300 gallons or so he would begin to look for
5 a leak or someone stealing gasoline, and as a dealer, I
6 know that in my leases I was required to notify the oil
7 company in three days if my books showed a loss.

8 So at least from a lessee/dealer standpoint, and
9 I believe the contracts with the dealers are pretty much
10 standard in this, the dealer must notify the oil company
11 within three days. Whether or not they follow their con-
12 tract is something else, so you do need the other limit
13 on the seven days or five or whatever you come out with,
14 but please be aware that at least from a lessee/dealer
15 standpoint we do notify the oil company when we have a
16 problem.

17 I believe that's all that I have to say and I
18 thank you very much for the opportunity.

19 MS. ONORATO: Thank you, Mr. Boswell.

20 Did you wish to address the board on this issue?

21 MR. HAGY: Yes.

22 MS. ONORATO: Please.

23 MR. HAGY: My name is Gerry Hagy and I am an en-
24 gineer with Shell Oil Company and one of the points that
25 I would like to cover is the inventory control or recon-
26 ciliation or however you want to say it.

1 We had a lot of comments this morning and we be-
2 lieve that everyone had something to say that was true and
3 accurate and pertinent, but I think we could see also that
4 it's a difficult subject, and to try to put it all togeth-
5 er has been the problem that the staff has wrestled with,
6 we know, for several months.

7 I would like to from our viewpoint summarize the
8 types of variations that we see in inventory control.

9 Number one, we talked about temperature. The tem-
10 perature of the product affects the amount of gallons de-
11 livered, and that was covered this morning. It is loaded
12 at one temperature, it is received at another, so you have
13 a temperature variation which can be, as the example that
14 was used earlier, of an appreciable amount.

15 Temperature also affects the gauging. If we gauge
16 the tank at one time, the temperature of the product can
17 be one thing. If you gauge it say at the opening, it can
18 be one thing. You gauge it at the closing it can be an-
19 other, so if you don't take temperature into account you
20 have another error.

21 I would say that normally in service station op-
22 eration today temperature is not taken into account. We
23 heard last week or a couple of weeks ago that one gentle-
24 man said he did. There's certainly nothing wrong with
25 that. It's an accurate way to do it, but it is not common.
26 It could be, however.

1 Meter accuracy is another factor. Meter accuracy
2 depends on the amount of gallons that you sell through the
3 meter. If the tolerance of the meter is off, the more gal-
4 lons you put through it, the more you lose or gain. So now
5 we are talking about what we sold.

6 Just to reiterate, we were talking about delivered
7 gallons for temperature change and also for the amount of
8 product that was in the tank when you gauged it, the tem-
9 perature, et cetera, so now we really have three different
10 things that we are trying to measure.

11 There's another factor that is a little bit in-
12 significant, but I will bring it up just to show the com-
13 plexity of it. There is a small factor of vapor variation.
14 It is small. We have talked about gauging this morning.
15 We talked about gauging in terms of temperature, but if
16 you manual gauge the way you use a gauge stick, it is a
17 factor.

18 In fact studies have shown if you took three peo-
19 ple out at the same time with the same gauge stick and ran
20 a series of measurements, you would get different answers.
21 So there's a tolerance in there. It's the human factor.

22 MS. ONORATO: May I ask you specifically, can you
23 tell us what Shell Oil Company accepts as variations for
24 purposes of charging fees that are levied for delivered
25 gas. In other words, is there something that you are put-
26 ting forth as acceptable.

1 MR. HAGY: You mean in terms of handling the tem-
2 perature?

3 MS. ONORATO: And the variations that can result
4 from what you have cited. In other words, how do you feel
5 this should be considered in the variations that are being
6 allowed?

7 MR. HAGY: Let me see if I can answer your ques-
8 tion this way. If when you received product, and you know
9 what the temperature was when it was loaded and you know
10 the volume that it was when loaded, you can account for
11 that.

12 MS. ONORATO: And you do that routinely?

13 MR. HAGY: It's up to the dealer to do that. We
14 give them a temperature loaded and the volume.

15 MS. ONORATO: And that is considered when you com-
16 pute delivery for purposes of charging people for deliv-
17 ery?

18 MR. HAGY: Right.

19 MS. ONORATO: Mr. Willis has a question.

20 MR. WILLIS: I want to ask you with regard to item
21 3, we had discussion earlier this morning on option number
22 3 as to a 50 gallon weekly running average. We also dis-
23 cussed in terms of variation a 100 gallon thirty day run-
24 ning average as being reasons for having to perform a tank
25 test or take the other measures that are listed in the
26 regulations.

1 Do you have difficulty with that?

2 MR. HAGY: I have difficulty with those numbers,
3 yes.

4 MR. WILLIS: Why do you have difficulty with those
5 numbers? I heard other people say they do not.

6 MR. HAGY: Basically because we are talking about
7 a variation in size of operations.

8 MR. WILLIS: Excuse me, we were footnoting that
9 to a specific sized tank.

10 MR. HAGY: Okay. In my opinion the tank has really
11 no bearing on it because you can put 300,000 gallons a
12 month through a 12,000 gallon tank and you can put a thou-
13 sand gallons a month through a 12,000 gallon tank and
14 these factors that I have mentioned here don't relate to
15 the size of the tank other than the one of gauging and how
16 much product that you are gauging.

17 So the variations are really not, except for one
18 case, a function of the size of the tank. They are the
19 function of how much gas you sell through the meter.

20 MR. WILLIS: We are considering how much gas might
21 be lost before it seems apparent. This isn't just a mat-
22 ter of variation in temperature, but there's an indication
23 here that we may have a leak and we need to begin taking
24 precautionary steps to do something about it irrespective
25 of the size of the tank.

26 MR. HAGY: Right.

1 MR. WILLIS: But the concern is how do we estab-
2 lish the limit on that variation so that we know when
3 those steps ought to be taken? What is a reasonable level,
4 reasonable, not just for the gas station operator but rea-
5 sonable to the extent of also public safety.

6 MR. HAGY: It's my belief that you will have a
7 difficult time coming up with a reasonable number, one
8 single number or three numbers, daily, weekly and monthly,
9 that will cover all cases.

10 And really what I am trying to say to you is that
11 these factors that we are looking at that affect that num-
12 ber that you get when you look at your volume change,
13 these factors affect that, and if we are going to say if
14 it is off by 50 gallons you have to take action, and the
15 50 gallons might be temperature. Do you see what I mean?

16 MR. FINSTER: I think in the presentation at the
17 hearing all these variables were indicated. We know one
18 day you may have a gain and the next day you may have a
19 loss, but what we are saying and what other representa-
20 tives of the industry have indicated is that over a period
21 of time these will average out and so what we are trying
22 to do is come up with some kind of an average over a per-
23 iod of time.

24 Seven days has been indicated as being a reason-
25 able period of time to come up with some kind of average,
26 but what kind of proposal do you have other than that?

1 MR. HAGY: Let me just reference one thing here.
2 Let me give you a number we figured at lunch. If you took
3 a 30,000 gallon service station as an example and I recog-
4 nize that's a three-tank station, so if we looked at one
5 product for a week just on an average number you're look-
6 ing at 2500 gallons a week.

7 A 50 gallon variation in 2500 gallons is two per-
8 cent for a week. If you are looking at a 300,000 gallon
9 station, it's ten times less, it's two-tenths of a percent
10 based on throughput.

11 So when you get down to --

12 MR. WILLIS: Do you recall though that we were
13 discussing, Mr. Finster and I were discussing earlier just
14 putting throughput aside.

15 MR. FINSTER: We are not sure it had anything to
16 do with it.

17 MR. HAGY: Well, it does from the standpoint that
18 the losses relate to throughput.

19 MR. FINSTER: It may be only in the metering
20 system --

21 MR. HAGY: That's true.

22 MR. FINSTER: If you admit that, that's all right.

23 MR. HAGY: And then it's also affected by tempera-
24 ture --

25 MR. FINSTER: You have a plus or minus there.

26 MR. HAGY: But we are talking about a time period

1 when it might be all minus.

2 MR. WILLIS: Well, sir, if you have, as was ear-
3 lier testified this morning, a 12,000 gallon tank, you can
4 detect 100 gallon loss in a week -- excuse me, in a month,
5 a thirty day running period. Basically that just boils
6 down to eight-tenths of a percent of the volume of the
7 tank size as being loss.

8 I really would like to see this kept as simple as
9 we can keep it. I think simplicity is really a key here
10 to avoid a lot of unnecessary paperwork and investigation
11 when there really isn't a leak at all.

12 MR. HAGY: I would agree with that.

13 MR. FINSTER: What figure do you think should be
14 in there. What are your figures, or should there be any?

15 MR. HAGY: I think one of the -- let's come back
16 to the beginning. The staff had drafted a recommendation
17 which we commented on and we said 100 gallons a day, five
18 percent a week, and half a percent for the month.

19 Now at the same time we are also commenting as it
20 affects us, but I also realize it affects a lot of other
21 people and in terms of trying to get a reasonable number
22 that can be workable and yet do what you want to do with
23 it, we would be the last ones to say we want it too high,
24 which maybe that is for some cases.

25 So at any rate, you know, we would stand on what
26 we said before, a hundred gallons a day, five percent a

1 week and half a percent for the month. The 30 gallons, how-
2 ever, we find is not acceptable.

3 MS. ONORATO: Well, the 30 gallons were changed
4 to 50.

5 MR. WILLIS: No.

6 MR. HAGY: Even 50 we felt was too low. That's why
7 we made the comment to the board before that we recommend-
8 ed a hundred.

9 Let me make this comment with all due respect to
10 everyone that's here, I'm really not sure that you can
11 really solve this problem today listening to the public
12 testimony and the staff listening to the public testimony,
13 and it would be our recommendation that we would, I think
14 other members of the industry, would like to participate
15 with the staff in trying to further refine the number.

16 MS. ONORATO: You are aware that we are operating
17 under a legislatively mandated deadline?

18 MR. HAGY: Absolutely.

19 MS. ONORATO: And I think listening to what you
20 are saying, I don't mean to be disrespectful, but I think
21 these are the kinds of questions, you know, like how many
22 angels can sit on the head of a pin, you are going to get
23 5,000 answers if you ask 5,000 people.

24 I think we are going to try to strike a happy med-
25 ium.

26 MR. HAGY: Well really, our intention is to come

1 out with something that is really workable.

2 MS. ONORATO: Say that again now, 100 gallons a
3 day, five percent of the throughput --

4 MR. HAGY: It would be number 4 alternative.

5 MS. ONORATO: Mr. Anton.

6 MR. ANTON: I wanted to ask Mr. Hagy. I'm hearing
7 all sorts of different things, and between us and the
8 board we have to come up with something. I am hearing in-
9 dustry say one thing, that inventory control is all we
10 need.

11 But yet no one seems to be willing to come up with
12 anything we can hang our hats on in terms of a number in-
13 dustry can work with other than the ones that you can say
14 are what you can meet.

15 You are talking about five percent of throughput,
16 and a 300,000 gallon a month station is a level of leaks
17 we can't stand, and we need to come up with something that
18 will both provide the assurance of the ground water and
19 we are certainly willing -- we are looking for sugges-
20 tions, but I just haven't heard them.

21 Harold had a comment, too.

22 MS. ONORATO: Mr. Singer.

23 MR. SINGER: Let me make one other point here. I
24 think we need to look at the two different alternatives
25 we have recommended right now for the modification of the
26 regulations.

1 Alternative 4 is really in response to some of the
2 comments that we have had. That is, we feel that given the
3 current state of inventory control at many of the major
4 service stations, that is a level of inventory reconcilia-
5 tion that can be achieved.

6 However, we felt that that's too large to leave
7 that as the sole method of monitoring. That's why we have
8 required other forms of monitoring such as vadose zone
9 monitoring, ground water monitoring as a back-up to that.
10 That would be done on a less frequent basis.

11 Alternative 3 is basically out of the law itself
12 which does say that inventory reconciliation by itself is
13 appropriate. But given what we have heard and as Ed point-
14 ed out about the varying degrees of accuracy of that, we
15 felt that what we should go with is the state of the art,
16 that is the best that is available in inventory reconcili-
17 ation.

18 Our feeling was that the liquid level monitoring,
19 that is gauging of the liquid level was the largest vari-
20 able of that aspect of the inventory reconciliation, and
21 we wanted to move people into an area of electronic moni-
22 toring to the degree of one-tenth of an inch, which is
23 possible, and therefore we were putting performance stan-
24 dards which would move people in the direction of utiliz-
25 ing very good state of the art liquid level monitoring.

26 And that's the difference between alternative 3

1 and alternative 4.

2 MS. ONORATO: Thank you very much for that explan-
3 ation. Sorry for the interruption.

4 MR. HAGY: That's what we are here for. A comment
5 in terms of the state of the art. I think we are all look-
6 ing for that as being a good device in the future, well,
7 not so much in the future. There's some available now and
8 as a matter of fact they are being considered and they
9 will improve the accuracy of the gauging.

10 We still need to take the other factors that they
11 won't account for into account. One of the things that it
12 will do for you is take care of the temperature and to
13 say, you know, manually handling temperature is a bit of
14 a chore, it can be done.

15 MR. FINSTER: I think it was indicated at the
16 hearing it wasn't much of a problem. I faintly remember
17 somebody making that statement.

18 MR. HAGY: I remember the statement also. If you
19 really believe in it and you like to do book work, it
20 really isn't that much of a problem if you want to do it.
21 But it is not being done.

22 MR. FINSTER: I think a running average over a
23 period of time would probably compensate for some of that.

24 MR. HAGY: I agree with you, but at any rate I
25 think that will help when it's not a choice, you know, the
26 guy will do it because the machine will do it for him, so

1 there's a real future in that.

2 However, we are looking at something that's ex-
3 pensive and we looked at that \$5,000. So at any rate, how-
4 ever, our recommendation was that we would like to have
5 even more chance than we have had in the past at working
6 with the staff in the next week if we have to, to fully
7 develop the number.

8 MS. ONORATO: Mr. Willis has a question.

9 MR. WILLIS: Mr. Hagy, we have addressed the con-
10 cern also of making these alternatives available to local
11 permitting agencies, not that all six of these alterna-
12 tives, you know, ultimately would be adopted or that they
13 would be adopted in this style, but basically I would like
14 to know very simply as an industry person going into a
15 community, do you relish the idea of the permitting agency
16 making a choice between all of these? Do you feel uncom-
17 fortable with that?

18 MR. HAGY: Not particularly. That's not to say
19 there won't be some problems with that, but we are not
20 particularly uncomfortable with that at all.

21 MR. WILLIS: Madam Chair, if I may make a comment
22 directed toward staff, I'm very concerned about alterna-
23 tive number 1 which is the straight tank testing monthly.
24 I think that the staff comments about the disadvantages
25 of this particular alternative and also the industry com-
26 ments about the expense of the alternative might suggest

1 to me at least, that this may not be an alternative that
2 either we or the industry would really like to utilize.

3 MR. FINSTER: The act says the first three.

4 MR. WILLIS: Okay, that's right.

5 MS. ONORATO: Thank you.

6 MR. FINSTER: Let me correct my statement. The act
7 does not say it is monthly, it says it can be as an alter-
8 native.

9 MR. SINGER: That is right.

10 MS. ONORATO: Mr. Noteware has a statement he
11 would like to make.

12 MR. NOTEWARE: Before lunch we seemed to be zero-
13 ing in on some pretty specific numbers. I had a chance
14 during the noon hour to ponder this a little bit and I
15 want to share the fact that I feel that I am a little un-
16 comfortable in that people here today could feel that we
17 are coming up with something very specific and I for one
18 want to reserve the right to sleep on some of the things
19 I have heard today and make sure that those who are here
20 realize that what we are talking about at this point in
21 time aren't necessarily the final form that we are commit-
22 ting ourselves to live with, because it seems like the more
23 we talk, the more specific we seem to be getting and I
24 think there's still opportunity for a little bit of chang-
25 ing our minds for revision here.

26 MS. ONORATO: Please come forward.

1 MR. FINSTER: Let me ask one thing to try to get
2 this in my head. I think we have come a long ways over
3 what we said in the hearing, what was the draft, and I
4 think industry recognizes this.

5 What I would like to see, the last gentleman in-
6 dicated that the items in alternative number 4 were more
7 the kind of conditions he can meet, but he would like to
8 do it without running ground water monitoring or vapor
9 monitoring.

10 I would suggest we leave these two items, 3 and
11 4, the way they are except for the third one which could
12 include fifty gallons seven day running average as a con-
13 dition. I still think throughput is not a factor, in my
14 mind.

15 If they try it in industry for a period of time
16 and it proves to be not a valid figure and say that it
17 comes out to be 100 gallons per day on a running average
18 and we can prove there is no leaking of the tank whatso-
19 ever, there's nothing to stop these regulations being mod-
20 ified; is that correct?

21 They can be modified if after a period of time
22 they are in use and we find out that the 100 gallon is a
23 realistic figure rather than the fifty, and that there has
24 been no proven leaks at that rate of usage and rate of
25 loss these could be modified, so I am willing to stick
26 with the recommendation or stick with the fifty gallons

1 on a seven day running average

2 MR. WILLIS: Madam Chair, I tend to agree with Mr.
3 Finster. I would only suggest to add that the 100 gallon
4 thirty day running average would also be a factor for con-
5 sideration, but I want to ask Mr. Richard how much longer
6 -- well, the record remains open for written comment on
7 items such as this, does it not?

8 MR. RICHARD: Following the guidance that we re-
9 ceived today from the board and as a result of these dis-
10 cussions, staff will put together another draft of the
11 regulations which will include if I were to project from
12 this moment, I would say it would probably include the
13 fifty/100 gallon figures running averages.

14 That draft would, and all the other changes that
15 are proposed and have been discussed in this document and
16 such other changes as may be necessary to respond to com-
17 ments and so forth and so on, that draft would then be
18 made available to the public for comment for a period of
19 fifteen days prior to the hearing that currently is sched-
20 uled on the 27th.

21 That means that we would be trying to have the
22 next draft available by next Friday, the 9th of November.
23 That will allow a period of just a little bit over fifteen
24 days, I believe, before the hearing on the 27th of Novem-
25 ber.

26 During that period of time industry and the public

1 would have once again an opportunity to comment on the
2 proposed regulations as modified.

3 MR. FINSTER: I was going to say I hate to dis-
4 agree with my fellow board member, I don't know how you
5 can have a fifty gallon seven day running average and come
6 up with a 100 gallon thirty day average. I don't see how
7 the two are compatible.

8 The fifty gallons on a seven day running average,
9 if it goes through the 30 days, at the end of the 30 days
10 you should only have a fifty gallon differential.

11 MR. OUELLETTE: I am confused about using the word
12 average. Are you talking about a difference or an actual
13 daily?

14 MR. FINSTER: No, not a daily. During any running
15 seven day period the average that should average out all
16 these items, should average out not to exceed a fifty gal-
17 lon loss. That's the figure the industry or somebody from
18 the industry just pointed out.

19 They came up with seven days and only ended up
20 with fourteen. If he had fifty or sixty on one day, which
21 is way over --

22 MR. OUELLETTE: You are talking about cumula-
23 tive --

24 MR. FINSTER: Cumulative, yes, it's a running
25 average for seven days. In other words, it's just like you
26 handicap golf, you know, you might have a low score way

1 back and it gets ticked off, so you might have a variance,
2 so you might have a high variance and at the eighth day
3 back it would go out of the calculation.

4 MR. WILLIS: Madam Chair, my concern is the other
5 comment that my fellow board member Finster made and that
6 was we are never absolutely sure that the wisdom of our
7 numbers is going to be perfect. We are basing this on a
8 lot of testimony that's been made to us and materials that
9 have been turned in on the record and I know in my notes,
10 at least, there have been more comments relative to a hun-
11 dred day cumulative loss on a thirty day running average,
12 excuse me, 100 gallon cumulative loss on a thirty day run-
13 ning average, and as a back-up to the fifty gallon issue
14 I think that that would give us two bases on which to make
15 a consideration if need be.

16 MS. ONORATO: Well, Mr. Singer, I don't mean to
17 be rude, but this gentleman has been very patient and been
18 waiting. Could we at least get through the public comments
19 and then -- would that be all right, Mr. Willis, we will
20 get back to this after the public comments.

21 I'm sorry, thank you for your indulgence. I don't
22 know your name.

23 MR. JOHNSON: My name is Bob Johnson, and I repre-
24 sent Southland Corporation.

25 I think we almost had it a second ago when we
26 talked about running averages. Then we got away from it

1 and went to a set gallon figure again. What we are looking
2 for is to detect losses.

3 MR. WILLIS: We are talking running average,
4 period.

5 MR. JOHNSON: I thought I heard cumulative fifty
6 gallons.

7 MR. FINSTER: Average seven day.

8 MS. ONORATO: Cumulative average.

9 MR. FINSTER: You take a daily reading and you
10 divide it by seven and you get a daily average cumulative
11 average of fifty gallons a day. Ken was suggesting 100
12 gallons a month. I mean those are the two things under
13 consideration, but it is an average. Over a seven day per-
14 iod it is fifty gallons and over a month period it is 100
15 gallons.

16 MR. JOHNSON: There was a statement made by one
17 of the board members that we were talking about in a seven
18 day period if the cumulative total was in excess of fifty
19 gallons -- you're talking about the average per day short-
20 age?

21 MR. FINSTER: The average for seven days would
22 balance out to fifty gallons. One day you gain 100, one
23 day you lose 100, the next day you gain 50, the next day
24 you lose 50, at the end of four days it would be zero, and
25 then three more days, whatever happened in those. It's a
26 running average and the average is 50 gallons.

1 You take all the pluses and all the minuses during
2 that seven day period, add them up, and divide by seven
3 and if it comes out about 50, you are exceeding the limit.

4 MR. WILLIS: Madam Chair, why don't we remember
5 this chart.

6 MR. JOHNSON: I am not disputing that. I thought
7 I heard you say the cumulative total being 50 gallons at
8 the end of seven days.

9 MR. FINSTER: Well, it is. If you have a hundred
10 gallon gain and a hundred gallon loss, it's zero, the cum-
11 ulative total is zero. So if you do the same thing through
12 a seven day period and it comes out to be more than 50,
13 it exceeds the limit. If it is less than 50 it's within
14 the limit.

15 MR. JOHNSON: Let me give you an example. If you
16 are 150 gallons short on day six and you are zero days one
17 through five and you are 100 gallons over on day seven,
18 what's the situation?

19 MR. FINSTER: It's a running total. There could
20 be a case where you might exceed it, then we would have
21 to take a look at it.

22 MR. JOHNSON: That's cumulative total being 50
23 gallons.

24 MR. FINSTER: The next day it might be up and you
25 push the zero days off the other end. There could be some
26 variance, but at least it gives you a chance of seeing --

1 everything I have heard from the industry is that all
2 these variable factors average out in the course of time.
3 That's what you people are telling us. You are saying that
4 the temperature, the metering facilities, the inaccuracy
5 of reading the dip stick and so forth will average out so
6 what we are saying, let's find out whether it averages out
7 over a seven day period.

8 It may be the three day average is better, but I
9 heard somebody testify seven days was adequate. Somebody
10 said three days.

11 We're trying to accommodate, at least I am, accom-
12 modate some of the positions the industry is saying and
13 they say they can account accurately within about a seven
14 day period, so I am willing to go along with it.

15 MR. JOHNSON: I am just trying to understand math-
16 ematically what we are talking about. If you are talking
17 about a seven day average being 50, that's a 350 gallon
18 loss in seven days.

19 MR. FINSTER: That's not an average. If you gain
20 100 yesterday and you lost 100 today, the average for the
21 two days is zero.

22 MS. ONORATO: Pardon me just a moment. Mr. Johnson
23 is at the podium right now.

24 MR. JOHNSON: If you lose 350 gallons in seven
25 days and you divide 350 by seven, you come up with 50 gal-
26 lons. That's a 50 gallon average loss per day.

1 MR. WILLIS: May I interrupt?

2 MS. ONORATO: Yes.

3 MR. WILLIS: It's a semantic issue.

4 MR. JOHNSON: Is this what we are talking about?

5 MR. FINSTER: Yes, if you had a constant loss all
6 the time.

7 MS. ONORATO: I am not keeping order here very
8 well.

9 MR. WILLIS: Excuse me, sir, what you are refer-
10 ring to is semantically you want this cleared up as to
11 whether we are talking about 50 gallons in one week or one
12 seven day period. Am I correct?

13 MR. JOHNSON: Fifty gallon average per day.

14 MR. WILLIS: Total.

15 MR. JOHNSON: Yes.

16 MR. WILLIS: Cumulative.

17 MR. JOHNSON: Yes.

18 MR. WILLIS: Yes, okay, we agree, 50 gallons cumu-
19 lative.

20 MR. FINSTER: I've got one more statement. The way
21 it is written in item 3 now, you look at alternative 3 it
22 says 30 gallons per day. If I said the same thing, accumu-
23 lated average for seven days it did not exceed 30 gallons,
24 you are saying the same thing because you could say you
25 lose 30 gallons a day for seven days, divided by seven is
26 30. So I have increased that to 50 so I am really saying

1 it is 50 gallons per day, but I don't want to tie it to
2 any one day.

3 In one day you might lose a hundred and the next
4 day you might gain a hundred, or the next day gain 50, so
5 I am saying over an average it takes out some of the in-
6 accuracies in the reading of the facility. So I am truly
7 saying you could lose 50 gallons a day over a seven day
8 period, or 350 gallons, but at least you are within the
9 same range as it says here 30 gallons a day or 50. I am
10 increasing it to 50.

11 MS. ONORATO: Mr. Johnson.

12 MR. JOHNSON: I have no problem with that.

13 MS. ONORATO: You have no problem with that.

14 MR. FINSTER: I could be wrong in my mathematics.

15 MR. JOHNSON: The example that I cited originally
16 when you lose 150 gallons on the sixth day and you gain
17 100 gallons on the seventh day, you've got a 50 gallon
18 loss in a seven day period. That would not fall out.

19 MR. FINSTER: Give me that again. You're up to
20 four days and you're even.

21 MR. JOHNSON: Up through five days you are even.
22 On day six you are 150 gallons short. On day seven you are
23 100 gallons over.

24 MR. FINSTER: So you are 50 gallons for the seven
25 days, divide by seven, it's four gallons or something.

26 MR. JOHNSON: So you're okay.

1 MR. SINGER: Yes.

2 MS. ONORATO: Any other questions or comments?

3 Do you think this is reasonable, Mr. Johnson.

4 MR. JOHNSON: I think it will work. I think there
5 are going to be some problems in some areas.

6 One of the big, I guess, questions that I have in
7 my mind is when you have an indication in your accounting,
8 your inventory reconciliation, that you have a leak and
9 you go to your book work and you can't find the problem,
10 you go to your meters and they are in calibration, you do
11 a line check and there seems to be no problem there, then
12 you do a hydrostatic test on your tanks and there's no
13 problem there, then what happens?

14 Are we going to say, you are clean?

15 MS. ONORATO: Staff.

16 MR. ANTON: I had a couple of comments, but the
17 biggest concern I have is if we go with something in the
18 neighborhood of 50 gallons per day running average, we are
19 talking about a potential of a 1500 gallon a month leak.
20 That's perfectly within the range of what we are specify-
21 ing and I think they could do better.

22 That seems to be an unreasonably large amount of
23 loss. I am still grappling with the need to try to narrow
24 this down to do as well as they can, but I think that that
25 may be too excessive.

26 MS. ONORATO: Mr. Anton, I don't want to be sim-

1 plastic. Mr. Johnson, I address this to the audience also,
2 but we are getting hung up on numbers and we are forget-
3 ting the reality which is, I presume, the industry is
4 fully aware of clean-up costs, of deliberate spill fees
5 that can be levied upon them by the regional water board,
6 local health departments, et cetera, and I cannot believe
7 that industry would not be responsive or individual les-
8 sees or gas station operators.

9 If they think there's a leak, they are going to
10 want to find out about it. Let's not lose sight of that
11 either.

12 I am getting rather frustrated. The board does not
13 want to be unfair to industry and have onerous, terrible
14 costs, nor did the author of the bill intend that, but we
15 are all forgetting the issue that this is a serious health
16 threat to the citizens of this State and we all want to
17 work together.

18 So please in your comments to us, don't just pick
19 at us, try to translate this into something that will help
20 us come up with what is the best possible regulations that
21 we can think of and recognize that the board is not un-
22 reasonable. None of us are multi-billionaires, I might
23 note. We are all working people and therefore I am sympa-
24 thetic to the economic impacts of our regulations and we
25 will be very amenable to opening this up at the first in-
26 dication that there is an onerous burden or we made some

1 great mistake in judgment, and we all recognize this is
2 something rather new, but I still presume the other fac-
3 tor, too, that has to be mentioned here and again I am not
4 trying to be idealistic.

5 You people are paying for deliveries of gas and
6 I can't presume with the cost of gas even at the wholesale
7 level that you enjoy losing hundreds of gallons to leak-
8 age. Isn't that money out of your pocket?

9 So that to me is another constraint that exists
10 implicitly. So I think we should be working together a
11 little bit more.

12 Sorry to give you all that speech, but I think I
13 am reflecting the philosophy of the board, and I want you
14 to understand that, and we don't like being in an adver-
15 sarial position which we are anyway because we are regula-
16 tors. We don't even get elected to office for this.

17 Thank you very much. I'm sorry.

18 MR. SINGER: Can I make a suggestion? I think that
19 the policy question that we are asking you today is wheth-
20 er or not on alternative 3 we should be putting something
21 in the regulation that requires industry to do the best
22 that they can given the technology that exists today, and
23 that's what we should require when we are looking at in-
24 ventory control alone as being the sole method of leak
25 detection.

26 Alternative 4 being, should we allow the use of

1 inventory control based on what is typically done in the
2 service station industry today along with some form of
3 back-up monitoring because of what we consider to be the
4 inaccuracies in the current level of inventory control
5 that exists today, and I think that's the policy question
6 that we are asking for guidance on and I think if we get
7 some guidance on that, maybe we can go back and work with
8 the industry to say, all right, if we are looking for best
9 available technology, what numbers should we recommend,
10 and we are looking for state of the art which exists today
11 in the field, what can we recommend for numbers there.

12 But if we can get the guidance from you that
13 that's what you would like to see as the two alternatives
14 from a philosophical point of view, then I think we can
15 come up with the right numbers.

16 MR. NOTEWARE: I concur.

17 MS. ONORATO: What is your reaction?

18 MR. FINSTER: I think that the reason for -- al-
19 ternative 3 is spelled out in the act. I mean it's there.
20 It tells us this is one of the alternatives.

21 MR. SINGER: It's one of the alternatives, but the
22 point being is we could go with that alternative at a much
23 lower level of accuracy or we can go with that alternative
24 with the best available technology and that's the key
25 question.

26 If we go with the best available technology it

1 will probably require that those stations that want to use
2 that alternative would have to install some additional
3 pieces of equipment at a cost that would bring this degree
4 of accuracy up to the level we are saying is the best
5 available technology.

6 MR. FINSTER: I understand. I think alternative
7 4 could be used in other instances, other types of prob-
8 lems that might exist at the site of the station, but I
9 heard staff indicate that 50 is too much. Thirty was the
10 figure here, I heard industry say 50 is okay. I have heard
11 it should be a hundred, so we have got all kinds of fig-
12 ures.

13 I am willing to go along with the 50 at this point
14 in time and see if industry can indicate they can meet
15 this standard.

16 I think the throughput, I still have to be shown
17 in my mind where that is a variable, other than through
18 the metering facility. Other than that, if there was a
19 constant 50 gallon loss every seven days, on an average
20 every seven days, there may be a problem and maybe that
21 will detect the problem.

22 MS. ONORATO: Thank you very much. Sir.

23 MR. ROBINSON: I am Tom Robinson. I have already
24 had my two cents worth, but for CIOMA, and that's what I
25 am representing, inventory control is an incredibly impor-
26 tant item for us.

1 I agree with Harold. I think we have to talk be-
2 cause as I am sitting down there, points are raised and
3 I am ready to jump up, and I see other people are ready
4 to jump up because there is confusion. There's real con-
5 fusion.

6 Somebody asked me after I spoke this morning, do
7 you think inventory finds the leaks, or inventory recon-
8 ciliation finds the leaks or doesn't, and, you know, if
9 I made myself so poorly understood to that person, and he
10 was in the industry, obviously I didn't do a very good job
11 explaining that to you.

12 In listening to everybody else talk I see it ap-
13 pears to me anyway the level of confusion is rapidly in-
14 creasing. For example, on the item of throughput, you
15 know, I would disagree with you one hundred percent, Mr.
16 Finster.

17 Just to take one item, say for example like vapor
18 recovery, you gain vapors back based on the amount that
19 you send out toward the cars, so that is directly in pro-
20 portion to the amount of throughput.

21 If you have temperature corrected gallons and you
22 buy hot gallons and you can sell them hot but you get
23 billed at temperature corrected, which is cold gallons,
24 which is fewer gallons, you gain on that temperature cor-
25 rection and it is much more substantial, or the loss or
26 gain is much more substantial than just the gauging.

1 In fact, if you look at throughput, throughput af-
2 fects the delivery at the meter based on temperature co-
3 rection. It will affect you when you are selling the prod-
4 uct based on the temperature of the product you are sell-
5 ing.

6 The vapor recovery, if your meters get out of cal-
7 ibration, all those things are going to be affected by
8 throughput because if you have meters out of calibration,
9 the more you sell, the more off you are going to be.

10 The only thing that affects your tank size is your
11 inaccuracy in the sticking.

12 MR. FINSTER: I agree with your statement regard-
13 ing the meters. I think you have got a case where input
14 and output temperature control problem would compensate,
15 at least that's what was testified in the prior hearing.

16 I also remember somebody in the prior hearing, and
17 I don't know who it was, I remember said that vapor recov-
18 ery was not a factor because you take it out of the car
19 and put it back in the tank. You take it out of the tank
20 and put it back in the delivery tank.

21 In other words, somebody testified that vapor
22 losses were not a major factor. I'm not going to debate
23 the point right now, but I just know in the testimony at
24 the hearing that vapor was not --

25 MS. ONORATO: Mr. Robinson, could you comment spe-
26 cifically on the staff recommendation about the two percent

1 of throughput in alternative 3, and the five percent
2 throughput in alternative 4.

3 MR. ROBINSON: If I could just make one really
4 brief comment prior to that, you made the comment about
5 finding the leak. We don't want to have allowable leak
6 levels. That's not our point.

7 The point is we are very concerned about false
8 trigger mechanisms. We don't want to have to go through
9 a whole bunch of steps. I think it is very important we
10 discuss this some more.

11 There seems to be some confusion in the audience
12 whether you are saying 50 gallons per day or 50 gallons
13 in a week's time. I guess what I would say is something
14 that we feel that we can live with is where you get into
15 say on a thirty day basis you're talking half a percent
16 of throughput or a hundred gallons, whichever is greater.

17 And if you get down into the weekly level, you
18 might get into something along the line of what's in al-
19 ternative 4, well, two percent or something like that, but
20 I think that the concept, I think we can work it out, we
21 definitely feel that a daily trigger doesn't make a lot
22 of sense.

23 MS. ONORATO: Well I would say that the recommend-
24 ations agree with that because we are talking in terms --

25 MR. FINSTER: I agree a hundred percent with that
26 statement. That's why I propose the seven day average.

1 MR. ROBINSON: I'm not sure, but I kind of assume
2 from the look on Harold's face that he thought what you
3 said before lunch was not what you said after lunch. I
4 know the basis I went to lunch with and we came back there
5 is a tremendous difference.

6 MR. FINSTER: No, seven day running average is
7 only a seven day running average.

8 MS. ONORATO: Any comments, Mr. Singer -- pardon
9 me, Mr. Willis.

10 MR. WILLIS: Well, Madam Chair, I wanted to ask
11 Mr. Singer if he would explain to us what he thinks we
12 have said.

13 MR. SINGER: I was hoping you wouldn't ask that
14 question.

15 MR. WILLIS: Because I think that's really very
16 valuable.

17 MR. SINGER: I think I have heard two different
18 things, and I am not quite sure how to interpret it es-
19 pecially as it relates to the 50 gallons.

20 Maybe as opposed to getting on to numbers, I would
21 like to get off the numbers and maybe get back to the pol-
22 icy implication of the two alternatives because I think
23 that once you decide whether you like the policy implica-
24 tion, then the numbers come a whole lot easier, and I
25 think industry would agree with that.

26 Once we get the policy implications of what we are

1 trying to achieve, then the numbers are a lot easier to
2 come by. Rather than get on the issue of the numbers at
3 this point, I would like to move back to the real question
4 of do you agree with the direction that we recommended to
5 you for those two alternatives.

6 If you like, I can go through that again.

7 MS. ONORATO: Please.

8 MR. SINGER: For alternative 3 again, which calls
9 for -- the statutes themselves require one alternative to
10 be inventory control. Our position is that that alone as
11 a monitoring alternative should require the best available
12 technology that exists, and therefore the smallest degree
13 of variation that could be achieved.

14 Alternative 4 is for those facilities that want
15 to continue their inventory control procedures which we
16 feel are less accurate than what is actually available
17 through technology, but are being implemented right now
18 in the field, that is stick readings and taking into ac-
19 count some temperature variations but not everything, but
20 basically doing what is being done in the field provided
21 that some form of back-up monitoring on a much less fre-
22 quency basis and we are talking about vapor monitor or a
23 vadose zone monitor or ground water monitoring maybe at
24 a semi-annual or annual basis just as a check to make sure
25 that because of the large variations that we are allowing,
26 that we want to make sure that we are actually still pro-

1 tecting the resource, and if we want to go with inventory
2 control as a sole means of monitoring as alternative 3 and
3 is required by the law, that we should require the best
4 technology which is available which I will tell you is
5 better than what is being done right now in the field, and
6 that would require people to do better than what they are
7 doing now probably with the installation of more equip-
8 ment.

9 MR. WILLIS: Can I respond?

10 Mr. Singer, let me try to be clear on number 3.
11 When you say inventory control, inventory reconciliation,
12 you are really talking about an electronic mechanism, not
13 the dip stick device?

14 MR. SINGER: We are talking about taking the liq-
15 uid measurement using some type of electronic meter.

16 MR. WILLIS: Electronic or mechanical.

17 MR. SINGER: Or mechanical.

18 MR. WILLIS: Number 4 is talking about a stick
19 type of procedure when you say inventory reconciliation,
20 stick type of measuring procedure.

21 MR. SINGER: That's right. It's a performance
22 standard that we are trying to get at, that is, the degree
23 of accuracy we can achieve using that methodology.

24 MR. WILLIS: Why do we not include in number 4
25 tank testing?

26 MR. SINGER: We could add it as an alternative,

1 but again our feeling at that point is that the verifica-
2 tion would be in the vadose zone impossible because that's
3 the best place to have it, and if you can't do it there,
4 then in the ground water as a verification method which
5 is in the long term probably cheaper than doing tank test-
6 ing once a year, because you do the tank test and you
7 throw the money away.

8 Once you put the ground water monitoring in it's
9 a fixed cost and the analysis is probably cheaper per year
10 than the cost of doing a tank test.

11 MR. WILLIS: Ground water or vapor monitoring, one
12 or the other?

13 MR. SINGER: Right. We are not asking for both.

14 MR. WILLIS: Thank you.

15 MS. ONORATO: Mr. Robinson.

16 MR. ROBINSON: Can I just make one comment? I
17 agree with Harold. I think it would be worthwhile to go
18 with the concept. I would like to respond to his concept.

19 May I back up just a little bit? Obviously we are
20 still on inventory control and you're not going to get too
21 much further today than I am sure you would like to. And
22 seeing as I am getting my two cents worth in, it's fine
23 for me to say we should cut it off after me, but my only
24 point is going to be, you know, that I'm not that old, but
25 I have stuck tanks for a long time.

26 I have done sales reports at stations, I have cor-

1 rected them in the office, I understand how it works. You
2 will pick up a marginal amount of improvement by having
3 a \$10,000 electronic tank gauge, I mean for maybe a three-
4 tank station. You're going to pick up this much more ac-
5 curacy. You will be more accurate than if you got, you
6 know, kind of a dimwit going out there sticking it, but
7 going on the assumption that somebody can go out there and
8 stick the tank, you will get a decent reading and you are
9 going to end up spending \$10,000 more to have an electron-
10 ic gauge, or your choice is to either put in a \$10,000
11 tank gauge or you have to go to a vapor or ground water
12 monitoring and however many dollars that is and you're
13 really only gaining this much if it is done properly.

14 MS. ONORATO: Thank you.

15 MR. FINSTER: I just wanted to ask one question.
16 What would be an average throughput on a real successful
17 gas station, I mean a month?

18 MR. ROBINSON: They fall all over the countryside,
19 but you're probably talking -- let's throw them in two
20 different categories. One, if you want to talk about high
21 volume, self service, you are probably talking about a
22 150,000 type of unit, give or take; and then when you get
23 into the more conventional type station, you are probably
24 talking more along the lines of 70,000, give or take.

25 But that doesn't include any of your small mom and
26 pop stations, in other words, metropolitan type of loca-

1 tion.

2 MS. ONORATO: Thank you, Mr. Robinson.

3 MR. BONKOWSKI: My name is Mike Bonkowski. I am
4 a technical consultant. I intend to address the issues of
5 ground water, soil monitoring, alternatives 2, 4 and 5 be-
6 cause I don't think we have addressed them yet. It seems
7 like we have gotten into the endless inventory control
8 stuff.

9 I would like to draw the board's attention to page
10 13 of the hand-out, the top paragraph, about six lines
11 down, the comment that

12 "Staff believes that ground water monitor-
13 ing is the best, if not the only, means
14 of assuring that the indirect leak detec-
15 tion methods employed are adequate."

16 I would like then to address your attention to page 17,
17 the bottom paragraph, the first line,

18 "If all three monitoring methods (ground
19 water, vapor and soils) were implemented
20 and monitored frequently this would be
21 a very effective monitoring alternative."

22 I think that we all concur with that in this room. How-
23 ever, the methodology or the way it is presented beginning
24 on page 18, 19, 20, 21, is very confusing. I don't think
25 that we are looking at this alternative realistically.

26 As you peruse page 19 and you review the vadose

1 zone monitoring, it's not clear how many vadose zone moni-
2 toring wells are required, whether we are sticking with
3 the original regulations which implies seven vadose zone
4 wells at a regular service station plus the waste-oil
5 tank, and then if we go to page 20 we discuss the ground
6 water monitoring requirement.

7 It's clear looking at 5a, shallow ground water,
8 which is not defined in this text, I assume it's 30 feet
9 though that's implied, that we are still requiring five
10 ground water monitoring wells per site.

11 This, of course, does not require any vadose moni-
12 toring.

13 If we look at the assurance monitoring for ground
14 water 50 to 100 feet deep, we are looking at a minimum of
15 four wells plus the original number of vadose monitoring
16 wells. If we look at that particular site, we are looking
17 at about seven holes in the ground or several vadose holes
18 in the ground and four ground water wells and that's still
19 eleven holes in the ground.

20 Now I refer you to page, I think it is page 14,
21 the first paragraph and it is interesting that what we
22 have here is a reduction of maybe one or two ground water
23 monitoring wells from the original text.

24 The last sentence says,

25 "However, this reduction in the number
26 of wells could reduce the reliability of

1 "monitoring unless local agencies specify
2 additional monitoring in critical ground
3 water cases."

4 I have a hard time with that. I don't see that a one or
5 two well reduction is significantly different.

6 There has been some concern, looking at the fourth
7 line down, that there is some concern that this number of
8 holes in the ground will be a pathway for contaminants,
9 especially if you require this many wells, and we agree
10 with that. That's probably true.

11 However, I must say that I doubt that the reduc-
12 tion in number of wells that they have given us here will
13 lead to any increase in quality control.

14 I think that the alternative, vadose monitoring
15 and ground water monitoring, is still good if we are in-
16 terested in actually determining what does exist in the
17 ground water. The methods we are looking at now are im-
18 plications.

19 They imply that we will find something or imply
20 there's a problem. However, because of all the false posi-
21 tives you are going to be receiving from these types of
22 devices, -- well, the discussions we have had already, it
23 is clear there's some problems with that.

24 Interestingly enough at the last meeting, CIOMA,
25 Chevron, Harding/Lawson and Associates presented alterna-
26 tives that we think good alternatives for ground water

1 monitoring, tank testing, testing leaking tanks.

2 None of these alternatives, the alternative that
3 we have all concurred on is that we need some sort of tri-
4 level investigative device which involves either a combin-
5 ation of tank testing, inventory controls, vadose monitor-
6 ing, ground water monitoring.

7 If you peruse the alternatives the regional board
8 has given us, you will find none of the alternatives have
9 presented or discussed those alternatives that we as geo-
10 technical consultants recommend.

11 Thank you.

12 MS. ONORATO: Thank you. Would you like to comment
13 on that, Mr. Singer?

14 MR. SINGER: I think the alternative we have pro-
15 posed to you related to ground water monitoring is in fact
16 taken from most of the comments that we have received.
17 This is very close, in fact this is less than in some
18 cases some of the monitoring proposals that we received,
19 so I would say that this does reflect many of the comments
20 that we have received, and I would beg to differ with you
21 on the number of wells.

22 I think that is a significant reduction because
23 of two points. One is we are not requiring ground water
24 monitoring at every location, which we did in the past,
25 which significantly reduces it.

26 And secondly, the number of wells are reduced.

1 MR. BONKOWSKI: Again I consent that perhaps the
2 hour at lunch that I had to review this wasn't enough
3 time, but it's not clear to me that the number of vadose
4 zone wells was reduced and also it's not clear to me that
5 installing four ground water wells around a tank cluster
6 is required.

7 Those of us who understand the problem of gasoline
8 contamination in ground water would probably all agree
9 that one or two wells at the most is needed. I think if
10 you had a tank leak -- I still think we have overkill here,
11 and I think because of this what you've done is you have
12 taken the only monitoring alternative that you have that
13 clearly shows you whether you do or do not have a leak,
14 and you have unfortunately made it not financially avail-
15 able.

16 MS. ONORATO: Thank you, Mr. Bonkowski.

17 Any further questions? Thank you very much.

18 MR. BONKOWSKI: Thank you.

19 MS. ONORATO: Does anyone else wish to address the
20 board on this item? If not, it appears, and I don't like
21 to be premature, but we may go on to the next item.

22 MR. NOTEWARE: Madam Chairman, I think there's one
23 significant thing we really haven't zeroed in on, at least
24 we haven't put it to bed and that's the daily monitoring.
25 I have in mind Mr. Short's customers up in the snow where
26 you have to walk for five miles through the snow and dig

1 down ten feet to monitor this thing daily on a station
2 that might be closed and so forth.

3 I realize that we can't re-write these to cover
4 every possible, conceivable condition, but I think where
5 we talk about daily inventory control we should at least
6 come to some agreement as to whether we are talking about
7 stations that might be closed on Sunday or closed during
8 the winter, et cetera.

9 Have you had any more thoughts on that, Hal?

10 MR. SINGER: I think you have raised two issues;
11 one, those facilities that are normally closed, let's say
12 on a weekend and should we be requiring monitoring seven
13 days a week.

14 One possible alternative would be to say that this
15 type of daily monitoring does not have to be performed on
16 Saturday, Sunday and holidays providing the station facil-
17 ity is not normally operated on those days.

18 MR. NOTEWARE: Just on working days.

19 MR. SINGER: Providing it was at least five days
20 a week. We wouldn't want to say working days, and it might
21 be the type of site that people are there for two days a
22 week or two days a month, which could be on a remote fa-
23 cility. So I think we want to say five days a week.

24 MR. NOTEWARE: Before we get off that, if we are
25 talking about marinas that say may be only open on week-
26 ends, that we would have that problem.

1 MR. SINGER: Again we are looking at many types
2 of facilities. An example would be a standby generator at
3 a remote location with people only going there maybe once
4 every two or three days or once a week. We want to look
5 at those facilities also, and I think we don't want to say
6 working days.

7 I think five days per week or every day except
8 Saturday, Sunday and holidays would be a more appropriate
9 way if we wanted to eliminate the requirement for people
10 to go out there on what would not be normally a working
11 day.

12 I think that's the one issue first before we get
13 into the second issue of remote locations as was brought
14 up earlier about the country home out in the snow some
15 place where no one goes to for two months at a time. I
16 think those are two separate issues.

17 MR. FINSTER: I have to agree with that. I think
18 we are going to run into other conditions that we can't
19 anticipate at this point in time. There are going to be
20 special conditions that are going to have to be handled
21 in some way other than normal.

22 MR. SINGER: We should remember, too, that people
23 can apply for site specific variations and we can talk
24 about the costs of those later on, but people have that
25 ability.

26 MR. FINSTER: Yes.

1 MR. SINGER: I think the first question we want
2 to resolve is would you like to see something less than
3 daily, and if so, would something like every day other
4 than Saturday, Sunday and holidays, or Sunday and holi-
5 days, or some other form like that?

6 MS. ONORATO: Any other comments?

7 MR. WILLIS: Madam Chair, I think Mr. Finster has
8 something he wanted to go through that I find interesting.
9 I think Mr. Singer could --

10 MR. FINSTER: I hate to keep harping about the
11 figures in here. I have some question about the through-
12 put, but I am willing to accept something on the through-
13 put item, but let's take 3 and look at it.

14 I asked this gentleman what the adequate condi-
15 tions were for stations and he said well, the average
16 might be around 70,000 gallons for the run of the mill
17 station in a city, or something, and high would be 120,000
18 gallons in some of the self service stations, so what I
19 did, I applied the figures that are in the draft here to
20 those particular limits, 70,000 first.

21 We take the 70,000 first under the 30 gallons per
22 day allowance and that means during that period you could
23 have a loss of 840 gallons per month. If you applied the
24 two percent to the 70,000 you are allowed 1400 gallons per
25 month, and obviously the half percent per 30 days, which
26 is just one-fourth of the other should be the same.

1 Now you go up to the 120,000 gallons per day and
2 you apply the 50 gallons per day to that and you are re-
3 stricted to 1400 gallons per month. You apply the two per-
4 cent factor or the half percent factor for the month and
5 the week respectively and it comes up to 2400 gallons per
6 month.

7 So I don't think they are compatible. I think the
8 50 gallons per day is compatible with the two percent on
9 the low side, but it sure isn't compatible on the high
10 side.

11 MR. ROBINSON: That's volume per station, not per
12 tank.

13 MR. FINSTER: I assume it would balance out. One
14 may be more than the other, but it is still the volume
15 factor. It is just that the 50 seems to be a reasonable
16 figure.

17 MR. SINGER: I think the calculations that we ran
18 out on this were using some throughputs that were less
19 than what had been talked about today. We are looking at
20 throughputs in the area of, again I think the point that
21 Mr. Robinson just made is appropriate in that we are look-
22 ing at 30 gallons per tank and you are using a throughput
23 for all three tanks.

24 I think you have to divide those numbers by three,
25 and I think you will see the 30 gallons per day is in line
26 with the two percent and one-half of one percent.

1 MR. FINSTER: I was just using that to try to in-
2 dicate that the 50, I think is more --

3 MS. ONORATO: Do you want to comment on this also,
4 sir?

5 MR. DUNCAN: Madam Chairman, board members, staff,
6 my name is Ron Duncan. I am director of environmental
7 health for El Dorado County.

8 I have some concerns here since the counties are
9 going to be the enforcement agency, that we really do need
10 a trigger mechanism, and as you indicated, Mr. Finster,
11 whether you're talking about 30 gallons a day, 50 gallons
12 over a week, or whether we are talking about 1400 gallons,
13 at what is the action level that the local enforcement
14 agency is going to say, Mr. Gas Station Operator, you have
15 a problem, we are going to stop you from putting gas
16 through that tank until we resolve the problem.

17 I think that there's a real serious need for us
18 at the local level to have that specified because if a guy
19 puts through his gas station thousands and thousands of
20 gallons, we cannot allow a different amount to go into the
21 ground water.

22 I have another couple of points and I will make
23 it very brief, Madam Chairman.

24 We spoke earlier about the double containment
25 tanks and the monitoring and the double container tanks
26 before you arrived. I am not so sure that I think it is

1 important to send one around to monitor the annular space
2 on a daily basis because that secondary containment is
3 supposed to be able to contain the fluid should there be
4 a rupture. That's way back earlier this morning.

5 MR. FINSTER: Did you say should or should not?

6 MR. DUNCAN: Should not. I think it is not neces-
7 sary. It's going to contain it for a period longer than
8 one day, one week or even a month.

9 I have another bit of a problem that I would like
10 to voice at this time, and that was a consideration that
11 the small gas station operators would in fact have a dif-
12 ferent mechanism. I see alternative number 6 that you have
13 given a three year period so these small operators, small
14 businesses, can comply with the requirements.

15 I feel like that's more of a delay since it ap-
16 pears that the requirements are going to be the same for
17 the monitoring wells, for the soil testing, one of the
18 methods which would require electronic or mechanical type
19 inventory control -- we're still talking large dollars to
20 small operators.

21 I think that we need a mechanism to address the
22 sticking and at what point do you go to a different mech-
23 anism, not three years, because as we indicated or as I
24 indicated before, last time, you know there's a lot of
25 difference in what tanks are in the ground, whether it is
26 a gasoline storage tank that's been installed in the last

1 year and a half and one that's been in the ground 20 to
2 30 years.

3 If the sticking shows that you have a problem, a
4 loss, whether it is a trigger mechanism as we spoke before,
5 once it hits that trigger, then you go to other tests to
6 find out why you are getting a variation in your sticking.

7 But to give them a three year delay and then still
8 throw the same requirements, I don't think totally ad-
9 dresses the problems I brought up here earlier.

10 Thank you very much.

11 MS. ONORATO: Thank you, Mr. Duncan.

12 Yes, sir.

13 MR. ZIPP: I am Richard Zipp. I spoke earlier. I
14 am representing CIOMA.

15 I have just a few comments. I had an opportunity
16 to look over the document, not thoroughly, but enough to
17 see a couple of questions on page 18, item B.4. at the
18 bottom of the page,

19 "Samples shall be analyzed by laboratory
20 or field techniques that provide quantita-
21 tive results."

22 I would like to bring, I believe staff probably is aware
23 of this, it may be an oversight, but most field instrumen-
24 tation will not give a quantitative number. It will give
25 a qualitative number, and I think you're going to be un-
26 duly restrictive.

1 MS. ONORATO: I see the staff nodding their head
2 in agreement.

3 MR. ZIPP: It may be just an oversight. Then on
4 page 19, B.6.,

5 "Borings shall be logged in detail and
6 described using the unified soil classi-
7 fication system on appropriately trained
8 professional working under the supervision
9 of a geologist, civil engineer, engineer-
10 ing geologist or hydrogeologist who shall
11 be either registered or certified in his/
12 her field by the State of California."

13 The State of California does not have a registration or
14 certification for hydrogeologist.

15 MS. ONORATO: Would you tell the Legislature that?
16 We have referred to various pieces of legislation and
17 that's perhaps where this is translated from. We know
18 there are no hydrogeologists.

19 MR. ZIPP: It is necessary that someone should
20 propose it because there are a lot of people doing work
21 without the proper credentials.

22 MS. ONORATO: Let me tell you I personally went
23 to some author of the bill and pointed this out, not once,
24 but ten times, and the bill came out with hydrogeologists
25 still referred to, but let me suggest that you missed your
26 vocation. I believe you belong with the I.R.S.

1 MR. ZIPP: I have too many dealings with them
2 already.

3 Backing up to page 18 on alternative 2, under A.,
4 general l.b.

5 "This monitoring alternative shall not
6 be allowed if vapor monitoring pursuant
7 to the performance standard cannot be in-
8 stalled and either:

9 "The first ground water encountered
10 is hydraulically connected to ground water
11 suitable for domestic, municipal, agri-
12 cultural or industrial purposes."

13 I would maintain that on an initial investigation there
14 would be no way to ascertain whether or not a shallow
15 ground water did or did not have continuity with usable
16 ground water, which makes it extremely restrictive from
17 an investigative standpoint.

18 In other words, I don't know when I can or cannot
19 utilize alternative 2.

20 MR. FINSTER: Good point.

21 MS. ONORATO: I don't know that we are prepared
22 to answer.

23 MR. ZIPP: I am just raising that question for
24 consideration.

25 MS. ONORATO: Staff will look into that.

26 MR. FINSTER: -Most of the people know pretty well

1 the geology of the area.

2 MR. ZIPP: Well, if you look at the State ground
3 water resources data, the maps, ground water maps and
4 things, you will find that they are only referring to and
5 applying to usable ground waters, domestic production
6 waters, not perched water.

7 In the Los Angeles area I think the last usable
8 ground water, shallow perched ground water map was 1927,
9 I believe, which is a little bit out of date.

10 And one final comment. On page 19 under D, ground
11 water monitoring, I mentioned this this morning, I feel
12 as strongly now as I did before, you are talking about the
13 frequency of sampling analysis and again the turn-around
14 time is going to totally throw out your schedule.

15 If you have to perform laboratory analyses, your
16 turn-around time will not be weekly. It's going to be
17 monthly, bi-monthly, or in this case, your turn-around
18 time will be about six months.

19 MS. ONORATO: Does the staff agree? I think that's
20 a valid point.

21 MR. SINGER: I think the third one is a valid
22 point. However, again we can't back off farther than month-
23 ly. That would be the farthest you could back off on this
24 alternative because you are required by law to monitor
25 monthly as a minimum.

26 MS. ONORATO: - Mr. Zipp, it sounds like a sop,

1 but again if it proves unachievable simply because there's
2 no availability of this many testing labs and the turn-
3 around time is not improved, I am sure the author would
4 be amenable to changing the language, but since it's in
5 the bill we will have to deal with it that way.

6 MR. SINGER: There are some field techniques and
7 again if you are looking for a floating hydrocarbon, you
8 can do that in the field and look for visual --

9 MR. ZIPP: Yes, qualitative check, not quantita-
10 tive.

11 MR. SINGER: I'll agree with that.

12 MS. ONORATO: Thank you very much, Mr. Zipp.

13 I would like to call a ten-minute recess and would
14 also like to apologize and tell you it was not just a
15 fluke I wasn't here this morning. I was called to meet
16 with several people who are leaving town this afternoon,
17 so please excuse my absence. It was not that I was not
18 interested. Thank you very much.

19 (Recess)

20 MS. ONORATO: Ladies and gentlemen, I would like
21 to request on behalf of the board that anybody that fur-
22 ther testifies, that I think we have said enough about the
23 weekly average, daily average and so forth, and what still
24 hasn't been addressed is the policy issue here, the policy
25 directive of the board to the staff, and I have asked Mr.
26 Walt Pettit to again straightforwardly ask the board what

1 directions we wish to give staff on the policy level.

2 MR. PETTIT: I think this is particularly perti-
3 nent to the issue for the existing tank monitoring, Ms.
4 Onorato, and the concern is that we can work with the in-
5 dustry and with the board and everybody else to develop
6 the numbers under the various alternative monitoring
7 schemes here, and I think we have some pretty good feel
8 for what you are thinking of regardless of maybe some se-
9 mantic differences of the language.

10 But the one thing we want to make sure we under-
11 stand from you is whether we are going the right direction
12 or not in proposing that some of these alternatives in-
13 volve existing inventory practices which we don't think
14 are very accurate, although the industry has told us today
15 they are more accurate than what we have put down here as
16 an alternative, but using the existing practices in con-
17 junction with some other type of less frequent back-up
18 monitoring, or as an alternative going to something which
19 would be a much more, much higher degree of accuracy re-
20 quired for the inventory reconciliation process, but a
21 number that we think can be supported on the basis of
22 present technology, and bearing in mind again that this
23 alternative would only be required because there would be
24 no back-up system, and I hope we are not being overly re-
25 petitive on this point, but we think that's a basic con-
26 ceptual approach that we need to be certain we are on the

1 right track with.

2 MS. ONORATO: Would anyone like to comment?

3 Mr. Willis, would you like to express yourself on
4 this?

5 MR. WILLIS: Yes. I think it would be a good idea
6 if each of us expressed ourselves to the staff and then
7 move on through these regulations. Can we do that?

8 MS. ONORATO: Please.

9 MR. WILLIS: My feeling after the last hearing and
10 going through the material simply has been -- I felt that
11 the inventory reconciliation was something that was called
12 out specifically in the legislation.

13 I think the point has been debated, and after to-
14 day I have felt that was the conclusion. So I really don't
15 feel that we have an alternative in terms of excluding
16 that in favor of any other particular system.

17 However, I also believe providing various differ-
18 ent alternatives is again something that is an option, not
19 just an option, but something the Legislature calls for.

20 I don't believe that an individual station owner
21 should be required to have to use mechanical monitoring
22 devices as opposed to a stick measuring device.

23 However, my concern here with the alternatives as
24 they are spelled out is that a local permitting agency
25 could make that choice and require that, and I think that
26 in some instances based on the testimony that we have

1 heard during the hearing, that that might prove to be very
2 difficult for some very small mom and pop operators.

3 Also I felt that the inventory reconciliation pro-
4 gram should have a prescribed methodology which staff has
5 endeavored to describe under maximum inventory variations.

6 I think that this should be spelled out very
7 clearly that consideration is given for all the concerns
8 that were raised about temperature as it affects gallonage
9 in the tanks, et cetera.

10 During this workshop I have gone from thinking
11 that throughput was necessary to it not being necessary.
12 I think that at this point it can be re-instituted and
13 staff comment is a helpful instrument in determining maxi-
14 mum inventory variations.

15 I have also felt that no tank should be, or no
16 tank should go without a pressure check or a tank test of
17 some type, that straight across the board, State of Cali-
18 fornia, every one of the tanks that are registered should
19 have that test to determine whether or not they leak.

20 After that we can go right ahead with the program
21 using inventory reconciliation. Those tanks that are found
22 to be leaking after that particular test will have to be
23 dealt with as the regulations and the law prescribe.

24 I have had an opportunity to hear from members of
25 the industry both on the public record and on the street,
26 and talking with our own staff and in general, I don't

1 feel that that is something that is out of order at all,
2 and I think the tests need to be performed and additional-
3 ly I felt that the stick or sticking as an inventory de-
4 vice would be sufficient provided that there was an annual
5 tank test required.

6 In terms of vapor monitoring, I feel open on that
7 and I would like to take my time to further reconsider it
8 over the next week.

9 As an additional comment, I am concerned for the
10 first time today about the possibility of what to do with
11 these out of the way small businesses that may be seasonal
12 who have very small tanks perhaps and what do you do to
13 properly monitor those particular tanks.

14 I would like to see some consideration of that
15 particular issue raised by some today and I think that
16 perhaps that might best fit under the small business cri-
17 teria. That might be the area within the regulations to
18 deal with that, perhaps some type of exemption criteria
19 might be addressed or at least a method with which to deal
20 with it.

21 Those are generally my thoughts, Madam Chair.

22 MS. ONORATO: Thank you, Mr. Willis.

23 Before anyone else says anything, I am going to
24 make a statement. This board does not apply to gas sta-
25 tions and oil stations alone, and I can't help but be
26 deeply concerned by the fact that we have allowed our-

1 selves in our judgment to be overtaken with the industry
2 who has very effectively made a case and I think changed
3 our mind and modify the staff recommendations substantial-
4 ly.

5 However, ladies and gentlemen, I cannot allow the
6 board to make further statements without bringing it to
7 everyone's attention -- are you saying that inventory con-
8 trol alone is sufficient for the highly toxic hazardous
9 threatening materials that are relegated to underground
10 tanks in high density areas.

11 We cannot do this, and I'm sure Mr. Willis didn't
12 mean that. I'm sure his comments were directed toward the
13 oil industry, and now I must ask of staff, is there any
14 possibility that we can treat these as two separate enti-
15 ties.

16 MR. WILLIS: Madam Chair, less dramatically than
17 you posed the question, let me say I was addressing spe-
18 cifically gas station operators in my comments.

19 MS. ONORATO: I don't think anyone else is here.

20 Is staff prepared to suggest that we treat the oil
21 and gasoline industry differently because certainly moni-
22 toring, I mean just inspection, and tank testing is not
23 going to be adequate.

24 I myself was down at IBM this past week and they
25 point-blank said they have test forms but said point-blank
26 that inventory control is inadequate and is not accepted

1 as state of the art by industry which is disposing of
2 hazardous materials, toxic materials in tanks.

3 Mr. Finster.

4 MR. FINSTER: I was just going to make the remark,
5 that the whole discussion as far as I am concerned has
6 been around alternative 3 and 4, and 3 is strictly for
7 gasoline stations.

8 MS. ONORATO: Mr. Finster, staff has been asking
9 us a direct question about policy.

10 MR. FINSTER: I am saying this inventory only ap-
11 plies to gas stations under alternative 3. That's the only
12 one it applies to. The rest are going to have different
13 conditions, and stationary ones will have different condi-
14 tions.

15 The ones we have not talked about will have dif-
16 ferent conditions, I'm sure. Inventory control alone,
17 which is only item 3, applies solely to gas stations.

18 MS. ONORATO: But they are also asking the ques-
19 tion is it inventory control alone or should it also be
20 with the best technology available standards.

21 MR. FINSTER: I heard that statement. First of
22 all, I want to talk about the isolated condition like the
23 one gentleman brought up about the mountains.

24 I think those are going to have to be addressed
25 with some kind of special provision. I'm sure something
26 in the regulations will permit those considerations.

1 I think another gentleman came up and talked to
2 me at the break indicated they have a diesel storage tank
3 at I believe a grocery store to run an emergency generator
4 if and when they have to have it, and they don't even use
5 the tank. The tank is sitting there full of diesel and the
6 inventory control would be zero every day unless somebody
7 was stealing it.

8 I'm sure we are going to run into special problems
9 that we can't possibly cover under the regulations.

10 My feeling is I have had some question in my mind
11 regarding the throughput situation. I think I have ex-
12 pressed that enough to everybody. I feel that under al-
13 ternative 3 fifty gallons is a reasonable figure.

14 The reason I asked the question of what the aver-
15 age tank, average station puts through in a month was to
16 give me some guidance to try to run some figures out on
17 it and I did. On high volume, and I assume staff is tell-
18 ing us that one of the three will control, all three can't
19 control, it has to be one of the three.

20 In other words, if your daily one exceeds 30 gal-
21 lons a day, for example, then it controls because the
22 other one, the weekly one is two percent on a large gas
23 station and the two percent would be way higher than the
24 30 gallons per day.

25 In the case of a small station that pumped very
26 little gas through it, I would say a couple thousand gal-

1 lons a month, for example, the percentage would control,
2 the two percent per week would control, you know, so I as-
3 sume that the throughput is there for a purpose and prob-
4 ably we could leave it there.

5 It would effectively control low volume stations
6 and the daily one would control high volume stations. I
7 could be wrong in that statement. That's the way I see it.
8 I think it should be 50 gallons.

9 It looks like the average figure is just coinci-
10 dental in my mind. The 70,000 gallon per month station
11 just worked out the same as 50 gallons, but then I was ad-
12 vised there are three tanks and you have got to divide it
13 by three.

14 Well, maybe you should divide the fifty by three
15 and apply it per tank, too. So there are other factors,
16 so I guess there are going to be variances there.

17 I recognize the antiquated methods of sticking and
18 I was surprised in hearing the testimony at the hearings
19 before that they are still basically all sticking tanks.
20 I'm not in the gas business, but I remember as a kid
21 sticking a few of them for a friend of mine who had a gas
22 station. I thought sure they would have a modern technique,
23 and maybe in the new installations maybe there should be
24 some consideration given to modernize the method.

25 I'm sure industry is probably looking into it, but
26 they talk about their variances, the inaccuracies, the

1 differences because of temperature control, they even have
2 pluses and minuses in temperature, you can have pluses and
3 minuses in sticking, you can have pluses and minuses in
4 meters, and all of them can be a factor up and down.

5 I mean your meter could be reading high instead
6 of low. There are cases that they do that, so looking at
7 some kind of an average figure is still what I feel should
8 be looked at rather than just one day because in one day
9 all of the factors are concerned, the temperature, the
10 dumping, the meters and so forth can create a problem
11 where they had a 200 gallon loss which way exceeds the 50,
12 but maybe the rest of the week it was zero.

13 It seems we have got to allow some time in this
14 to compensate for this multitude of variables that exist.

15 I think in connection with the monitoring and the
16 interior ring between the two tanks under the double tank
17 system on a continuous basis is not warranted. It's a con-
18 tainer, that's why it is there, is to protect it from get-
19 ting into the underground, and I think there may be some
20 other standards relative to that testing rather than a
21 continuous testing.

22 MS. ONORATO: Okay.

23 MR. NOTEWARE: I think to answer our staff's con-
24 cern about items 3 and 6, I certainly concur that if in-
25 ventory control is going to be the only method, it has to
26 be the state of the art, and again we are all faced with

1 trying to come up with something that will cover all the
2 variations and I certainly concur with Carole when she
3 says what we are talking about here in these items, we're
4 really talking about only service stations because--well,
5 again, too, depending upon the beneficial use that the
6 ground water is going to be put to and a whole lot of
7 other factors, it is going to have to modify our decision
8 on these things.

9 If we use the method of inventory reconciliation
10 that's based upon sticking, I concur there must be some
11 back-up as you have indicated in item 4, vapor monitoring,
12 ground water monitoring. I would like to see the number
13 of holes minimized.

14 I believe that we don't have to have the eleven
15 that it has been suggested the bill calls for. I'm not
16 sure we are calling for eleven, but if we are, we might
17 take another look at that.

18 I'm still concerned with all the variations that
19 are going to occur for which exceptions will be applied
20 for. I'm think of all the various public works departments
21 of the cities and counties, Caltrans installations, De-
22 partment of Forestry, people who use underground storage
23 tanks for motor vehicle fuels on a very seasonal basis,
24 and requiring a daily monitoring when they are not in use
25 doesn't seem to make a whole lot of sense.

26 But again, I think I concur with the need for

1 state of the art inventory control if that's the only
2 method of checking.

3 MS. ONORATO: Mr. Finster.

4 MR. FINSTER: That created one more question in
5 my mind and the statement I want to make, the Public Works
6 director indicated there should be some triggering mechan-
7 ism and I think probably there should be. I don't know
8 what it would be.

9 For example, say you did adopt the 50 gallons per
10 day allowance for loss. If there was a continuous 50 gal-
11 lons a day loss for three months or even a month, if I was
12 the owner, I would be concerned.

13 But I think there should be a triggering mechanism
14 and I don't recall seeing any. Maybe there is some in the
15 regulations that I haven't seen.

16 MR. SINGER: The 50 gallons that we are talking
17 about would be the triggering mechanism.

18 MR. FINSTER: Well, the constant 50 gallons per
19 day --

20 MR. SINGER: One time.

21 MR. FINSTER: Let's say it was 49 $\frac{1}{2}$ every day of
22 the week and every day of the year. Technically that
23 wouldn't trigger it and I think there should be some kind
24 of trigger mechanism. I don't know what it is. I think it
25 is a good suggestion.

26 MS. ONORATO: John Richard, could you address this

1 given the Sher bill in its present form, what would be the
2 impetus for anyone to report a suspected leak.

3 MR. RICHARD: There's a requirement for reporting.
4 If an unauthorized release occurs which cannot be removed
5 from the secondary containment within a certain period of
6 time, that unauthorized release must be reported.

7 MS. ONORATO: Thank you.

8 Staff, I feel very strongly that there will be an
9 attempt if we water down too much the inventory control,
10 and I would like to see the best technology available ap-
11 plied on the grounds that this is -- we do have alterna-
12 tives here for industry that could be impacted, small bus-
13 iness and so forth, but I think that we have to have the
14 highest standards possible, particularly given the dif-
15 ferent toxics we are dealing with, and I think the board
16 has been successfully lobbied by industry and properly so
17 to point out to us that we are dealing with toxics in gas-
18 oline per se or oil products as they are classified by EPA
19 and the Department of Health Services, but they are quite
20 different in their use and storage purposes from waste or
21 sumps or whatever you want to call the storage of toxic
22 and hazardous materials which I think this is mainly gear-
23 ed toward and I would like to see that handled in the most
24 stringent manner possible.

25 I would like with the concurrence of the board to
26 ask the staff specifically to contact David Farrell, who

1 had to leave, the environmental planner for the Air Force
2 region and he expressed concern for all military installa-
3 tions and the economic impact of the staff regulations in
4 the Sher bill implementation because nobody paid any at-
5 tention to this until the law passed, and they go by the
6 federal fiscal year, and they will not have funds avail-
7 able in the immediate future and will have to seek special
8 legislation after they do a state-wide assessment of the
9 area of the problem and they want to be certain that the
10 regulations address the problems they have.

11 Is that all right with the state board?

12 MR. WILLIS: They may have to take the leather
13 seats out of the B1 bomber.

14 MS. ONORATO: Would staff take this card. Thank
15 you very much.

16 I would like to point out to you that several of
17 the board members have to leave quite soon, at 4 o'clock,
18 in order to meet planes, so I would ask that any further
19 remarks from the audience please remember this is a work-
20 shop and it isn't a public hearing, so that's why we did-
21 n't count on quite as much public input.

22 If you have anything to say, I hope it isn't re-
23 petitive.

24 MR. SHUSTER: I am Bob Shuster from Escondido,
25 California, and one comment here on item 3. It says pipe-
26 lines must be pressurized.

1 Couldn't that be changed to pressurized pipelines
2 must have leak detectors, and that would give us the abil-
3 ity to use a suction line. A lot of our independent small
4 businesses have a suction system and not the pressure sys-
5 tem that you find in bigger service stations. Maybe they
6 only have one tank and it has one pump that goes right
7 down to it.

8 MR. ANTON: Can I address that a little bit? We
9 will have to take another look at the law. It can be read
10 a couple of ways and we may have to have Mr. Richard look
11 at it as well, but the reason for that was that this spe-
12 cial monitoring provision for motor vehicle facilities
13 specifically says that whenever any pressurized system has
14 a leak detection device, the monitoring the monitor for
15 leaks in the piping -- one can read that as a requirement
16 to use that monitoring system or you can read it to say
17 if you are using a pressurized system you've got to have
18 a leak detection system.

19 MR. SHUSTER: That's the way I want to read it.

20 MR. ANTON: We will take a look at it.

21 MS. ONORATO: Thank you.

22 Mr. Richard Reese approached the chair and said
23 that this morning he asked staff for clarification on is-
24 sue 3. Did you give him the clarification, staff?

25 MR. SINGER: Yes, it related to the continuous
26 monitoring between the double walled tanks, and I think

1 we agree with the comment that it could be handled similar
2 to other secondary containment facilities for the purposes
3 of monitoring, so it would not have to have continuous by
4 definition monitoring.

5 MR. REESE: That satisfies me.

6 MS. ONORATO: Thank you very much.

7 Staff, I think we still have two items to go
8 through here.

9 MR. SINGER: We will move through. Issue 5 deals
10 with the economic impact. Let me go through this very
11 quickly.

12 What we have proposed to do here is to address two
13 separate issues under the economic impact; one, the impact
14 to small business. Again the legislation does require some
15 level of monitoring be installed on all existing tanks by
16 July 1 of 1985, so we have to require some level of moni-
17 toring.

18 We are proposing to allow a small level of moni-
19 toring as proposed in alternative 6 from the prior issue
20 for small businesses and we have defined a small busi-
21 ness as defined in the Administrative Procedures Act as
22 being the best definition we felt would be appropriate.

23 What we are saying there is that for those small
24 businesses we will give them three years to come up with
25 the capital that it would take to install the more rigor-
26 ous and what we feel is the minimum level of monitoring

1 required over the long term provided they could implement
2 the monitoring under alternative 6 during that three-year
3 period.

4 So again I think the real policy issue here is do
5 you feel that that is appropriate to handle small business
6 economic concerns, and the three-year period we felt was
7 a reasonable period of time for a small business to devel-
8 op the capital it would take to implement the type of mon-
9 itoring that would be required under some of the other mon-
10 itoring alternatives where we are talking probably in the
11 range of between four and ten thousand dollars for some
12 of the simpler methods, and maybe getting up in the twelve
13 to fifteen thousand range for some of the larger or more
14 expensive type.

15 That's probably the key policy question here.

16 The other issue also relates to this three-year
17 period, and again we have had some concern for large busi-
18 nesses that may want to either replace or close their fa-
19 cility within a short period of time, and don't want to
20 have to implement the monitoring that might cost ten or
21 fifteen thousand dollars, and then eliminate that tank
22 within two or three years.

23 So again we have allowed them that same period of
24 time using the same monitoring alternative number 6, that
25 if they make a commitment to either eliminate the tank by
26 closing it or elimináting by replacing it with secondary

1 containment, i.e., a new tank, that they could implement
2 the monitoring alternative 6 during that three-year period
3 of time.

4 This may be a way to address the military concern.
5 We will look at that with that perspective.

6 MS. ONORATO: I think that sounds reasonable. Do
7 any of you have a concern? Does that meet your concerns?

8 MR. WILLIS: I just have one comment. How would
9 you know for certain that a particular operator intended
10 to replace their tank within three years, by what means
11 would you determine that?

12 MR. SINGER: We would propose that the person that
13 owned the tank would make a permit to the local agency
14 saying he would like to implement alternative 6 for moni-
15 toring and he would go on record that he in fact would do
16 something with that tank within the three-year period.

17 We would propose the local agency issue a permit
18 for three years and no longer, and once that three-year
19 period of time was up that permit would expire and he
20 would have either to close the tank or do something else,
21 but that permit could not be renewed with that existing
22 tank.

23 MR. FINSTER: I wanted to make one comment. I am
24 glad to see you don't consider engineers as large busi-
25 ness. You've got landscape architects, architects and
26 building designers -- I guess engineers are small.

1 MR. SINGER: It's straight from the code. Somebody
2 else made that determination.

3 MS. ONORATO: Does anyone in the audience feel
4 they have anything to offer on this? Sir.

5 Pardon me, Mr. Willis.

6 MR. WILLIS: Mr. Singer, under (B) you have gener-
7 al construction, nine million five hundred thousand dol-
8 lars. How do you gauge nine million five hundred thousand
9 dollars?

10 MR. SINGER: It's out of the code.

11 MR. WILLIS: Just out of the code.

12 MR. SINGER: We took that directly out of the
13 code. We may have to look at that and see what kind of
14 definition they have applied to that. It's obviously a
15 period of time, and is it a gross or net. We will look at
16 that and see that that is clarified. It is gross amount.

17 MS. ONORATO: Does that satisfy you? Sir.

18 MR. FAY: I am Richard Fay with Diablo Petroleum
19 and I realize this seems self-seeking because our company
20 deals mostly with people that have small tanks, but you
21 have been talking about small service stations and large
22 service stations, but we don't deal with service stations,
23 just people with small tanks and unfortunately the Admin-
24 istrative Code that the staff used to define small busi-
25 ness certainly eliminates many of our customers.

26 It is redundant, it includes agriculture that's

1 already exempt from all your regulations, but all non-
2 profit institutions are eliminated, colleges --

3 MS. ONORATO: That's in the bill.

4 MR. FAY: It's in the staff's recommendations as
5 out of the Administrative Code, "the following profession-
6 al and business activities shall not be considered a small
7 business."

8 And that includes entities organized as non-profit
9 institutions which would be many colleges and your univer-
10 sities. We deliver fuel to a thousand gallon women's col-
11 lege in Oakland, for instance. Under this definition they
12 are not considered.

13 And a five million dollar contractor is not a very
14 large business, you know. I don't know when that code was
15 written, but inflation has caught up with it and I would
16 hope -- I submitted a request in writing that I hoped,
17 maybe they did consider it and rejected, but I suggested
18 that they talk about and throughput of tanks rather than
19 size or definition of a business, and maybe they feel they
20 took care of that in their paragraph a few pages down
21 where they say large companies can apply for a special
22 dispensation, and I realize that that is there, but the
23 way this is written, you know, architects can't comply be-
24 cause they are written in the code, they are not consider-
25 ed small business.

26 And I don't think there's in the Sher Act that

1 says you must take the definition of small business from
2 the Administrative Code, although I have not discussed
3 that with anyone on the staff, but I would just submit to
4 you that I would hope that another definition could be in-
5 cluded in your regulations, not the definition used.

6 And the one that I would hope you could use would
7 be predicated on the size of tank and annual throughput,
8 and I am talking about very small throughputs, something
9 like 60,000 gallons a year or less than that, and you are
10 talking about, you know, 100,000, 300,000 a month.

11 In the aggregate we are talking about a very small
12 percentage of the total gasoline and diesel that is stored
13 in the State of California, but to us it is our bread and
14 butter.

15 MS. ONORATO: Yes. I would like staff to comment
16 on this, please.

17 MR. RICHARD: The Administrative Procedures Act
18 from which the provisions that appear in this staff report
19 were taken requires all agencies, including the state
20 board, to give consideration to the special needs and con-
21 cerns of small businesses in developing administrative
22 regulations such as these regulations relating to the
23 storage of hazardous substances in underground tanks.

24 Furthermore, in the hearing many people represent-
25 ing the small business community requested special consid-
26 eration for small businesses. The exemptions and special

1 provisions that staff is proposing to add to the regula-
2 tions address the concerns of small businesses as required
3 by the Administrative Procedures Act, and the definition
4 of small businesses is a definition that was developed by
5 the Legislature and is provided in the Administrative Pro-
6 cedures Act. That's what small businesses are.

7 Incidentally, this legislation's definition of
8 small businesses was originally added to the statutes in
9 1979. It has been amended almost every year since then,
10 and the most recent amendment was in 1983 operative Janu-
11 ary 1, 1984, so the Legislature has had a very recent op-
12 portunity to review the cutoff levels for the various
13 kinds of small businesses.

14 MS. ONORATO: I guess, Mr. Fay is really asking
15 us, would the author be responsive in your view to his
16 concerns as expressed for small users, specifically gas
17 products, I guess he meant, or fuel products and/or educa-
18 tional or tax-exempts.

19 MR. RICHARD: I believe those types of facilities
20 could be given special consideration by the staff, and
21 staff has indicated that they propose to consider further
22 refinement.

23 MS. ONORATO: Would that help you any, Mr. Fay?

24 MR. FAY: I was emboldened to submit my request
25 last time because I found nothing in the Sher Act that
26 referred to the Administrative Act on small business and

1 when I testified I wasn't talking about small business.
2 I talked about, and also in my written testimony, I was
3 talking about small tanks because knowing the very re-
4 strictive definition that the Legislature has given small
5 businesses, I specifically kept away from that and I prob-
6 ably should have discussed it with staff, but I didn't.

7 Maybe the way to resolve this, I think maybe we
8 could move the non-profit institutions and consider them
9 all subject to this, I will say exemption over three
10 years, also that the term individual is included in this
11 exemption, so I think we could define individual.

12 Just one quick response, the reason we didn't in-
13 clude tanks per se with small throughput is you could have
14 a very large business that has economic ability to comply,
15 but they don't use a lot of product through their tank.

16 If they had used my suggestion, they would have
17 been saved from that because I also talked about the com-
18 bination size tank and throughput, so that you couldn't
19 get tricky and have a small tank with a delivery every
20 day.

21 MR. SINGER: You could have a large business that
22 doesn't use much fuel but has it there, but I think based
23 on those two terms, those two definitions, I think we
24 might be able to accommodate the concern.

25 MR. FINSTER: I think the example I made reference
26 to during the intermission was a Safeway store which is

1 a large business, I assume. They have this tank without
2 any use at all. It was just sitting there, so there's a
3 case of the type he is talking about.

4 It's too bad -- maybe it can be tied to use rather
5 than the profession. A good example would be as I mention-
6 ed the architect is not a small business, but you could
7 have an architect up in Humboldt County way up in the
8 mountain with four people and he had a gas tank there and
9 he wouldn't be subject to that regulation because he is
10 not a small business.

11 MR. FAY: Well, hospitals would come under this
12 unless they are non-profit hospitals. Health care facili-
13 ties are included in the definition of small business, but
14 if they are non-profit hospitals, then they are not in-
15 cluded. I hope we can do something.

16 MS. ONORATO: Thank you, Mr. Fay, for bringing
17 that to our attention.

18 Yes, ma'am.

19 MS. ALLENDER: I am Margaret Allender, represent-
20 ing California Rental Association with approximately 800
21 members operating statewide.

22 There are probably about 1200 rental yards in this
23 State. We are faced with something no one else is. The
24 definition of small business does apply to us and does
25 cover us.

26 We do foresee on the part of other small business-

1 es and we suggested to staff that staff might consider
2 referencing the very comprehensive definition used by the
3 Small Business Administration.

4 We just foresee that there will be many areas
5 where firms fall in between.

6 Because this is related, I have a question that
7 relates to small business and goes back to the monitoring
8 alternatives. We ran a very unsophisticated kind of test
9 pattern on some of our members and one of our chapters
10 showed a volume of about 2,000 gallons average per month.

11 In alternative number 3 these people could prob-
12 ably undertake inventory control using a manual system on
13 that small a gallonage and maintain -- I see your head go-
14 ing, but going to the expense of the electronic monitoring
15 system would be very onerous for this type of institution.

16 Obviously you have anticipated my question.

17 MR. SINGER: That's the point. We are not requir-
18 ing the electronic situation where we are requiring the
19 variation which is the performance standard. If you can
20 achieve it through stick monitoring, that's acceptable.

21 MS. ALLENDER: Okay.

22 MR. FINSTER: What type of operation is it, you
23 say?

24 MS. ALLENDER: It's the California Rental Associa-
25 tion.

26 MR. FINSTER: What do you rent?

1 MS. ALLENDER: Everything from lawnmowers to
2 trucks.

3 MR. FINSTER: So it is all moveable equipment?

4 MS. ALLENDER: That's my other question. We are
5 an example of organizations that fall right in between
6 that particular definition and we would argue that we
7 would fall most specifically into the motor vehicle fuel,
8 depending on the organization, it could differ quite a bit.

9 MR. FINSTER: They probably rent generators, too.

10 MS. ALLENDER: And sump pumps, but we thank you
11 for your consideration.

12 MS. ONORATO: Thank you, Ms. Allender.

13 Are there any questions? I repeat, please keep
14 your comments brief because two board members are leaving.

15 MR. HAGY: Madam Chairwoman, you stated that you
16 would like to hear something new. I would like to say
17 something new.

18 I think it is important that we in industry tell
19 you and the staff that we think you have been very re-
20 sponsive to many very important needs on the part of in-
21 dustry.

22 We would also like to say that we think we are
23 getting very close to a very workable program from our
24 standpoint, and we are very appreciative of that and we
25 think that all these sessions have been conducted in a
26 very positive attitude.

1 We are also appreciative after having expressed
2 last time need for further opportunity for public comment,
3 the opportunity today, and also I notice that the next
4 meeting is scheduled as a public hearing and a board meet-
5 ing.

6 MS. ONORATO: You also will have two weeks for
7 written input.

8 MR. HAGY: We will have a minimum of two weeks
9 from the time the staff --

10 MS. ONORATO: Of the final draft report if the
11 staff lives through getting it ready.

12 MR. FINSTER: I thought you were going to claim
13 small business.

14 MS. ONORATO: By the way, I don't want the rest
15 of you to leave, but Mr. Finster and Mr. Willis -- were
16 there any other comments about the small business aspect?

17 MR. PETERSON: Thank you. My name is Roger Peter-
18 son. I am a gas station operator from Lake Tahoe, and
19 prior to coming here I thought I was a small businessman
20 until I read this definition, and although I operate three
21 gas stations and have nine employees, since my sales are
22 2.2 million dollars, I don't qualify as a small business-
23 man under the definition that's in the regulations.

24 MS. ONORATO: Stop right there. Is that true, when
25 you own three stations is it your gross figure that deter-
26 mines your status as a small businessman or on the indi-

1 vidual stations?

2 MR. RICHARD: He is one business.

3 MS. ONORATO: But the revenue source is from three
4 different places. That's not fair. I guess Standard Oil
5 is in the same position.

6 Pardon me, Mr. Peterson, for interrupting. I did
7 want to understand that.

8 MR. PETERSON: 2.2 million dollars is a ridiculous
9 figure for gas stations. The average gas station nation-
10 wide in the United States sells approximately \$75,000 per
11 month of total sales of just petroleum products. My three
12 stations sell 2.2 million dollars, so the 2 million dollar
13 threshold eliminates all but basically the single station
14 operators; whereas, on the other hand, if I was a manu-
15 facturer and had 200 employees I would be considered a
16 small business under this definition.

17 This definition does not address the reality of
18 the oil business.

19 And in my comments to the preceding meeting I sub-
20 mitted a definition that was borrowed from the Environ-
21 mental Protection Agency's definition of an independent
22 oil business that they use in liabilities from unleaded
23 gasoline.

24 I think that definition would be far more appro-
25 priate for use in this.

26 MS. ONORATO: What does it refer to?

1 MR. PETERSON: It refers to whether or not a major
2 oil company which has its own definition is involved in
3 the property either in terms of being a landlord or prop-
4 erty owner or whether the facility is displaying the brand
5 name or trade name of any person other than the small
6 businessman basically.

7 MR. FINSTER: Might I ask, maybe I am missing
8 something here, but wouldn't you fall under alternative
9 3 anyway? If you have three gas stations you operate under
10 alternative 3 and you wouldn't go under 6 anyway, would
11 you? I don't know. Maybe I am missing something.

12 MR. PETERSON: The question is first of all this
13 proposal gives small business people, even though I am not
14 one of them, it gives us nothing. It just gives us three
15 more years to comply.

16 MR. FINSTER: Yes, but under 3 we are not asking
17 you to do anything but inventory control. We are not ask-
18 ing you to put anything in unless there is some water
19 problem and there might be something.

20 MR. PETERSON: You are asking us to use state of
21 the art so that we can read our sticks to a sixteenth of
22 an inch instead of a quarter of an inch. If we have pres-
23 sure pipeline systems without automatic leak detection,
24 we will have to install those.

25 MR. FINSTER: If I understand alternative 3, you
26 are not being asked to do anything other than the present

1 art. The figures are still in question. Am I right?

2 MR. SINGER: I think that's true. Under alterna-
3 tive 3 we are asking people to use state of the art meter-
4 ing devices or measuring devices which would in most cases
5 for service stations imply that they would have to go to
6 something other than what they are doing now with stick
7 readings.

8 MR. FINSTER: Well, that's not my understanding.
9 Okay.

10 MR. PETERSON: Whatever it is that we are getting,
11 we are not getting anything that the big boys don't have
12 to comply with as well, except perhaps to the extent some
13 of us can fit within the definition of small business and
14 we get three years, but I would venture to say with all
15 the resources the larger companies have at their disposal,
16 three years from now we will be the only ones that will
17 be in full compliance with these requirements.

18 I submit a better approach would be to start from
19 a clean sheet of paper on the definition of small business
20 and really consider that -- the economic realities of the
21 situation is that only the smallest of the operators are
22 the ones who really have the financial incentive to see
23 to it there are no leaks because the leaks are such a
24 large percentage of our total situation that we cannot
25 tolerate them; whereas the other companies, actually it
26 is perhaps the most feasible thing for them to tolerate

1 them and overlook them, but the small operators cannot
2 tolerate the leak, so perhaps in view of our relatively
3 weak financial position some special consideration should
4 be given to us.

5 MS. ONORATO: Thank you, Mr. Peterson.

6 Ron, you wanted to say something?

7 MR. DUNCAN: I have one question to the last
8 speaker. The staff's answer was for item number 3, that
9 the state of the art testing was necessary, yet the speak-
10 er just before him, the staff's answer was as long as you
11 meet those requirements by sticking, which I suspect means
12 not the electronic or mechanical means, that was satis-
13 factory, and I am confused as to which you really meant.

14 MR. SINGER: I qualified the second one to say in
15 most cases for service stations that they would probably
16 have to go to a state of the art electronic type equip-
17 ment; in other words, the larger tank.

18 It's mainly the tank size that is the key aspect
19 of it.

20 MR. DUNCAN: If in fact you eliminate the require-
21 ment for electronic or mechanical for the small gas sta-
22 tions, I find little fault with number 3, but if you re-
23 quire the expensive -- I think the statement was up to ten
24 thousand dollars, type of monitoring mechanism, then I
25 still have a problem.

26 MR. SINGER: I think the key point is it would be

1 a performance standard that would be based on what could
2 be achieved with state of the art, but it would not re-
3 quire that to be installed.

4 MR. DUNCAN: Who gets to make the determination,
5 the local level or would that be an interpretation?

6 MR. SINGER: It would be by the permit applicant
7 saying he wanted to utilize this type of monitoring and
8 saying he feels he can achieve it, and if he can't through
9 experience, he will be forced to go into other forms of
10 monitoring or constant leak detection monitoring.

11 MR. DUNCAN: But as the enforcement agency, I must
12 tell him -- I've got to make the determination whether or
13 not his mechanism is going to be acceptable.

14 MR. SINGER: You could look at prior inventory
15 records.

16 MR. DUNCAN: Okay, thank you.

17 MR. SINGER: Which he should have.

18 MR. ROBINSON: Tom Robinson again. May I make just
19 a brief statement about number 6, something about the
20 small business?

21 We obviously won't fall in the small business cat-
22 egory either. We would like to have the alternative though
23 to in a situation where say within a three -- let me back
24 up just a little bit to say that I think it is important
25 to realize someone might have five stations or ten sta-
26 tions or twenty or a hundred, and if they are all in the

1 State, their burden is quite a bit more substantial than
2 say a company that has three stations in this State and
3 the other 97 some place else.

4 My point is that it would be nice if you could
5 leave the alternative so that say a company like ours de-
6 cided they wanted to put in new tanks, could spend less
7 money now for those locations; in other words, we take
8 some of the locations and we would go in and put monitor-
9 ing in and we would be able to waylay the expense for a
10 little while and put in a double containment system.

11 MR. SINGER: The point is, the small businesses
12 are only for the purpose of delaying the implementation
13 of monitoring. The way we have worded this any business
14 can utilize that alternative for the three years while
15 they decide that they want to do something other than in-
16 stall the monitoring, but replace the tank.

17 So it's small business only for the purpose of
18 three years to install the monitoring. The other is for
19 any business who decides they want to eliminate the tank
20 just like you said.

21 MR. ROBINSON: Okay.

22 MS. ONORATO: I want to ask you, you obviously
23 have experience in this. What happened when you had to do
24 the vapor recovery systems in terms of what was the defin-
25 ition of people that could dip into that, was it a low
26 interest or no interest loan fund?

1 MR. ROBINSON: Well, there again it didn't apply
2 to us and I just don't know. I couldn't tell you.

3 MS. ONORATO: Well, if anybody in the audience
4 knows that information, I wish you could send it to the
5 board, tell the board, because at the board's behest I
6 have an appointment in about another ten days with the
7 Environmental License Fund representative for the State
8 of California Bond Authority, and the board is quite con-
9 cerned that perhaps it would be appropriate if we could
10 get some kind of administrative support to have a funding
11 source since the author overlooked that, and we are inter-
12 ested in exploring that, I should tell everyone.

13 MR. ATTWATER: My name is David Attwater. We are
14 a small petroleum jobber in Stockton.

15 We went after SBA guaranteed loan for a vapor re-
16 covery system. We submitted approximately a 250-page docu-
17 ment and got one of the first SBA guaranteed loans for
18 vapor recovery for approximately \$50,000 to install that
19 over a period of time, you know, in a very few stations.

20 MS. ONORATO: I was thinking in terms of there was
21 a funding source available from the Environmental License
22 Plate Fund. The State goes out and sells bonds and it was
23 my understanding that it was available to small business
24 for vapor recovery systems. I think it is a good idea and
25 worth exploring.

26 MR. ATTWATER: We have looked and we couldn't find

1 out anything about that. Maybe we are looking in the wrong
2 places.

3 MS. ONORATO: Well, in any event, the board has
4 asked me to research the question because everybody was
5 concerned as we all are about the economic consequences
6 and it is not directly related to the regulations, but
7 again we want to see what we can find out and keep those
8 affected aware of this.

9 We have one more item now and that's the variance
10 fee.

11 MS. HARDING: Yes. I would like to bring to the
12 board and the public's attention some corrections on page
13 29. In the middle of the page, site specific variance, it
14 should read \$2,750, not \$2,250.

15 On page 31 under alternative 6, the third line,
16 it should read \$2,750, and the last figure in that para-
17 graph should read \$5,500, not \$4500.

18 And on page 32 on the final paragraph, the second
19 and third lines should read \$2,750 and \$5,500.

20 Just to quickly go over the alternative, we looked
21 at variance fees and as you are aware there were several
22 comments on the high cost of these fees.

23 Staff examined six alternatives to come up with
24 the recommendation. The alternatives were re-examining the
25 fixed fees and we felt that the fees could be lowered if
26 the public hearing could be part of a normal regularly

1 scheduled meeting, and those fixed fees are cited on page
2 29 absent the public hearing costs that were added orig-
3 inally.

4 Alternative 2 was based on actual costs. Currently
5 the Division of Water Rights is doing this type of fee
6 proposal for small hydro applications. There is some con-
7 cern about going with actual costs.

8 Applicants have come to the board and expressed
9 concern that they don't know what the cost is up front.
10 There is additional administrative cost because of re-
11 evaluating and adjusting fees throughout the review proc-
12 ess. However, the benefit to have an actual cost fee is
13 that a variance that may not be as complex will not pay
14 as much as a variance that would be more complex and re-
15 quire more review time.

16 Alternative 3 is lowering the proposed flat fee
17 in alternative 1. Staff doesn't believe that the Legisla-
18 ture intended that we redirect staff to absorb these fees.
19 They were quite specific in allowing the board to require
20 fees to cover reasonable costs.

21 Alternative 4 is no variances, no fees. Again we
22 don't feel that this was the legislative intent and we
23 feel that an applicant should have the opportunity to come
24 before the board for variances.

25 Alternative 5 is specific to local agency requests.
26 Many local agencies feel a particular burden because of

1 funding problems. The board may want to consider absorbing
2 the local agency variance costs in the surcharge over all
3 tank owners. This would require a change in legislation,
4 but they might want to consider that in the future.

5 Alternative 6 is specific to site specific vari-
6 ances and the flat fee. Originally the legislation did not
7 give a definition or site specific variance and therefore
8 staff considers that a site specific variance would be
9 located at one facility. Recent legislation passed broad-
10 ened that definition such that site specific variance
11 could be at several facilities within one local agency's
12 jurisdiction.

13 Based on that, staff felt that additional costs
14 should be charged on a flat fee for examining more than
15 one facility. The recommendation is that we go with an
16 actual cost fee for categorical variances with upfront
17 money being what would be the staff's review time.

18 At the time prior to the public hearing staff
19 would ask the applicant if they want to proceed to a pub-
20 lic hearing, and the fee would be adjusted according to
21 what the estimated costs of that public hearing would be
22 or if the applicant doesn't care to go to public hearing,
23 to finalize the actual cost involved and either refund or
24 bill the applicant.

25 This is also how we feel we should go with local
26 agencies as an actual cost with the same type of formula

1 unless the board would like to pursue legislation which
2 would give additional relief to local agencies.

3 As far as site specific variances, we feel this
4 should go as a flat fee. We feel the fees have come down
5 considerably over what was previously proposed. Our con-
6 cern is that we are going to have several more site spe-
7 cific variances than we will categorical and local agency
8 requests.

9 These site specific variances will be held at the
10 regional board level. The regional board usually handles
11 such items with the area engineer who has to do several
12 tasks and this would be one additional task that they
13 would have to do and it is very difficult to account for
14 staff time.

15 In the water rights applications one of the prob-
16 lems of actual cost is because staff did not accurately
17 keep account of their staff time on the variances. So we
18 feel that it would be more appropriate to go with the flat
19 fee for site specific.

20 Under local agency categorical variances we have
21 a little more control because that is handled by the State
22 board and one or two specific people would do nothing but
23 handle the variances and it will be easier for them to
24 keep track of the staff time.

25 MS. ONORATO: Any comments on the staff recommend-
26 ations? Do you concur with them?

1 MR. NOTEWARE: I concur.

2 MS. ONORATO: Is there anyone in the audience that
3 has any comment? Sir.

4 MR. BOSWELL: Thank you very much. I am Ed Bos-
5 well, assistant executive director of California Service
6 Station Association.

7 For Mr. Finster, the average volume in service
8 stations in this State is 60,000 gallons per month. That's
9 the over-all average.

10 The fee structure, I think we spoke on that last
11 time. I wasn't the one that was here, but my boss was. We
12 feel that these variance fees are way out of line for one
13 very good reason.

14 The person who is likely to be coming to you for
15 a variance is coming to you for a variance because of what
16 is being required and whatever he is trying to get around
17 is probably something he can't afford.

18 It would seem to me that it would make some sense
19 to put some limit on this based on the fellow's business.
20 If he is out there, and again I am speaking only of the
21 service station business because that's the only thing
22 that I'm in tune with, it would seem like his gross busi-
23 ness per year -- let's say he is doing 200,000 gallons a
24 year and he needs some kind of variance.

25 The minimum cost of \$2,750 or up to \$4500 could
26 be a pretty onerous fee to him and I just feel like it is

1 a real burden for the mom and pop stations that come to
2 you and ask for some relief to have to go down and borrow
3 money at the bank in order to pay for the cost of the
4 variance.

5 MS. ONORATO: Mr. Boswell, the other thing is the
6 author very clearly said the State board should recover
7 the cost because they don't think it is appropriate that
8 the State General Fund tax money be a revenue source, so
9 I think --

10 MR. BOSWELL: I guess I am saying, redirect staff.
11 I'm sorry.

12 MS. ONORATO: You see, that's the point. If we do
13 that, then we are fiddling with the budget process that
14 we have adhered to and I just want to be frank with you,
15 I don't think you have any chance with coming on with that
16 kind of argument.

17 MR. BOSWELL: All right, thank you.

18 MS. ONORATO: Thank you very much.

19 MR. BOSWELL: And I appreciate your comments a
20 while ago, and I would certainly support anything you can
21 do as a chairperson of this board to separate us from
22 those fellows that are handling all that toxic stuff.

23 MS. ONORATO: Mr. Finster, did you wish to say
24 something?

25 Did anyone else wish to speak on the variances?

26 MR. NOTEWARE: I would like to comment that I hope

1 that our regulations can be written in such a way that
2 they will have minimum need for variances. I can't help
3 coming back to the people who can't inventory their prod-
4 uct daily because of all the different things we have dis-
5 cussed. I hope they won't all have to come in and get one
6 of these expensive variances.

7 The more you consider the diversity of tanks that
8 are in the ground, the more areas you can see where vari-
9 ances could apply if we aren't pretty careful in how these
10 regulations are written.

11 MS. ONORATO: Before we adjourn, I was absent this
12 morning. How tanks have we had registered at the latest
13 count?

14 MS. HARDING: The latest count is we have got
15 about somewhere between 90 to 95 thousand forms in and
16 about 10,000 tanks registered on computer tapes. That in-
17 cludes, those are not just tanks. Those include pits,
18 ponds, lagoons that are specifically excluded by the Sher
19 bill.

20 MS. ONORATO: Thank you.

21 If there are no further comments to the board
22 -- sir?

23 MR. CHAN: My name is Michael Chan and I am with
24 Safeway Stores. I have talked with Mr. Finster earlier
25 about small users, not small business..

26 We have standby fuel tanks for our boilers and

1 food processing plants as mandated by the Public Utilities
2 Commission. That took place in the early Seventies because
3 of the oil shortage.

4 I would like to get the understanding that the
5 staff would look into some relief for small users. We have
6 standby fuel tanks for boilers. We haven't used them. We
7 check periodically for leaks. We have an electronic gauge
8 on them and I would just like to clarify that the staff
9 would --

10 MS. ONORATO: Mr. Chan, I think Mr. Finster spe-
11 cifically directed staff to deal with people that don't
12 have daily use. Staff, you do understand that that was a
13 concern.

14 Sir.

15 MR. MC CORMACK: I am Bert McCormack, president
16 of McCormix Corporation from Santa Barbara.

17 It just amazes me, we are talking about all these
18 monitoring devices and everything, and you never come up
19 with a guideline on how clean is clean and how dirty is
20 dirty.

21 MS. ONORATO: Mr. McCormack, you will be delighted
22 to know we are planning to have a workshop on that very
23 subject and are requesting that the Department of Health
24 Services and the Environmental Protection Agency join us
25 in that endeavor to try to start dealing with this.

26 We are not insensitive to your prior criticism.

1 It is a tough question.

2 MR. MC CORMACK: I know. This whole thing is very
3 expensive for us little guys. You are only giving us three
4 years.

5 MS. ONORATO: We didn't author the bill. We just
6 happen to have to carry it out, and I don't say that dis-
7 respectfully to the author or the intent of the bill. It's
8 just that all of us get a little upset.

9 We get the impact of the translation of these leg-
10 islative movements on the citizenry.

11 MR. MC CORMACK: None of us want to complain about
12 clean water. We all drink the same but then when we get
13 these kind of guidelines we have got to come out fighting,
14 and it is a little unfair to us.

15 We have to do it after the fact, after you have
16 a law passed that we didn't fight. But no, we are learning
17 our lessons.

18 MS. ONORATO: Is there anyone else that wishes to
19 address the board?

20 MR. WILLIS: If no one in the audience that wants
21 to do so, I will say a comment and that is I think the
22 staff has worked very hard since the last hearing to try
23 to respond to the many comments and voluminous documents
24 that were handed in and I think they have come up with a
25 lot of alternatives and quite a few changes and I appreci-
26 ate the hard work.

1 I know there were people here until midnight a
2 couple of nights trying to get this work done, and prob-
3 ably a lot of people in the audience are unaware of that.

4 MS. ONORATO: Well said, Mr. Willis.

5 MR. FINSTER: I would just add one thing, I think
6 there is somebody sitting by ready to go to work, too, on
7 the changes.

8 MR. NOTEWARE: Yes. I think that is only half the
9 story. There is going to be some midnight oil burned again.

10 MS. ONORATO: Well, thank you very much, for your
11 participation, and I will now adjourn this meeting.

12 (Meeting adjourned.)

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3 **REPORTER'S CERTIFICATE**

4 --oOo--

5 THIS IS TO CERTIFY that I, ALICE BOOK, a Certified
6 Shorthand Reporter, was present during the proceedings of
7 the STATE WATER RESOURCES CONTROL BOARD, STATE OF CALI-
8 FORNIA, held in Sacramento, California, on Friday, Novem-
9 ber 2, 1984; that as such I recorded in stenographic short-
10 hand writing the discussion and comments presented in the
11 workshop on Proposed Regulations Governing Underground
12 Storage of Hazardous Substances; that I thereafter caused
13 my stenographic shorthand to be transcribed into longhand
14 typewriting and that the preceding pages, 1 through 193,
15 constitute said transcript; that the same is a true and
16 correct transcription of my stenographic shorthand writ-
17 ing for the date herein specified.

18 DATED:

19 A handwritten signature in cursive script, reading "Alice Book", is written over a horizontal line.20 ALICE BOOK, CSR NO. 43
21
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3. November 27, 1984 Public
Meeting in the matter of
adoption of regulations
governing underground storage
of hazardous substances

Public Meeting
STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

---oOo---

In the Matter of:)
)
Adoption of Regulations)
Governing Underground)
Storage of Hazardous)
Substances)
)
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---oOo---

Held in
El Dorado Room
Community Center
Sacramento, California

---oOo---

Tuesday, November 27, 1984
10:00 a.m.

received DTS

DEC 12 1984

ALICE BOOK
CERTIFIED SHORTHAND REPORTER
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A P P E A R A N C E S

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Board Members:

- CAROLE ONORATO, Chairwoman
- WARREN D. NOTEWARE, Vice Chairman
- KENNETH WILLS
- DARLENE RUIZ
- E. H. FINSTER

Staff:

- WILLIAM R. ATTWATER, Chief Counsel
- WALTER PETTIT, Deputy Director
- ED ANTON, Chief, Division of Technical Services
- JOHN RICHARDS, Counsel
- HAROLD SINGER

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S T A T E M E N T S

| | Page |
|----|------------------------------------------|
| 1 | |
| 2 | |
| 3 | Opening statement - Chairwoman Onorato 1 |
| 4 | Staff presentation - Mr. Richards 2 |
| 5 | Presentations: |
| 6 | KIP LIPPER 5 |
| 7 | TOM ROBINSON 22 |
| 8 | MIKE BONKOWSKI 40 |
| 9 | DICK ZIPP 45 |
| 10 | E. D. YATES 57 |
| 11 | HOWARD ROBBINS 73 |
| 12 | GERRY HAGY 91 |
| 13 | JOHN KNOX 100 |
| 14 | MARGARET ALLENDER 112 |
| 15 | JIM CAMPBELL 125 |
| 16 | BOB MEACHAM 133 |
| 17 | F. A. NAGLESTAD 176 |
| 18 | RICHARD FAHEY 180 |
| 19 | JOHN CUPPS 184 |
| 20 | WILLIAM STEAD 194 |
| 21 | DICK DAVIS 197 |
| 22 | NOEL FLETCHER 199 |
| 23 | LARRY OBERTI 202 |
| 24 | DANIEL HALL 213 |
| 25 | RON DUNCAN 221 |
| 26 | |

1 TUESDAY, NOVEMBER 27, 1984, 10:00 A.M.

2 ---oOo---

3 MS. ONORATO: This is the time and place for the
4 public hearing on the proposed regulations governing the
5 storage of hazardous substances in underground tanks. This
6 hearing is to allow interested person to comment on the
7 modifications to the proposed regulations which have been
8 developed as required by Section 25288.2 of the Health
9 and Safety Code.

10 Our previous hearing was held on October 23, 1984,
11 and a workshop was held on November 2, 1984.

12 Please address your concerns to the revised draft
13 dated November 9, 1984. We would appreciate it if you
14 would limit your testimony to those areas that you have
15 not previously addressed. All comments, both oral and
16 written, must be submitted before the close of the hearing.
17 Following the hearing, the Board will decide whether to
18 adopt the regulations, whether to request additional sub-
19 stantive changes be made to the regulations which would
20 require an additional 15-day review period be granted,
21 or whether to postpone making any decision.

22 At this hearing the State Board staff is represented
23 by Mr. Michael Campos, Our Executive Director; Mr. William
24 Attwater, our chief counsel; Mr. Walt Pettit, the Deputy
25 Director; Mr. Ed Anton, Chief of the Division of Technical
26 Services; Mr. John Richards, our staff counsel for these

1 regulations; and Mr. Harold Singer.

2 I would like to hold all comments to a maximum
3 of ten minutes per individual or group, if possible.

4 And I would now like to call on Mr. John Richards
5 to make a brief opening statement. However, before I do
6 that, may I take the liberty of informing the audience,
7 to start out good news, that we have received the official
8 notice of approval from the Office of Administrative Law
9 on the Subchapter 15 regulations.

10 And now, Mr. Richards, would you please take over.

11 MR. RICHARDS: Thank you, Ms. Onorato.

12 Many of the comments that we have received during
13 this last 15-day period have complained that a 15-day period
14 was inadequate to properly review the changes made to
15 the regulations. We regret that comment because the 15-
16 day period is the period required by the Administrative
17 Procedures Act for modifications made to proposed regula-
18 tions as a result of comments received during the original
19 45-day comment period.

20 Those changes that were made and that are subject
21 to review during this last 15-day period were made based on
22 the comments received from the interested persons, from
23 the commenters. Therefore, in this 15-day period the com-
24 menters know what the issues are, were aware of the issues
25 that were affected, were aware of the provisions of the
26 regulations that were affected, and should be able to

1 review the changes made in those areas without taking any
2 more time than the 15-days that is available. Furthermore,
3 the changes that were made, even though extensive, were
4 directly the outgrowth of the changes proposed at the Novem-
5 ber 2 workshop and discussed by the Board Members and staff
6 and many of the interested persons and, therefore, the
7 commenters again would have a preview of what was coming
8 which would identify the issues and the affected sections
9 so they would know where to look.

10 Furthermore, there's a very real concern that if
11 we delay in the development of these regulations beyond
12 the end of the year, several legislative changes which
13 affect the underlying statutory authority for this program
14 will take effect and the regulatory changes necessary to
15 implement those legislative changes which were not part
16 of the original notice will require amendment of that
17 original notice and a further 45-day comment period.

18 While it is anticipated that this 45-day comment
19 period and amendment of the regulations will be necessary
20 to implement the changes adopted during the 1984 session,
21 it would unduly delay adoption of subchapter 16 to wait
22 until the laws take effect and render the existing pro-
23 posed regulations for the underground tanks inconsistent
24 with the law as it will be in 1985.

25 MS. ONORATO: Are there any questions or comments
26 of Mr. Richards at this time?

1 Mr. Richards, I would also like very much for you
2 to read for the public the letter we received two days
3 ago from the author of this bill, Assemblyman Sher. Do you
4 happen to have a copy there? I think it is important.
5 I would like this read aloud for the public's information.
6 This is from Mr. Sher.

7 I would also like to note we received a letter
8 containing some constituents mailed from Senator Ken Maddy,
9 who asked wed include this in the record.

10 MR. RICHARDS: I will now read the letter. It is
11 addressed to Carole Onorato, Chairman of the State Water
12 Resources Control Board.

13 Dear Carole:

14 I am writing to you and to the Board Members
15 to briefly comment upon the staff recommenda-
16 tions for revisions to the draft regulations
17 promulgated by the Board at its October 23,
18 1984 hearing.

19 My comments are as follows:

20 1. Regarding Section 2641, monitoring alter-
21 natives: As mentioned in my testimony on
22 October 23, I hope that the Board will re-
23 main steadfast in its opposition to the use
24 of simple inventory reconciliation as a means
25 of monitoring motor vehicle fuel tanks. Ex-
26 perience has shown this method does not

1 accurately detect leaks which might occur.
2 So-called dip-stick measurements has been
3 used for some time and has clearly failed
4 to prevent serious leaks from entering the
5 groundwater.

6 2. Section 2641(c), paragraph 8: The defi-
7 nition of "small business" should be revised
8 downwards. As presently drafted, the defi-
9 nition would postpone effective monitoring
10 requirements for a large number of tank
11 owners and operators who were originally
12 intended to be covered under the law.

13 Thank you for the opportunity to comment
14 on these regulations.

15 Sincerely, Byron D. Sher, Assemblyman, 21st
16 District.

17 MS. ONORATO: Thank you very much.

18 Are there any comments on that by Board Members?

19 The Assemblyman is not very specific in what he
20 would like in terms of our definition of small business.
21 Perhaps Mr. Lipper -- is Mr. Lipper here? Do you have any
22 comments to add to that?

23 This is Mr. Kip Litter from Assemblyman Sher's
24 office.

25 MR. LIPPER: Thank you, Madam Chairwoman and Mem-
26 bers of the Board.

1 I want to say we were reviewing these regulations
2 and I apologize that the comments in Assemblyman Sher's
3 letter were not as specific as they should have been. We,
4 frankly, in reviewing them, especially with reference to
5 the small business definition, feel that setting a limit
6 whereby all businesses who have retail sales of two million
7 dollars or less is extremely high for the coverage of this
8 bill and this legislation, and we feel that businesses
9 which are much smaller are, indeed, frequently responsible
10 for leaks that occur into the groundwater and want to com-
11 mend that to the Board's attention because we feel quite
12 strongly about it.

13 If I could take a moment, too, Madam Chairwoman,
14 I want to elaborate a little bit on the first point in
15 Assemblyman Sher's letter and that has to do with the in-
16 ventory control or the dip-stick testing alternative to do
17 monitoring.

18 Mr. Sher asked me to mention today to you that
19 we do, as the letter reflected, feel quite strongly that
20 the use of inventory control or the dip-stick monitoring,
21 even in conjunction with periodic testing, I believe as
22 the Board's regulations are drafted, include an annual
23 testing requirement, even in combination with that kind
24 of monitoring, the inventory control is inadequate to de-
25 termine when leaks occur in a proper fashion.

26 I recognize, as you know, we have been monitoring

1 these hearings, and I know the Board is under a great deal
2 of pressure from small businessmen, from industry repre-
3 sentatives and from others who are concerned about the
4 high cost of putting in monitoring requirements as they
5 have been suggested by the Board staff in the original
6 draft proposal of the regulations.

7 Nonetheless, I think that it is important for the
8 Board to recognize an important for us, Assemblyman Sher and
9 those who were involved in the drafting of the bill, to
10 recognize that we did not ever contemplate using simply
11 inventory reconciliation as a means for monitoring.

12 As I testified before to this Board at the hearings
13 of October 23 and November 2, we do feel quite strongly
14 that even the proposal that the Board has come up with,
15 much as it is an attempt to mediate between the concerns
16 of the cost of monitoring and the need for effective moni-
17 toring, we feel that it may fall short of what is neces-
18 sary in order to protect the groundwater.

19 I don't want to just make a suggestion from the
20 floor, but I will say if the Board does decide to adopt
21 the monitoring alternatives as outlined in the draft regula-
22 tions as proposed by staff, they may wish to consider some-
23 thing along the lines of a trial period after which, if
24 we find out that these leaks are not being caught by the
25 kinds of monitoring that are suggested under the Board's
26 regulations, that we come back and revise the regulations

1 at some point to disallow the inventory control, and I
2 guess what I am expressing, Madam Chairwoman and Members
3 of the Board, is Mr. Sher is very very leary of the use
4 of this monitoring alternative even in conjunction with
5 periodic tests.

6 We feel that the groundwater of the state is going
7 to be jeopardized and we have seen in the past, as Mr.
8 Sher mentioned in his letter, that the dip-stick method
9 has not been effective. We have many leaks throughout
10 the state that are gasoline related leaks and they are
11 as a result of poor monitoring and most of those tanks
12 were being monitored through the dip-stick method.

13 I want to express our great concern over the adop-
14 tion of the regulations which would, even as I say, require
15 the inventory control in conjunction with periodic testing,
16 and I hope that the Board, and I think Mr. Sher would want
17 me to express the hope that the Board will look very care-
18 fully at that, and if they do decide to adopt it in the
19 regulations, that they consider placing some sort of sunset,
20 or at least placing something in the regulations that serve
21 as a fair warning to those who are going to use that moni-
22 toring system, and we understand many many people will
23 use that, that if it is proven not to be effective over
24 a reasonable period of time, that the Board ought to come
25 back and revise those regulations.

26 I even go so far, and I don't mean this as a

1 threat, but I think Mr. Sher feels so strongly about this
2 that we would even come back and carry legislation to that
3 if we felt there were problems that ensued with the Board's
4 regulations as they were drafted because we are so con-
5 cerned about that method of monitoring and the potential
6 that it leads to for leaks not to be detected.

7 MS. ONORATO: Thank you, Mr. Lipper.

8 Mr. Willis.

9 MR. WILLIS: Mr. Lipper, you are going to say
10 through the entire hearing today?

11 MR. LIPPER: Yes, sir.

12 MR. WILLIS: I think that's important.

13 Secondly, in your own considerations, was Assembly-
14 man Sher aware of the allocation error in that particular
15 type of method? For example, the inventory reconciliation
16 option, which is what it is, may not exceed an allowable
17 measure of error plus .15 percent of the through-put during
18 a 30-day period. This is not something that is -- cer-
19 tainly it's not common now. It never has been and I don't
20 know, when you say the dip-stick method has not been worka-
21 ble in the past, I'm not sure what you are comparing that
22 against.

23 We have never had regulations requiring that you
24 do not exceed a measurement of error with that type of
25 option as it is being described here, plus the fact that
26 if you do exceed that type of option it becomes apparent

1 that, first of all, I think, you have exceeded it and it
2 requires further investigation is then mandatory, plus
3 the fact that the owner/operator is going to have to sign
4 a letter under perjury to the permitting agency periodically
5 during the year indicating he has not exceeded any
6 of these measurements, and if it is found at some point
7 in time that there is a leak, those letters are going to
8 be pulled out of the file and there is going to be an investigation
9 in that particular instance.

10 None of that makes any dent in your thinking or --

11 MR. LIPPER: It does, Mr. Willis, and I guess I
12 should say that, you know, the Board staff and the Board
13 has been diligent in trying to recognize the needs and
14 I know you have all heard and I have certainly sat here
15 and heard what small businessmen and others have mentioned
16 about the expense of doing what was originally proposed
17 in drilling monitoring wells and many of the other requirements
18 which were originally contemplated.

19 MR. WILLIS: Which I don't think you supported.

20 MR. LIPPER: No, I don't think it was consistent
21 with the statute. However, I think -- let me finish that
22 thought.

23 The final thing I want to say, I think the Board
24 has attempted to take a reasonable approach between those
25 who would like the monitoring to be very stringent and
26 those who feel that there are reasonable alternatives to

1 that kind of stringency that will be cost effective for
2 the owner/operator of the tank.

3 You asked a specific question whether Mr. Sher
4 had taken the ranges into account, the error that you men-
5 tioned, the margin of error. We had looked at that very
6 closely and we still feel -- I guess we still feel very
7 concerned that even in the diligent way that the Board
8 has drafted that particular section, there's still a pos-
9 sibility that we could have major leaks getting into the
10 groundwater, and I know you will hear a lot from the in-
11 dustry folks about how it is important to make these moni-
12 toring requirements cost effective for them, and I guess
13 I am up here on behalf of Assemblyman Sher to say that
14 while we are concerned about that, I think our first duty,
15 our first task in drafting AB 1362 was to protect the
16 groundwater of the state, and I want to emphasize strongly
17 that we have some concerns about these alternatives even
18 with the care that the Board has taken to draft them, and
19 as I say, if the Board does go forward and adopt them,
20 we hope that they will continue to scrutinize them and
21 indeed possibly put something in the regulations.

22 MR. WILLIS: Let me indicate, if I may, Madam Chair,
23 I think that any time we believe a regulation is not work-
24 ing, we certainly have the authority and the responsibility
25 to go back and review that and make possible changes, but
26 I would indicate -- or not indicate, I want to just clarify

1 with you, Mr. Lipper; are you suggesting that the Assembly-
2 man would like to see some sort of automatic or mandatory
3 review of this procedure at some point in the future, a
4 few years down the road, to ensure it is working?

5 MR. LIPPER: I think that would be a reasonable
6 approach to take rather than to just leave it open ended.

7 As I say, I think we are very very concerned with
8 the use of this monitoring alternative. I think there
9 ought to be some sort of review of it and whether the Board
10 is able to do that on its own or whether we ought to come
11 back through the Legislature and do something through
12 statute remains to be seen, but we feel strongly enough
13 about it that Mr. Sher asked me to appear before you today
14 to urge you to take some action.

15 MR. WILLIS: Would that add to the comfort, if
16 I can use that term, of the Assemblyman if the Board's
17 order were to include that there would be an automatic
18 review at the end of two years or something like that of
19 that particular option, to examine its effectiveness?

20 MR. LIPPER: I think that would help. I don't
21 want to say he -- I believe he is uncomfortable with the
22 whole idea.

23 You asked me a minute ago, Mr. Willis, about this
24 dip-stick method, how we can determine -- if I understood
25 you correctly, whether it has been effective in the past
26 because there really hasn't been any program where there

1 was a requirement for monitoring.

2 MR. WILLIS: No measurable.

3 MR. LIPPER: No measurable, and I agree with you
4 and I still think, however, that the evidence around the
5 state is that we do have these leaks occurring fairly fre-
6 quently and in fairly large amounts, and certainly, in
7 Mr. Sher's district, Mountain View and Sunnyvale area,
8 we have had some very severe problems, and througout Santa
9 Clara County.

10 And I know that these are occurring in other parts
11 of the state and I know you are aware of that as well.

12 So, I think that what we are trying to do and what
13 I am here to express to you this morning, is to err on
14 the side of caution rather than to err on the side of a
15 line of what may be reasonable economically for a lot of
16 tank owners, and as I say, I know you have to take that
17 into account in looking at these regulations, but we still
18 have to look at protecting the groundwater, and I think
19 that's our first task.

20 MR. WILLIS: If I could beg your pardon, one more
21 time. Mr. Lipper, I think the concern that crosses my
22 mind is that in the past, if an operator were using this
23 particular method, there's no requirement that he had to
24 report it to anybody if he discovered his inventory was
25 not reading correctly -- there was no requirement that
26 he had to go to a city government or county government

1 or to a Regional Water Quality Control Board, nor was there
2 any requirement that he had to sign a letter under penalty
3 of perjury that he had taken these measurements and that
4 the measurements indicated to him that there were no leaks
5 occurring.

6 I think the difference is, as we read it here,
7 that now, of course, because of the law which the Assembly-
8 man passed, because of that, if the option is used and it
9 is determined that there is a difference in measurement
10 that indicates possibly there is something wrong, that
11 first of all, they have to report it in a specific period
12 of time; secondly, they have got to remember that under
13 penalty of perjury they are going to have to say one way
14 or the other what has been occurring, and if there is a
15 measurable difference and it exceeds the requirements of
16 the regulations, that they then have to take further in-
17 vestigative actions, plus the fact they are going to have
18 to notify the permitting agency of what they found.

19 It seems to me with those types of things, if this
20 had been going on for the last 20 years, it would be very
21 difficult for anyone to say this method has never worked
22 in the past because the method has never been regulated
23 in the past. It's just been something you could do, you
24 or I could do it. There was no requirement that we had
25 to do anything if the method did not work.

26 I think that's a basic difference which the

1 Assemblyman should take into consideration, but I would
2 be willing to suggest that we have some conversation here
3 today as to whether or not we should mandate that there
4 would be a review at some year point in the future, two
5 years or three years down the road, to verify the effec-
6 tiveness of this option.

7 MR. LIPPER: I just want to respond. I am grateful
8 for your going through that process. I think we have looked
9 at the possibility that this could also work and work very
10 well, and certainly, as the staff has drafted it and as
11 the Board is reviewing it, I know you have taken very great
12 pains to attempt to reconcile what are seemingly diverse
13 interests, that is protecting the groundwater and also
14 having some economic sensibility to these regulations.

15 I think Mr. Sher is as hopeful as you are that
16 the regulations as drafted do work and are effective in
17 preventing leaks.

18 Our concern is that they might not be -- in which
19 case we hope the Board will continue to scrutinize that
20 particular requirement in the regulations and possibly
21 take some action in the future.

22 MS. ONORATO: I think Mr. Finster has a question.

23 MR. FINSTER: I would like to make one comment.
24 I recognize Assemblyman Sher's concerns here and we had
25 testimony presented at the hearing regarding the capability
26 of the industry to monitor the system through the inventory

1 reconciliation method. We heard statements of different
2 ranges of what limits could be detected as far as sticking
3 is concerned, and I personally feel by inventory control
4 that they will be able to detect any major leak. I am
5 not convinced we can detect a minor leak, but the major
6 ones, the ones you seem to express your concerns about,
7 I have no qualms about saying I feel the limits placed
8 in the regulations will detect any major leaks.

9 In the regulations the limits of the sticking pro-
10 cess are way below what some of the industry indicated
11 they could not meet. I think staff and ourselves have
12 developed a limit on the sticking inventory control that
13 will definitely show if there is any basic leak at all
14 in the system. If they cannot meet the limits set in the
15 regulations as drafted, there is a second alternative
16 which is alternative No. 6, which was added to the regula-
17 tions which, if they do not meet those limits, they can
18 then put in some kind of monitoring system and the limits
19 would be raised a little bit, so I personally feel that
20 the limits are below what the industry says it can meet
21 and we think that they are reasonable and some of the in-
22 dustry indicated they can meet it, some indicated they
23 couldn't.

24 So, I think that factor alone will protect the un-
25 derground tanks by detection of major leakage.

26 MR. LIPPER: I hope you are right, Mr. Finster.

1 I think the Board has done a commendable job and I have
2 sat through these hearings as you all have and I know you
3 are trying to reconcile some very difficult positions,
4 and I think you have done a commendable job of that.

5 We still would feel less than responsible as the
6 author of the bill if we didn't get up and express the
7 concern we have over the dip-sticking method, and as I
8 say, I think the Board has taken great pains to reconcile
9 protecting the groundwater and at the same time providing
10 an economically feasible alternative.

11 I hope again that the Board will continue to follow
12 closely and make sure it is effective and, if not, come
13 back and change it.

14 MR. FINSTER: You can assure Assemblyman Sher that
15 our primary responsibility is the groundwater water.

16 MR. LIPPER: I understand that.

17 MS. ONORATO: By the way, for the audience, I forgot
18 to take note that Darlene Ruiz, our other Board Members,
19 has joined us.

20 Do you have any questions of Mr. Lipper?

21 MR. RUIZ: No comments or questions at this time.

22 MS. ONORATO: Mr. Lipper, I would like to ask you
23 two things: What is the Assemblyman's reaction to quite
24 a bit of criticism we have received about meeting the date-
25 line of July 1, 1985?

26 MR. LIPPER: We have had some correspondence and

1 some verbal inquiries from various people. In fact, I
2 spoke to someone yesterday who I believe will be testify-
3 ing later today on that very issue.

4 As you know, Madam Chairwoman, the initial legisla-
5 tion set the date for implementation at January 1, 1985,
6 which, of course, given the Board's authorization in the
7 same legislation to develop these regulations and to have
8 them ready no later than January 1, 1985, was unrealistic
9 and we recognize that.

10 In the cleanup legislation we revised that to July
11 1, 1985. We rolled the date back six months. We feel
12 strongly that, at least at the point that we did that,
13 that it was the appropriate amount of time.

14 If there is a need to postpone that date even
15 further, I think we would want to look very very carefully
16 at it and discuss it with the Board before we took any
17 action legislatively. I think Mr. Sher feels very strongly
18 and the Board does as well that the sooner this program
19 gets going and is operating, the safer the groundwater
20 of the state will be, so we have reservations about leaping
21 headlong into postponing that date further.

22 I recognize there are some problems.

23 MS. ONORATO: I wanted to be sure you were aware
24 and you will report to the Assemblyman that this is a con-
25 cern to all of us.

26 The other thing I want to take note of and the

1 audience should be aware of, Mr. Noteware and I, after
2 our last hearing, did approach the Department of Finance,
3 and we find that there is no mechanism in law to assist
4 in funding for small businesspersons, a loan program or
5 anything of the sort.

6 We are not dropping it there. We have appointments
7 in the coming months. The Legislature will be reconvening
8 next month, and Mr. Noteware and I will continue our efforts
9 on behalf of what we see as a very serious impact finan-
10 cially and hope that we can find someone who will take
11 up this cause in the Legislature, and I just want the
12 Assemblyman to know this also because we do have state-
13 wide constituency and all of us are deeply concerned about
14 this aspect.

15 And those would be my two messages back to him.

16 I appreciate very much your indulgence and the
17 audience's indulgence in taking Mr. Lipper representing
18 Mr. Sher. I thought it was important to get on the table
19 this morning those items which were of concern to the author
20 of the bill and to the Board.

21 MR. LIPPER: May I make two more brief comments?
22 I hate to take up too much of your time.

23 MS. ONORATO: I think the audience wants to hear
24 this because you do represent the author.

25 MR. LIPPER: Madam Chairwoman, first of all, on
26 your last point I hope one of the appointments that you

1 have set up in the next month with Mr. Noteware is to meet
2 with Assemblyman Sher because we are very interested, in
3 fact, I think as interested as anyone else, if not more
4 interested than anyone else --

5 MS. ONORATO: We are trying to find a time when
6 they can squeeze us in.

7 MR. LIPPER: In making sure that this legislation
8 works, and we do want to see it work. We don't want to
9 see tank owners put out of business or unreasonable regula-
10 tions promulgated and we want to work with the Board and
11 industry as we have in the past to come up with a workable,
12 effective program.

13 I just briefly wanted to make two more comments:
14 The first one is a substantive one and that is the Board
15 staff has been working with -- I mentioned to Ed Anton
16 and your staff earlier, and I know that your other staff
17 has been working with the persons who represent tank liners
18 and this is as distinct from people who repair tanks and
19 coat them with an interior process, the people who use
20 these flexible plastic liners to protect the groundwater,
21 and one of the things that was left out of the regulations
22 that I believe Assemblyman Sher feels quite strongly about
23 and I hope the Board will take note of it, is that for
24 those persons who manufacture these liners, the Board did
25 in its second revision to the draft regulations, put in
26 standards for permeability and durability for which we

1 are grateful.

2 We also feel, though, that there ought to be a
3 provision, and we did suggest there ought to be a require-
4 ment in the regulations, requiring certification by the
5 manufacturer, in fact, a guarantee that the manufacturer
6 is willing to stand behind that the material will hold
7 up under the stress and duress that it will be under in
8 lining of the underground storage tank area, and I have
9 some language which I would like to submit to the Board
10 for its review and I hope, once again, that you will look
11 favorably upon accepting that language.

12 It was not in the draft language. I hope you will
13 agree it is important to have that in the regulations.

14 My second comment is just to thank the Board for
15 the trouble you have taken to stay in touch with our office,
16 especially Chairperson Onorato and Member Noteware for
17 the time they have taken to work with me and Assemblyman
18 Sher, as well as with your staff. We are very grateful
19 for the time.

20 MS. ONORATO: We always like to spread the gospel,
21 what it is like to be a regulator.

22 Thank you very much, Mr. Lipper, and thank you
23 again, audience, for your indulgence.

24 Mr. Tom Robinson, representing CIOMA. Good morning,
25 Mr. Robinson.

26 MR. ROBINSON: Good morning. My name is Tom

1 Robinson, I am with Robinson Oil Company, representing
2 the California Independent Oil Markets' Association.

3 Thank you for the opportunity to again present tes-
4 timony on the proposed regulations governing underground
5 storage of hazardous materials. CIOMA appreciates not only
6 the hard work done by the staff and the Board, but also,
7 the concern you have shown in trying to protect the ground-
8 water while at the same time not placing overly burdensome
9 costs on tank owners.

10 CIOMA is concerned with the speed in which the
11 implementation of these regulations is proceeding. Our
12 committee has only had one opportunity to meet to discuss
13 this latest draft. We have barely had the chance to proof
14 our own written comments. We have no desire to see these
15 hearings drag on, but more importantly, considering the
16 potentially tremendous financial implications these regula-
17 tions will have on independent petroleum marketers, we
18 hope the Board will not be hasty in the implementation
19 of these regulations until they have had an opportunity
20 to hear and read all the written and verbal comments that
21 have been presented today.

22 We do not want to take too much of your time today,
23 but realizing this may be our last chance to provide input
24 into the adoption process of this very significant piece
25 of legislation, we want to fully express our concerns and
26 answer any questions you might have.

1 Our major concern is Article 4, but before we dis-
2 cuss Article 4, we would like to note a few minor concerns.
3 Some of our other concerns will be discussed later by tech-
4 nical consultants.

5 Article 4: To discuss Article 4 we feel it is
6 important to first review the intent of the law. The intent
7 of the law is to protect the groundwater from contamination.
8 To do this, the Board is responsible for making regulations
9 governing construction and monitoring standards for new
10 tanks and monitoring standards for existing tanks; which
11 brings us to Article 4, monitoring standards for existing
12 tanks. Below are what we believe are the requirements
13 for a good monitoring alternative:

- 14 1. First and foremost, the alternative must
15 be capable of detecting unauthorized releases
16 of any hazardous substances stored in the
17 facility;
- 18 2. Detection should be prior to contamina-
19 tion;
- 20 3. It must be enforceable;
- 21 4. It should be cost effective. This in-
22 cludes the initial cost, ongoing cost, and
23 the paperwork and reporting costs;
- 24 5. Should attempt to minimize economic dis-
25 ruptions, i.e., change the distribution sys-
26 tem of the product by placing undue burdens

1 or benefits on a certain sector of an in-
2 dustry;

3 6. Should consider the relative hazardous
4 quality of various substances;

5 7. Should consider the inherent monitoring
6 advantages or disadvantages a substance has,
7 for example:

8 a. Can it be inventoried;

9 b. Will it dissolve in water or float on
10 water;

11 c. Does it have an odor or is it orderless,
12 et cetera?

13 With these requirements in mind, we would like to
14 review the proposed alternatives. To aid in this we have
15 provided a spreadsheet showing the various alternatives.
16 We feel it makes it easier to compare the relative require-
17 ments of each alternative.

18 Alternatives 1 through 4:

19 Alternative No. 1, tank testing, is simple enough,
20 but not presently practical unless a cost-effective tank
21 testing method can be developed and approved. Section
22 2643(d) allows only certified tank tests. CIOMA is concerned
23 that there is no provision as to how a test gets certified.

24 Alternatives 2 through 4 are straightforward enough
25 and do not require additional comments at this time.

26 Alternatives 5 and 6: A discussion of these two

1 alternatives is a discussion of inventory reconciliation.
2 An understanding is required not only of the mechanics
3 of inventory reconciliation but its strong and weak points.

4 The mechanics of inventory reconciliation are just
5 the comparison of a book inventory which is calculated
6 taking a known beginning inventory plus deliveries, less
7 sales, and a known ending, actual, physical inventory de-
8 termined by sticking the tank. The difference is product
9 overage or shortage. Everyone agrees on the mechanics.

10 Agreement on the strengths and weaknesses is not
11 quite so easy. Historically, the petroleum industry has
12 used inventory reconciliation as the sole monitoring method
13 for both the tank and the piping. If inventory reconcilia-
14 tion indicated a shortage, then bookkeeping records were
15 checked and inspection was done for evidence of leaks,
16 meter calibrations were checked and, if necessawry, the
17 tanks and piping were tested.

18 More recently, piping leak detectors on pressurized
19 piping have been installed as an added monitoring method
20 for the piping.

21 I might break in there by saying an awful lot of
22 previous large leaks and spills were in cases where leak
23 detectors were not on, thus one of the main reasons they
24 had so big spills.

25 The staff is concerned that inventory reconcilia-
26 tion may not detect a small leak due to the factors of

1 through-put, tanks size, vapor recovery, gaging errors,
2 bookkeeping errors, temperature correction, gain or loss,
3 et cetera.

4 The staff is also concerned that a tank owner or
5 operator may, when they suspect a leak, figure it is
6 cheaper to lose a few gallons rather than remove the tank
7 and clean up the spill.

8 Lastly the staff is concerned with the difficulty
9 of enforcing inventory reconciliation.

10 To relieve these concerns, staff has proposed a
11 very stringent allowable variation in alternative 5 and
12 a less stringent allowable variation in alternative 6 plus
13 additional monitoring in both.

14 As part of the inventory reconciliation process,
15 staff has proposed a method of verifying deliveries. To
16 ensure compliance staff has proposed a quarterly report
17 which the signer under penalty of perjury acknowledges
18 that he has reviewed the data and it is within the allowa-
19 ble variations or lists the dates and the variations that
20 exceed the allowable.

21 CIOMA understands staff's concerns but does not
22 feel staff gives proper credit to the value of inventory
23 reconciliation.

24 With regard to alternative 5, CIOMA believes a very
25 stringent allowable inventory variance will trigger the
26 implementation of unnecessary and costly emergency measures.

1 The lack of very stringent variance will not pre-
2 clude an owner/operator acting in his own self-interest
3 from taking further investigative measures. Most impor-
4 tantly, and this really is our biggest point, most impor-
5 tantly, CIOMA believes alternative 5, even without any
6 allowable variation trigger mechanism, answers all of the
7 staff concerns with inventory reconciliation.

8 Now in our written comments we submitted a trigger
9 mechanism variation, but I would like you to consider
10 whether it is really necessary.

11 On the next page I have again listed what their
12 concerns are:

- 13 1. May miss small leaks;
- 14 2. Owner/operator may ignore small leaks
15 figuring it is cheaper to lead than to re-
16 place and clean up;
- 17 3. Difficult to enforce.

18 CIOMA's answer to these concerns are as follows:

- 19 1. Assuming the small leak, and this is
20 going on the assumption a small leak is
21 missed by inventory reconciliation, then
22 if the leak is in the ^{en} tank, it will be caught
23 with the annual tank test -- that's assuming
24 it's missed.

25 If the leak is in the piping, the leak de-
26 tector will catch it. The leak detector

1 will catch it before the inventory recon-
2 ciliation will anyway.

3 2. Should the owner/operator ignore the
4 leak, he is a fool because he will be caught
5 when he tests the tank. The longer he waits,
6 the more expensive is his cleanup cost.
7 There's no incentive for him to wait as long
8 as there is a backup mechanism.

9 3. It should not be difficult to enforce.
10 The staff proposes a quarterly report. We
11 do not believe it is necessary. We believe
12 occasional spot checks of a few days or few
13 weeks would show if an owner/operator was
14 complying and if not, a penalty would be
15 the thing that would make somebody make sure
16 they did their inventory reconciliation;
17 and if they are going to take the time to
18 fudge it, it takes more time to fudge it
19 than it does to do it, so they might as well
20 do it.

21 With regard to alternative 6, we would propose as
22 a practical alternative the basic monitoring required by
23 Santa Clara County which consists of:

- 24 1. Inventory reconciliation;
25 2. Leak detectors;
26 3. Vadose and/or groundwater wells.

1 Later CIOMA's technical consultants will review
2 the Santa Clara alternative in more detail. CIOMA believes
3 this alternative answers staff's concerns much the same
4 way our proposal to alternative 5 does by providing backup
5 monitoring to inventory reconciliation.

6 CIOMA believes a stringent allowable variation
7 makes sense if there is no backup monitoring to inventory
8 reconciliation. An inventory only alternative for a small
9 through-put tank would be appropriate. This alternative
10 will be discussed further by another speaker.

11 With alternative No. 7 we have no comments.

12 Alternative No. 8: CIOMA is again concerned about
13 the need for the allowable variations. Also, considering
14 the cost to install new tanks and the fact that CIOMA mem-
15 bers' tanks are typically all within the state, we feel
16 it is appropriate to allow seven years to comply; especially
17 considering alternative 8 allows government agencies three
18 years to comply just to the monitoring standards.

19 Lastly, concerning all of the proposed alterna-
20 tives, Section 2641(d)2 appears to call for groundwater
21 monitoring in all cases if the tank is in a recharge area
22 and has actual or potential use. We believe this may re-
23 quire groundwater wells in a high percentage of tank in-
24 stallations.

25 Again, CIOMA's technical consultant will comment
26 in greater detail on this later.

1 In summary, as the alternatives are presently writ-
2 ten, almost no tank owners could consistently comply with
3 the allowable variations in alternative 5 and most tank
4 owners could not consistently comply with the allowable
5 variation in alternative 6. Not staying within allowable
6 variations will require unnecessary emergency measures.

7 Most importantly, leak detectors with tank testing
8 or monitoring wells will provide the necessary backup to
9 inventory. As they are presently written it may be cheaper
10 and easier to meet alternatives 2, 3 and 4. This situation
11 seems wrong when the Legislature in passing the law realized
12 gasoline is expensive, thus costly to lose, unlike a hazard-
13 ous waste, and realizing it was a substance in which in-
14 ventory reconciliation was a common and very useful method
15 in monitoring losses, which gave it some inherent monitoring
16 advantages over many other hazardous substances.

17 It is important to keep our perspective. When
18 these regulations are implemented, California will have
19 the most stringent underground tank regulations in the
20 nation. These regulations do not allow the local agency
21 authority in reducing the stringency of these monitoring
22 alternatives, but they can make them more stringent.

23 The monitoring requirements of Santa Clara County
24 are less stringent than these regulations. This law is
25 the result of toxic chemical leaks in Santa Clara County.
26 These were not gasoline leaks. We have come a long way

1 in just a few years.

2 Although the petroleum industry was not the cause
3 of this legislation, it had a few things in its act which
4 needed cleaning up. For that reason, CIOMA supports the
5 intent of the law and of these regulations. But again,
6 keeping our perspective, it is important to remember, even
7 with CIOMA's proposed comments, this state will still have
8 the most stringent underground regulations in the nation.
9 Even using our proposals, the financial burden on independ-
10 ent marketers will be very heavy.

11 CIOMA believes its proposals are fair and consist-
12 ent with the law while at the same time providing safety
13 to the groundwater.

14 Thank you.

15 MS. ONORATO: Thank you very much.

16 Are there any questions of Mr. Robinson? Does
17 staff have any questions?

18 Yes, Mr. Anton.

19 MR. ANTON: Mr. Robinson, you essentially have
20 said that you believe that alternative No. 5 will cause
21 most people that would like to use tank inventory recon-
22 ciliation only to violate the limits and, therefore, have
23 to go to some other alternative. What limits do you think
24 would be acceptable that could be met using essentially
25 the best ability of the station?

26 We don't want anything that would allow undue

1 carelessness or anything, but what limits do you believe
2 would be appropriate?

3 MR. ROBINSON: That's a good question. I guess
4 I would have to revise the question and say, why do you
5 need any limits when it is in the best interests of the
6 owner/operator to catch a leak because it's a backup mech-
7 anism, a backup monitoring that will catch it?

8 See, the problem is, I think the staff's major con-
9 cern is the small leak. If you make it so tight that it's
10 going to catch a small leak in a small through-put location,
11 then no one else is going to be able to use it.

12 If you make it reasonable for a normal service
13 station, then you are still not going to catch a gallon
14 a day, half a gallon a day, a quarter of a gallon a day,
15 a gallon a half a day. You are still not going to catch
16 it.

17 So, what my point is, is that if you have a situa-
18 tion where you have very low through-put and you want to
19 live and die by inventory all by itself, then in that situa-
20 tion, you know, you can have a very very stringent mech-
21 anism; but as long as you have a backup, in a sense you
22 have a double containment to inventory reconciliation,
23 you have a back to it, that that individual will be caught
24 if he doesn't do it properly, why make him go through these
25 things? Because what would happen with us, for example,
26 if we saw it was looking out of whack, we would start

1 looking for it because we would know darn well that when
2 we had a tank test or when we had to check our monitoring
3 wells, it would show that we had a problem.

4 MR. ANTON: Alternative No. 6 is a backup system
5 where it gives lesser standards for inventory reconcilia-
6 tion plus some sort of backup. What's wrong with that
7 then considering your --

8 MR. ROBINSON: Well, I think what you have done
9 with 6 is, you know, basically you have had a tremendous
10 amount of testimony from the petroleum industry -- you
11 know, these regulations are for all hazardous materials.
12 It appears to me that when you get into No. 6 for all in-
13 tents and purposes you are saying petroleum is the worst
14 one out there because you have to do tank testing, you
15 have to have a vadose or groundwater monitoring well, you
16 have strict inventory variations, you have to have a soil
17 analysis -- it doesn't seem to me that you are missing
18 anything that is in any of the other alternatives that
19 are for more hazardous material that can't be inventoried.

20 MR. ANTON: I guess I don't understand what you
21 are proposing for the petroleum industry.

22 MR. ROBINSON: Well, what I am proposing for the
23 petroleum industry is somewhat of a performance standard
24 which is my understanding of the way the law is supposed
25 to be anyway, but I agree that inventory reconciliation
26 all by itself may miss a small leak, so what we are

1 proposing is as long as you have a backup mechanism that
2 is going to catch that small leak if inventory reconcilia-
3 tion misses it, and that one of those backup mechanisms,
4 if it is in the piping, you've got a leak detector; and
5 if you have something that's going to back up your tank
6 which would be some sort of periodic tank test or monitor-
7 ing well, it seems to me that you have a backup to your
8 inventory reconciliation, you have two things that are
9 going to catch that leak before it contaminates the ground-
10 water.

11 MR. ANTON: In other words, tell me if I am misin-
12 terpreting you, what I am hearing you say is you would
13 like inventory reconciliation with periodic tank testing,
14 but absolutely no limits on the inventory reconciliation?
15 Is that what you are asking for?

16 MR. ROBINSON: Yes, but, you know, and I think
17 it should be clarified, that I am not saying I want the
18 ability to have one of our service stations to be able
19 to lose 3,000 gallons a day. That's not it. What I am
20 saying is that there appears to me that there is given
21 no credit to the owner/operator to act in his own best
22 interest.

23 If you've got a mechanism that's going to check
24 up on him, he or she should be acting in their own best
25 interest, if they see a trend develop, they will do that
26 all by themselves.

1 You do have to require inventory reconciliation.
2 I think that is important and it doesn't have to be any
3 fancy form or anything like that.

4 If you just walked in and you said, you know, Mr.
5 Robinson, I would like to see your inventory records for
6 station No. 1 for the dates of January 1 to January 7,
7 it would be very obvious if I had them.

8 MS. ONORATO: Mr. Robinson, I really don't think
9 there's very much point in continuing this drift in our
10 conversation because, respectfully, I suggest to you that
11 if we taken an opposite position to what you just stated,
12 it would imply that we questioned the good citizenship
13 and responsibility of service station operators. That's
14 not the point.

15 I don't think there's anyone that's been caught
16 with a leaking toxic material tank anywhere in the state
17 that would not have acted more responsibly if they recog-
18 nized what they were buying into.

19 There are certain industries, for example, that
20 are already in millions, tens of millions, thirty, forty,
21 fifty million dollars in cleanup, so I mean -- I don't
22 think that in and of itself, the consequences of that,
23 is going to satisfy the Board or the meaning of the law,
24 so I do think that this is rather futile argument on your
25 part.

26 I hope I am not overstating it for the other Board

1 Members. This is just my own feeling.

2 MR. ROBINSON: I think you are talking about a
3 situation where they were not inventoried.

4 MS. ONORATO: I disagree. In fact, that's how
5 they found out. There's no use discussing it because I
6 don't think the Board is going to be moved by this kind
7 of argument.

8 Am I correct, fellow Board Members?

9 MS. RUIZ: Well, I do believe Mr. Robinson raises
10 a point that there appears to be somewhat of a presumption
11 inherent the current regulations. I think there seems
12 to be some history reflected by Mr. Lipper's comments and
13 others while the legislation was developed that there is
14 a problem, so we are trying, of course, to balance the
15 concerns that need to be addressed or that were sought
16 to be addressed by the legislation.

17 MR. ROBINSON: I think a lot of Mr. Lipper's con-
18 cern occurred when people claimed they did inventory recon-
19 ciliation and they did not. They did not have inventory,
20 they did not have a leak detector and they had no backup
21 to make sure that that was correct.

22 As it stands right now -- look at alternatives 2,
23 3 or 4. It is easaier, and we have the ability every day
24 to take some sort of reading on our tanks.

25 MS. ONORATO: I think Mr. Willis has something
26 he wishes to say.

1 MR. WILLIS: I think, Mr. Robinson, taking into
2 consideration as Mr. Lipper pointed out, there was a his-
3 tory that promulgated the act of creating the legislation,
4 and consequently, we are now sitting here with these regu-
5 lations.

6 And let it be sufficient to say that it may not
7 be the best answer to your quandary, but I think it is
8 a legitimate answer, and that is that laws and regulations
9 are never written for the citizens who do not need laws
10 and regulations.

11 MS. ONORATO: Thank you very much.

12 MR. ROBINSON: Yes, but I assume you still try
13 to make them reasonable.

14 MR. WILLIS: I think we have been demonstrating
15 we are trying very hard to make these reasonable, taking
16 everyone's point of view into consideration.

17 MR. FINSTER: I would like to comment to Mr. Robin-
18 son. May I ask one question, though? Let's assume that
19 you are taking inventory control like you say the normal
20 operator would, we do come in and look at the books, what
21 kind of records would you indicate that then something
22 should be done?

23 We are setting limits. You know, we were told
24 by the industry that the accuracy is based on the sticking
25 that they can do would be pretty accurate and can tell
26 whether there is any loss or gain in the system.

1 We argued among ourselves as far as what these
2 limits should be and we feel that we have put in some rea-
3 sonable figures, and if you can't meet those figures, then
4 you have other alternatives to control the inventory as
5 far as the system is concerned.

6 So, we feel, I personally feel, I don't know about
7 the rest of the group, but I personally feel some limits
8 have to be put in to give us a feel of what's going on
9 as far as the sticking process is concerned. I think these
10 are reasonable. I think they are below what some of the
11 industry said they can meet. They are equivalent to or
12 above what some others testified they could meet, and I
13 think they should be tried.

14 We have tried to put -- if we held to the first
15 one, you would have lots of monitoring facilities going
16 in and I personally, myself, was opposed to that and yet
17 you heard the gentleman representing the Assemblyman, what
18 he felt should be done as far as the inventory control
19 is concerned.

20 So, I think these are reasonable. I think they are
21 limits that should be tried and any regulations, if they
22 don't work, they are subject to revision from time to time.

23 I think that, as you heard the Assemblyman's repre-
24 sentative indicate, that there should be some limits on
25 this as far as the period of time is concerned. That might
26 be a suggestion.

1 The same thing would hold true as far as the limits,
2 what these are, 25, 50, 100 gallons and so forth. So, I
3 think they are reasonable.

4 I, personally, would be opposed to just not having
5 any limitations.

6 MS. ONORATO: I would like to point out to the
7 Board Members that there are two more speakers from CIOMA
8 and I don't want to be rude, Mr. Robinson, but time is
9 passing.

10 Any other questions of Mr. Robinson at this time?

11 MR. NOTEWARE: I would like to hear the other
12 speakers.

13 MR. ROBINSON: Could I just make -- you mentioned
14 that we could come back if it was too stringent and we
15 could make it less stringent later on, and I know that
16 typically if you want to err, you want to err on the side
17 of safety. I think what you are looking at is you are
18 looking at -- even with our proposal, you have the most
19 stringent requirements in the nation. If you make it too
20 stringent, then you may drive a lot of people out of busi-
21 ness before you come back to make it more reasonable.
22 That's a consideration, I think.

23 The other thing is that right now it is my under-
24 standing that the bill was supposed to make a minimum stand-
25 ard and some of those counties that had a bigger problem,
26 like Santa Clara County, could have more stringent

1 regulations if they so chose. Your regulations are more
2 stringent than Santa Clara County. We could have that
3 alternative, you know, that's our company. Probably, you
4 know, that's the alternative we would do, is put in a moni-
5 toring well, do inventory reconciliation and have leak
6 detectors, but we can't do that. You are going to make
7 us also do tank testing on top that, which probably in
8 the first year will cost us anywhere from 1,000 to 3,000
9 dollars per tank.

10 So, you know, you are being more stringent than
11 these environmentally sensitive areas.

12 MS. ONORATO: Thank you, Mr. Robinson.

13 I would like to now call on Mr. Mike Bonkowski,
14 representing CIOMA.

15 MR. BONKOWSKI: Thank you. My name is Mike Bonkow-
16 ski. I represent CIOMA. I am a groundwater geologist.

17 CIOMA has asked me to address an alternative moni-
18 toring system, present that to the Board, a groundwater
19 monitoring system that they feel they can live with and
20 we feel would adequately protect the groundwater of the
21 state.

22 The alternative that CIOMA members can live with
23 and feel it is geotechnically correct would require in-
24 ventory control, line-leak detectors and groundwater and/or
25 soil monitoring. It's very similar to item 6 in Article
26 4 except that it doesn't require annual tank testing and

1 reduces the number of groundwater monitoring wells that
2 are required.

3 The basis for this alternative is really because
4 of the nature of gasoline leaks in soil and groundwater,
5 the types of leaks that we most normally deal with and
6 the types of soils the tanks are placed in.

7 Most leaks, massive leaks that we commonly fear,
8 would be easily detected with even probably your crudest
9 types of inventory control. The small leaks on a drop-
10 by-drop basis, those are very hard to detect and those
11 create the greatest threat to our groundwater resources,
12 but they won't be detected with any type of inventory
13 reconciliation. Even the most sophisticated electronic
14 devices wouldn't do that, so we are opposed to that.

15 However, we do feel the installation of a line-
16 leak detector would give an indication that possibly the
17 leak was occurring in the line. An installation of a ground-
18 water and/or vadose zone monitoring well in accordance
19 with the guidelines set forth by the Santa Clara Valley
20 Water District would adequately detect any tank leak.

21 I feel professionally as a geologist, and I have
22 been involved with these type investigations now full-time
23 for three years, and I feel that we have been rather suc-
24 cessful in Santa Clara County in implementing these
25 regulations. We certainly have a working history of de-
26 tecting leaks and we have a way of handling them when we

1 do.

2 I think these guidelines which require one
3 groundwater monitoring well per tank or tank cluster, and/or
4 one vadose zone well adequately detects any type of leak --
5 when used in conjunction with inventory control and/or
6 line-leak detectors would adequately satisfy what you are
7 trying to do here.

8 These systems -- I say systems, the cost of imple-
9 menting this type of system is minimal, probably has the
10 least effect on CIOMA members and other petroleum industry
11 members. The cost of installing a monitoring well and/or
12 a line detector is really the only cost involved here and
13 has a very low operation and maintenance cost as long as
14 you are not required to do some ridiculous type of contami-
15 nation study.

16 Again, the groundwater monitoring guidelines of
17 Santa Clara County stresses the type of water quality inves-
18 tigation that are required and we feel this adequately
19 describes what should be done.

20 You are looking at three or four thousand dollars
21 per site anywhere in the state for this type of thing.
22 This is a figure CIOMA members feel they can live with.

23 However, if you install up to five or six ground-
24 water monitoring wells per site and a number of vadose
25 zone wells, you are immediately back up into the-ten-to
26 fifteen-thousand-dollar category along with your, it seems

1 like an almost redundant, approach, annual tank testing
2 and inventory control, and you are really going to great
3 lengths when it is probably not necessary.

4 MS. ONORATO: Any questions?

5 MR. NOTEWARE: Mr. Bonkowski, it seems to me that
6 on certain geological conditions there would be a heck
7 of a leak before it would actually show up with a well,
8 and I think the purpose of the inventory control and the
9 tank testing is to prevent the damage from occurring, where-
10 as, what you are suggesting relies on damage already having
11 happened, and I, for that reason, tend to feel that
12 there's a real value to the inventory control.

13 MR. BONKOWSKI: Oh, I do, too, and that's again
14 part of the -- CIOMA has said they agree that inventory
15 control is necessary and they are already following that
16 in Santa Clara County.

17 MS. ONORATO: Will you state those three things
18 again?

19 MR. BONKOWSKI: Inventory control, line-leak detec-
20 tor and installation of a single groundwater or vadose
21 zone monitoring well adjacent to the tank or cluster of
22 tanks.

23 Santa Clara County regulations require one well
24 per 35 foot of tank length. They seem to be living with
25 this. Most of our clients, CIOMA members and everyone
26 else, is already complying with Santa Clara Valley Water

1 District. This is an effective methodology. It is proven.
2 We have detected leaks.

3 The problem is that these people are going to have
4 to go back and since they have already installed ground-
5 water monitoring wells, they will probably want to install
6 more to comply with what is written in Article 6.

7 MS. ONORATO: Mr. Willis.

8 MR. WILLIS: I would like to ask staff legal coun-
9 sel to respond to that. As I understand, if an ordinance
10 has already been adopted prior to January of this year,
11 that ordinance stands. Is that correct?

12 MR. RICHARDS: That is correct. If a city or coun-
13 ty has adopted an ordinance before January 1, 1984, and
14 is issuing permits according to that ordinance for these
15 tanks, that ordinance stands and the regulations adopted
16 to implement that ordinance and is administered by the
17 city or county, it stands. Those cities and counties do
18 not have to comply with the requirements in these regula-
19 tions.

20 MR. WILLIS: Based on that, Mr. Richards, you would
21 disagree that Santa Clara County has to redo anything?

22 MR. RICHARDS: Santa Clara County doesn't have
23 to do anything.

24 MR. WILLIS: Just for the record, I might clarify
25 also, Mr. Richards, as we understand it, under the law
26 that was passed, if the local government entity wishes

1 to adopt a more stringent option than the Board may approve
2 in its regulations, that local governmental entity will
3 have to come to the State Board in order to get approval
4 for that new provision; is that correct?

5 MR. RICHARDS: Yes, that's also correct.

6 MS. ONORATO: Thank you very much. Any other ques-
7 tions of Mr. Bonkowski?

8 Thank you very much.

9 I would like to call Dick Zipp, representing CIOMA.
10 Good morning, Mr. Zipp.

11 MR. ZIPP: Good morning, Madam Chairman and Board
12 and staff.

13 I would like to make a few comments here that are
14 related to the modified draft, some concerns that myself
15 as a groundwater geologist and representative for CIOMA
16 have about what you are proposing.

17 If I might take a quick minute and read a few
18 quotes and comment on them as I go.

19 On Section 2640(a):

20 To be adequate, the monitoring system must
21 be capable of "determining the containment
22 ability of the underground storage tank."

23 Unfortunately, not all options are physically test-
24 ing the tank and this might be considered unduly restric-
25 tive or cause the local entity to require more than one
26 option. Tank testing is not required on all options. And

1 if you are not testing the tank, you can't attest to the
2 integrity of it.

3 Another item as part of that:

4 And, in certain situations, determining if
5 hazardous substances are present in the area
6 around the underground storage tank.

7 Not all options require soil testing, and again,
8 you are implying there's a necessity to be testing the
9 soils in and around the tank, and it is not necessarily
10 true depending on which option is selected. So, I would
11 like you to be aware of that, keeping that in mind.

12 Section 2641(d)(2) with regard to recharge -- I
13 will take a minute and hand out a few things. For those
14 in the audience, I have just handed out a State of
15 California map showing groundwater basins within the State
16 of California, and this happens to come from Bulletin 18,
17 "California's Groundwater."

18 With regard to 2641(d)(2):

19 In cases where the underground storage tank
20 is in a recharge area and the groundwater
21 has actual or potential use (domestic, muni-
22 cipal, agricultural or industrial supply),
23 a monitoring method other than groundwater
24 monitoring shall be utilized on a monthly
25 or more frequent basis for leak-detection
26 monitoring. Furthermore, groundwater

1 monitoring shall be implemented in these
2 situations if groundwater is less than 100
3 feet deep.

4 I would like to remind the Board, or at least make
5 you, in my opinion, aware that the State of California,
6 approximately 40 percent of the state is underlain by al-
7 luvium groundwater which in most of these basins is 100
8 feet or shallower.

9 This rather innocuous statement on page 4.31 basi-
10 cally nullifies all the options except options 2 and 4,
11 and requires groundwater monitoring throughout the State
12 of California.

13 I do not believe that was the intent of the Board
14 or of the Sher amendment.

15 It also takes away the option of the local entity
16 having any prerogative to mandate what monitoring methods
17 will be implemented.

18 I repeat, it only allows 2 and 4 to be implemented.

19 MS. ONORATO: Staff, could you comment on this,
20 please?

21 MR. SINGER: We would disagree with that statement
22 completely. It does not preclude the use of any alterna-
23 tive. What it implies is that in addition to that alterna-
24 tive, you would have to put in at least one groundwater
25 monitoring well. So it does not preclude the use of any
26 alternative. It would then specify that something in

1 addition to that would have to be utilized in those recharge
2 areas.

3 MR. ZIPP: In other words, Table 4.1 under all
4 options except 2 and 4, you would include where groundwater
5 is less than 100 feet, you will install monitoring wells?

6 MR. SINGER: No, that's not true.

7 MR. ZIPP: That's what you just said, Harold.

8 MR. SINGER: No, we would leave it the way it states
9 right now. One of the objectives would state in the areas
10 where there is recharge that groundwater monitoring should
11 be a part of that alternative.

12 MR. ZIPP: But depending upon how that's going
13 to be interpreted, that could be upwards of 40 percent
14 of the state.

15 MR. SINGER: As I think we pointed out at the
16 workshop, we believe that in areas where there is shallow
17 groundwater that has a potential or actual use, it should
18 be monitored.

19 MR. ZIPP: Yes, but within the State of California,
20 even oil field cutwater people have applied for water rights
21 for it because it does have a beneficial use. There are
22 virtually no groundwater sources in the State of California
23 that do not meet the EPA groundwater criteria for benefi-
24 cial use water.

25 If I could go on to 2645(j) --

26 MS. RUIZ: Excuse me, if I may. Is that indeed

1 the case, Mr. Singer?

2 MR. SINGER: I guess the answer to that is we have
3 not had a chance to look at this completely to evaluate
4 it. I think what Mr. Zipp is saying is partially true,
5 that there are many areas in the state where there is
6 groundwater recharge and this would be the case. I couldn't
7 stand here and comment on his comment that the groundwater
8 in all those areas is less than 100 feet deep and, in fact,
9 that groundwater is usable.

10 MS. RUIZ: So, at this point, we don't know and
11 his statement is accepted as true, then in 40 percent of
12 the state it would require a monitoring well.

13 MR. SINGER: That's correct, but I think you have
14 to look at the concept of what you are trying to accomplish
15 and that is protection of groundwater that does have a
16 use and is easily contaminated and is shallow, and I think
17 you have to look at that concept also.

18 MS. RUIZ: Thank you.

19 MS. ONORATO: Thank you.

20 MR. ZIPP: If I may go on to 2645(j) at page 4.50,
21 Samples shall be analyzed by field or labora-
22 tory methods that provide quantitative re-
23 sults.

24 I would like to thank the Board's staff for modi-
25 fying this to include field analysis, a comment that CIOMA
26 had made at the last public meeting..

1 However, there is a question of ambiguity here
2 with regard to whether all samples collected will need
3 to be analyzed. If we are going to put in three or four
4 100-foot monitoring wells, collect samples at five-foot
5 intervals, that is approximately 20 samples per well, not
6 to mention a vadose zone monitoring program, do I have
7 to analyze all those?

8 I would suggest and respectfully request that the
9 Board add a comment to that at the end of (j):

10 Not all samples collected need to be analyzed
11 if initial tests of tank bottom are negative.

12 The intent of the law is to determine if a tank
13 is leaking. If we are testing soil samples in the immedi-
14 ate vicinity of the bottom of the tank and those are clean,
15 I, for one, don't see a reason to chase those soil samples
16 all the way to the bottom of the hole.

17 MS. ONORATO: Could we have some comment from staff
18 on that?

19 MR. SINGER: I think two points: One is in the
20 regulation we do allow for compositing of samples that
21 are from the same level in a sampling procedure. Therefore,
22 if you have four or five wells, you would only have to
23 analyze one sample from each elevation.

24 The second point is probably not all wells will
25 go to a hundred feet so we don't have as many samples as
26 Mr. Zipp has proposed.

1 The other aspect also is that soil sampling has
2 two purposes. In that case it may have a purpose of deter-
3 mining whether the tank is leaking. It also has a purpose,
4 primary purpose of determining whether the monitoring that
5 is being proposed will be effective. So, you would have
6 contaminants below the tank maybe from another source that
7 may impact your ability to monitor that tank utilizing
8 the proposed monitoring method.

9 I think there may be some validity to not analyzing
10 every sample, but I do think we want to go below just below
11 the tank level.

12 MS. ONORATO: I am kind of not satisfied with that.
13 You are saying there's a possibility of contaminants from
14 another source other than under the tank; right?

15 MR. SINGER: You could be in a situation where
16 contaminants from another source, another tank or another
17 source could have contaminated the groundwater away from
18 the site and if you are utilizing groundwater monitoring,
19 you could be in a situation where, first of all, your
20 groundwater samples will come up contaminated, but also,
21 some of the samples just above the water table where the
22 water table does fluctuate, residual contaminants remain
23 in those areas and you will pick those up in soil samples,
24 and that is also a good indication that the contaminants
25 are not from the tank being looked at, that they are from
26 another source, so there is some validity to taking samples

1 at various depths.

2 MR. ZIPP: Madam Chairwoman.

3 MS. ONORATO: Yes.

4 MR. ZIPP: I would suggest that that falls under
5 the Porter-Cologne, not under Sher.

6 MS. ONORATO: That would be my reaction.

7 MS. RUIZ: It sounds then as if we are imposing
8 on industry our duty.

9 MR. ZIPP: We are on a witch hunt.

10 MR. SINGER: I think what we are looking at is
11 the effectiveness of the monitoring that the tank owner
12 is proposing to install.

13 MS. ONORATO: Yes, but I think when you expand
14 the responsibility that he has beyond the tank itself,
15 as far as I am concerned, that's beyond the scope of what
16 was ever intended here. In other words, I want to protect
17 groundwater sources, but I feel we have authority under
18 Porter-Cologne to do what you are saying, and this is im-
19 pacting the underground tank user and expecting him to
20 do monitoring or testing of potential other sources of
21 underground contamination.

22 It doesn't sit easy with me.

23 MR. RICHARDS: The rationale for requiring this
24 kind of test is not primarily directed to contamination
25 from other sources. However, that contamination that is
26 present in the background has to be assessed in order to

1 determine whether or not the monitoring program being in-
2 stalled for an underground tank to detect leakage from
3 that underground tank will be able, in fact, to detect
4 that leakage. If the background contamination is suffi-
5 ciently high or of such a character that it would mask
6 the indicator parameters that would be investigated, that
7 would be looked at to detect tank leakage, then that would
8 suggest that the proposed monitoring program would not
9 be suitable at that particular location and that some other
10 monitoring program for leak detection would be necessary.

11 And it is for those reasons, it's to determine
12 whether or not that leak detection monitoring program will
13 be capable of performing its obligations to detect leakage
14 from the tank that it is necessary to look at what contami-
15 nants and at what levels are already present in the back-
16 ground environment.

17 MS. ONORATO: I understand what you are saying,
18 but I want to think about this a little more myself. Please
19 continue, Mr. Zipp.

20 MR. ZIPP: I have one more comment on 2645(k)
21 on page 4.51:

22 Samples shall be analyzed for one or more
23 of the most persistent constituents that
24 have been stored in the underground storage
25 tank. If the use of the underground storage
26 tank has historically changed, then analysis

1 shall be for at least one constituent from
2 each period of use. If the hazardous sub-
3 stance is known to degrade or transform to
4 other constituents in the soil environment,
5 the analysis shall include these degradation
6 and/or transformation constituents.

7 I was under the impression the Board had directed
8 staff to remove the historical testing program from the
9 regulations as it was not the desire of Sher to look for --
10 well, it was not the intent of the law to look for past
11 activities which again falls under Porter-Cologne, not
12 under Sher.

13 Basically again, we are on a witch hunt. I'm not
14 saying that is necessarily --

15 MS. ONORATO: Let me ask Mr. Singer to comment
16 on that.

17 MR. SINGER: Again, I think the same purpose is
18 involved. There may be constituents that may have leaked
19 from a facility in the past that again may impact the
20 ability of a proposed monitoring method to detect leaks.

21 There are situations where some chemicals mask other
22 chemicals. They do transform other chemicals if they are
23 available in the environment and I think we do have to
24 know what is out there now, if anything is there, in order
25 to determine whether future detection will work.

26 It's not a witch hunt and it is not required in

1 every case. It is only required when you are proposing
2 to perform certain types of future monitoring.

3 MS. RUIZ: Mr. Attwater, perhaps you could comment.
4 The notice for this particular hearing, did it include
5 the necessary notice under the general Porter-Cologne pro-
6 visions?

7 MR. ATTWATER: Not to my knowledge.

8 MR. RICHARDS: I don't have the notice, but it
9 did not.

10 MR. ATTWATER: My recollection is it did not.

11 MS. RUIZ: Did it satisfy EPA's requirement out-
12 lining the statutory authority on which we were relying?

13 MR. RICHARDS: Yes, it did.

14 MS. RUIZ: Including that under Porter-Cologne?

15 MR. RICHARDS: We are not relying on the authority
16 under Porter-Cologne because this is a program not for
17 implementation by regional boards which would rely on
18 Porter-Cologne, this is a program for implementation by
19 local governmental agencies, cities and counties, in the
20 implementation of the Sher bill --

21 MS. RUIZ: Interesting argument.

22 MR. RICHARDS: And it is under the authority of
23 the Sher bill that this was noticed and it is under that
24 authority these regulations are being proposed. We are
25 not intending to rely on the State Board or the Regional
26 Boards' authority to investigate water quality under

1 Section 13267 of the Water Code.

2 MS. RUIZ: Thank you for that argument, counsel.

3 MS. ONORATO: Any other comments?

4 MR. ANTON: I would like to point out that this
5 particular law does include provisions for analysis of
6 soil borings. Some of the comments of Mr. Zipp seem to
7 indicate that there is no authority at all in this particu-
8 lar provision. Section 25284.1(b)2 does include the state-
9 ment, partially and analysis of soil borings at the time
10 of initial installation of the well.

11 There was clear intent in that kind of installation
12 that this law calls for us to analyze these borings. We
13 tried to minimize that to a certain extent, but I do want
14 to point out that the law, this law, not the Porter-Cologne,
15 does call for that.

16 MR. ZIPP: I am not questioning the law's intent
17 to require soil analysis. What I am questioning, or not
18 even questioning, but requesting clarification on the num-
19 ber required and that's going to have to be somewhat flexi-
20 ble, but I do not personally see a need to analyze every
21 soil sample. It's cost prohibitive. It's unnecessary,
22 you know.

23 The soil samples are in storage. If a contaminant
24 is --

25 MS. ONORATO: Staff did indicate there was verbage
26 that requires testing.

1 MR. ZIPP: Yes, but under the wording here it is
2 very unclear as to whether it is requiring partial or com-
3 plete testing and even with the comments of Mr. Richards,
4 allowing for compositing, that still -- well, one techni-
5 cally is very impractical when you are dealing with vola-
6 tile organics, to do any kind of compositing because you
7 have the possibility of losing your constituents and, too,
8 you still are analyzing a prohibitive number of samples.

9 MS. ONORATO: Any further comments?

10 MR. NOTEWARE: I would just comment that Mr. Zipp
11 is in the business of sampling and testing soil, and he
12 is actually arguing against business for his industry,
13 so I think his comments are well received.

14 MR. ZIPP: Just in closing, I would like to re-
15 spectfully request that the Board not make a decision,
16 that they review comments being submitted today by various
17 organizations and individuals, and review those comments
18 and at that time make a decision as to the appropriateness
19 of the current draft.

20 Thank you.

21 MS. ONORATO: Thank you, Mr. Zipp.

22 I would like to call Mr. Yates, Vice President
23 of California League of Food Processors.

24 MR. YATES: Thank you, Madam Chairman and Members
25 of the Board. For the record, my name is Ed Yates. I repre-
26 sent the California League of Food Processors.

1 We did turn in comments at the October 23 hearing.

2 One of the reasons for being here today is we have
3 a concern that one of the concerns we did raise in that
4 previous submission has not been adequately addressed.
5 I know that's not by design.

6 The basic concern comes from the use by the industry
7 of underground storage tanks. Primarily these are tanks
8 that were put in to store alternate fuel oil as a condition
9 of receiving natural gas service from public utilities.
10 This is a requirement of the Public Utilities Commission.

11 So, in order for the industrial food processor to
12 get natural gas, you have to have alternate fuel storage
13 available in the event of a curtailment.

14 For the most part, the industry continues to rely
15 upon natural gas as its principal source of energy. In
16 recent years, the price of gas has been higher than oil
17 and in the last three or four years there has been a lot
18 of oil used by the industry. We are swinging the other
19 direction.

20 The utilities and the Public Utilities Commission
21 have responded by offering special gas rates for those
22 capable of using fuel oil, so we are basically back to-
23 day to a situation where those tanks storing diesel or
24 heavy residual fuel oil are in a standby mode.

25 Now specifically related to the redraft, our com-
26 ments go to basically alternative 7 which deals with;

1 number one, small tanks, and I am sorry, I could not detect
2 a definition of small tanks; and secondly, that alternative
3 is for small input or withdrawals and, of course, that
4 is undefined.

5 So what we have done is we have suggested, I guess,
6 an additional alternative which begins on page 2 of today's
7 submission. We give three treatments to it. If it is a
8 pure standpoint mode; in other words, there's a tank sit-
9 ting in the ground maybe half full of residual fuel oil.
10 If you gage it, gage it periodically and there's no change,
11 then there's really no need to test that tank since the
12 cost of testing ranges somewhere between 500 to 2,000 dol-
13 lars or more per test.

14 If there's confidence that there has been no with-
15 drawal or additions to the tank, it makes no sense to re-
16 quire tank testing if your gaging procedure reflects there
17 is no change in the level. And I won't go into all the
18 details, but the second scenario reflects in the event
19 of a curtailment of natural gas in accordance with the
20 priority system where there may be a withdrawal of fuel
21 oil in some cases maybe for a day or a few hours.

22 There hasn't been any curtailment in the summertime,
23 recognizing that the food processing industry is primarily
24 seasonal and there simply haven't been any curtailments
25 or need because of the priority system to use oil in lieu
26 of gas.

1 So under that condition, a combination of gaging
2 and inventory reconciliation should satisfy and meet the
3 objectives of the regulations for determining and detecting
4 leaks.

5 Third, there are some who do use oil in the summer-
6 time and maybe alternative 7 as it is drafted might be
7 appropriate under those circumstances; where we go back
8 and rely upon the fact and if your gaging and inventory
9 reconciliation of -- remember these people are not in the
10 business of handling fuel as a business, they are merely
11 using it in the boiler, so they are not like a tank farm
12 or someone else who has a large turnover of inventory,
13 so what we are suggesting is along the lines of alternative
14 7 where the example is given for, I believe, it's a standby
15 generator , fuel supply.

16 We visualize that the fuel supply for food process-
17 ing primarily issues in a standby mode. We would urge
18 that the Board give consideration to that and very quickly
19 there are some detailed features of this specific language
20 under that option 7.

21 We don't think that it's appropriate that you re-
22 quire that the same person conduct the gaging test neces-
23 sarily. If you have someone who is trained, who is com-
24 petent, you don't need to have the same person do it all
25 the time. That may provide the job security for the person
26 designated, but in many cases from an administrative

1 standpoint there should be some flexibility.

2 We also don't see why an empty tank needs to neces-
3 sarily be tested. Visualize, if you will, that there are
4 locations with multiple tanks. Given the supply of gas,
5 there is no need to have all those tanks full. There's
6 only a need for maybe a day or two of operation in the
7 event of a problem with gas supply. So there are empty
8 tanks out there. Not ones with high groundwater tables,
9 I can assure you, but there are empty tanks out there,
10 but there's nothing in there, so why do you have to test
11 them?

12 And to wrap this up, I believe your staff and the
13 Board should be complimented. In my opinion, the redraft
14 is a much improved version of the regulations than the
15 original. However, again, I hope that what has been done
16 in allowing for area-wide soil sampling and the other re-
17 quirements will be maintained because of the expense in-
18 volved in the event that there is a problem.

19 Many of the food processors run their own fleet
20 trucks and do have gasoline tanks. We are not specifically
21 addressing all those requirements at this time, except
22 to make you aware that again this is a situation where
23 they are using it for their own consumption. There's not
24 a great volume of through-put and they do watch it pretty
25 close.

26 In the interest of time, I will cut it off there

1 and would be happy to receive any comments or questions.

2 MS. ONORATO: Yes. Ms. Ruiz.

3 MS. RUIZ: Just a couple of questions, Mr. Yates.
4 What size tanks are you referring to now that are widely
5 used in the food-processing industry?

6 MR. YATES: There's a great variance in size.

7 MS. RUIZ: What is that range?

8 MR. YATES: I would say it varies from maybe 5,000
9 gallons to maybe up to 30,000 gallons.

10 MS. RUIZ: And how many state-wide would you say
11 there are?

12 MR. YATES: It would be my estimate that in the
13 food processors that the California League of Food Pro-
14 cessors represent there's probably about 250. That's assum-
15 ing about 2 to 2.5 tanks per facility.

16 MS. RUIZ: Thank you.

17 MR. YATES: These are approximate.

18 MS. ONORATO: Does staff have any comments on the
19 points raised by Mr. Yates?

20 I would particularly like Mr. Singer to comment
21 on Mr. Yates' question as to why tanks that are not being
22 used regularly have to be monitored? I do think that staff
23 has a rebuttal to that.

24 MR. SINGER: In that case, I think it would be
25 up to the tank owner to apply for a temporary closure of
26 that tank and he would not have to comply. I think there

1 are provisions in the regulation to take into account and
2 those could be either on a short-term or long-term basis,
3 up to two years.

4 MR. YATES: You mean you would just close it?

5 MR. SINGER: That is correct.

6 MR. YATES: If you close it, wouldn't you have
7 to put something in it, something in it to stabilize it?

8 MR. SINGER: Not during the closure period if you
9 didn't have to for structural purposes. You could, or
10 you don't have to. It would be up to you.

11 MR. YATES: But you would still have to come for-
12 ward to the local agency and go through the paperwork in
13 doing that?

14 MR. SINGER: You would have to be relieved of the
15 required monitoring during that period of time.

16 MR. YATES: Or you could just monitor and come
17 up with a zero each time.

18 MR. SINGER: You would have that option, right.

19 MR. YATES: Okay.

20 MS. ONORATO: Thank you very much.

21 MR. WILLIS: Mr. Yates, I hope all of your tank
22 owners have gotten them registered.

23 MR. YATES: We put out the word and, yes, there's
24 a rash of paperwork going forward.

25 MS. ONORATO: Thank you, Mr. Yates.

26 I am sorry, Mr. Rinehart, from CIOMA. Your card

1 must have gotten stuck behind Mr. Yates. Is there a Mr.
2 Rinehart here, Rusty Rinehart? I will call him again later.

3 Mr. Robert Short of Goodrich Oil Company of Turlock,
4 California. Good morning, Mr. Short.

5 MR. SHORT: Good morning. I hate to talk about
6 tank gaging again, but due to the comments from Mr. Sher's
7 office, I feel it necessary to make a couple of comments.

8 Tank sticking, as we call it, I was amazed at pre-
9 vious meetings at some of the comments that were made
10 pertaining to tank sticking. I can recall in particular
11 the comment that three people could go drop a stick in
12 a tank and each one would get a different reading. Cer-
13 tainly they would have. Tank sticking is a matter of meas-
14 urement.

15 My expertise is in the field of mechanical engi-
16 neering and I have been in the petroleum business all my
17 life. Tank sticking is done in the following manner: A
18 stick -- and it is not necessarily a wooden stick, you
19 need to have a device that you put down in the tank. We
20 use an aluminum stick rather than a wooden one, something
21 that won't soak up the liquid on the surface of the stick
22 and something that will accurately measure the level of
23 the product inside the tank.

24 Now when you put your stick down inside the hole,
25 most of the larger service stations have a four-inch dia-
26 meter drop tube, so due to the fact that you can agitate

1 that liquid very easily, instead of dropping the stick
2 in, you need to put it down into the tank very slowly.

3 The last inch or so before I push it on down I pause
4 and I look at my watch and I wait for a minute and a half
5 before I go down and come up.

6 Now, if I am sticking unleaded gasoline, I use
7 a gasoline gaging paste and apply it to the outside edge
8 of the stick so that I can see the exact level of the prod-
9 uct in the tank.

10 I find and my employees find that it doesn't matter
11 which of us stick a tank, we can come within an eighth
12 of an inch of each other in terms of reading the stick,
13 and I think it is a matter of measuring. I think it's just
14 like making a dress of measuring out a pound of rice or
15 whatever it is. It's as accurate as you want to be careful
16 to do it.

17 But I think a sticking procedure can be very accu-
18 rate and I would be most happy to show Mr. Sher's office
19 how to do it if they are not familiar with the procedure
20 I have just outlined, because I can certainly tell how
21 much product is in my tanks at any time.

22 The next thing I wanted to address was the tank-
23 testing procedure. On the 19th of this month I met with
24 a group of individuals who are in the same business I am
25 and we discussed a tank-testing procedure where we could
26 find plus or minus a cubic inch which is approximately

1 one and a ninth tablespoons of liquid of loss in a 12,000-
2 galling tank. It is a very simple, very inexpensive pro-
3 cedure, and it seemed to work for us.

4 So, we presented it on the 20th of last month in
5 the morning to the CIOMA ad hoc committee and in the after-
6 noon we presented it to members of the Water Quality Control
7 Board staff.

8 It is a very inexpensive test, but it is based
9 on the laws of physics and chemistry and one of the gentle-
10 men on the Water Quality Control Board staff who met with
11 us was from a background of chemistry and he said that
12 it's very simple, and I don't know why no one thought of
13 it before, but it was certainly work and we have found
14 a number of things.

15 It has its limitations. It's for a small through-
16 put operation. You can't be putting product in and out
17 when you are doing the testing. But we found it worked.

18 In discussing that with the staff of the Water
19 Quality Control Board, we felt that there seems to be one
20 problem in that certification of the test procedure as
21 described in 4.38, they talk about having your test pro-
22 cedures certified, but we haven't been able to come up
23 with who certifies the test procedure, and I'm sure that
24 there are a lot of people who would like to sell very ex-
25 pensive tests, but in the case of a small businessman,
26 I don't think it's necessary. I think we can do it very

1 very accurately, very very inexpensively, and unless you
2 especially want me to, I won't go into the procedure.

3 MS. ONORATO: May I interrupt to ask staff to com-
4 ment on this short demonstration and was it hopeful and
5 can we address this issue of certification, and certainly,
6 if there's an inexpensive and accurate alternative, we
7 are interested in it.

8 Pardon me, Mr. Short, is that agreeable with you?

9 MR. SHORT: Sure, go ahead.

10 MR. SINGER: I believe the alternative is very
11 similar to many of the other tests that are in the market
12 right now called the precision test. It's a generic name
13 for a test defined in the Uniform Fire Code to determine
14 whether a tank is leaking. And I think Mr. Short's test
15 is very similar to that. It uses many of the same prin-
16 ciples. The certification process that is requested in
17 the regulations is a third-party certification similar
18 to UL listing or other type of listing that would be re-
19 quired once that listing process is available, and it would
20 be required within one year after such a listing process
21 became available, and this would then assure small busi-
22 nesses, large businesses, that the tests that they were
23 performing were, in fact, living up to the reliability
24 the manufacturer said it would.

25 MS. ONORATO: Thank you. Are there any further
26 questions?

1 Please continue, Mr. Short.

2 MR. SHORT: I think that pretty well covers it.
3 The test costs about \$5 just to run it. I feel that tank
4 testing and tank sticking and inventory reconciliation
5 has worked for our company for a number of years, and I
6 don't feel we have a loss of product problem. I think
7 that there are a lot of places where there are small busi-
8 nesses that, as we said at the very first meeting, cannot
9 afford to go into the installation of expensive monitoring
10 wells and I think this procedure will work.

11 I wondered if the Board had any questions for me.

12 MS. ONORATO: Mr. Willis has a question and I guess
13 Mr. Finster.

14 MR. WILLIS: Mr. Short, do you feel that having
15 the requirements that are identified under alternative
16 3 that the staff has prepared at the Board's direction
17 helps to ensure that other individuals who do this type
18 of testing, using the stick method and inventory checking,
19 would want to be as careful as you have described the opera-
20 tions that you perform?

21 MR. SHORT: Under alternative 3?

22 MR. WILLIS: Five.

23 MR. SHORT: Five.

24 MR. WILLIS: The inventory reconciliation.

25 MR. SHORT: Well, it's difficult for me to speak
26 to anyone else's organization and say what they will choose

1 to do or what they won't do.

2 MR. WILLIS: You are in business and you do this?

3 MR. SHORT: I personally would choose in my case,
4 and there again, we have small through-put, but I would
5 choose alternative 5 and certainly alternative No. 1 be-
6 cause the tank-testing procedure is so simple and so accu-
7 rate. Where you are talking about measuring a through-put
8 of .15 gallons or you are talking about 100 gallons' loss
9 or 50 gallons' loss or 75 gallons' loss, I am concerned
10 with the loss of a very very small amount.

11 We are using a similar procedure to what weights
12 and measures you use to detect a plus or minus in a pump
13 of one cubic centimeter, which is a little over a tablespoon
14 of product.

15 Frankly, after exploring it, if the test is approved
16 and it is very expensive, I think I would encourage my
17 people to go to alternative No. 1 because the entire empha-
18 sis as we see it as petroleum marketers, is to not waste
19 the product, be able to sell it. It's expensive.

20 MR. WILLIS: Thank you very much.

21 MR. FINSTER: I have the same question. I was
22 wondering whether or not you thought you could meet the
23 limit requirements in the fifth alternative and I think
24 you can do that.

25 MR. NOTEWARE: Actually, I think my question is
26 more for our legal staff. Is there someone whose

1 responsibility it is to certify, for instance, tank testers?
2 Is it the Department of Weights and Measures or someone,
3 or should we instigate the certification somehow?

4 I don't think we should just wait for someone to
5 do this.

6 MR. RICHARDS: We are not aware of any regulatory
7 authority that undertakes that kind of certification at
8 this time.

9 MR. NOTEWARE: All right.

10 MS. ONORATO: Who does it for the fire chiefs?
11 Who do they demand?

12 MR. SINGER: Our understanding, and if there is
13 anybody in the audience, they can correct us, but they
14 require what is called a precision test, which is a generic
15 test which requires certain variables be taken into account,
16 and I believe they take the word of the test manufacturer
17 or the test developer that, in fact, that test meets those
18 criteria.

19 MS. ONORATO: I would like staff to look into that.

20 That sounds too open ended for me.

21 MR. SHORT: If I might make one comment, I would
22 like to see the Water Quality Control Board put the burden
23 of proof upon us in the case of the inventory reconcilia-
24 tion. It is customary in dealing with the IRS to make
25 out our reports and sign them, and they come in and audit
26 them. Sales tax people, it's a very good example, they

1 come in and audit very frequently and they audit at random,
2 and I think they pretty well keep sales tax in line, and
3 I think in terms of inventory reconciliation, if you require
4 that they be done on a daily basis and that they be availa-
5 ble for inspection upon immediate notice upon the premise
6 by an authorized state inspector, I think that you would
7 find records kept much better than if you required a monthly
8 report be sent in.

9 Another thing that comes to mind is our tank trucks.
10 The California Highway Patrol a year or two ago came out
11 with a procedure where we had certain guidelines which
12 they had established and procedures they wanted us to fol-
13 low in terms of servicing our trucks and record keeping
14 and keeping the trucks the way that they should be kept
15 so that they were safe when they were operated and driven
16 down the highway, and frankly, I hate to admit it, but
17 once they came up with that procedure, we keep a much bet-
18 ter truck on the highway than we ever did before.

19 They approached it in a manner of not only as a
20 body having authority telling us what to we have to do
21 in a small operation where we didn't know what some of
22 the things were, they took the time to show us how to do
23 it and what they wanted done on the trucks, and I find
24 in that case it's caused us to have a better truck.

25 In the case of the way that sales tax is audited,
26 I think it keeps everyone honest and I think you could

1 do the same thing with your tank testing. If I have 300
2 customers who select alternative A and decide to test that
3 tank monthly, I hate to think that the taxpayers would
4 have to pay an inspector to go out and observe that tank,
5 each one of those tanks being tested. I would prefer to
6 have you say there will be a fine and a penalty if you
7 allow that tank to leak and you have not performed that
8 test, and you need to verify and sign something where you
9 have done it and give the date and time and test results,
10 but I think the test is cost effective.

11 It's all right with me if someone from Weights
12 and Measures or your own Board comes out every time we
13 perform these tests, but we are just about going to have
14 in our small business someone from the government living
15 with us and going out every day.

16 MS. ONORATO: Thank you very much, Mr. Short.

17 I would like to call a break, but I think in view
18 of the hour, it is about ten to twelve, we will take a
19 recess for lunch and reconvene at one o'clock promptly.
20 There are 17 more people that wish to speak.

21 (Noon recess)
22
23
24
25
26

1 TUESDAY, NOVEMBER 27, 1984

1:00 P.M.

2 ---oOo---

3 MS. ONORATO: We will resume the meeting, please,
4 ladies and gentlemen. I would like to call on Mr. Howard
5 Robbins from Escondido, California.

6 MR. ROBBINS: I would like to make some very short
7 comments, mostly technical in nature based on the rewriting
8 of the proposed regulations.

9 First of all, I would like to identify myself a
10 little more fully. I am registered professional engineer
11 in the State of California in mechanical engineering. I
12 am also president and owner of an underground tank fabrica-
13 tion plant.

14 We very early in the game recognized the impact
15 of the impending Sher bill and decided on double-wall tank-
16 age and have been building the tanks religiously since
17 then.

18 I would like to preface anything I say with the
19 remark that I was quite pleasantly astonished by the com-
20 petency that I saw reflected in the rewrite of the guide-
21 lines. I have been at most of the meetings and it is a
22 very complex subject, and I think the staff did a great
23 job.

24 That doesn't mean I agree with everything they have
25 in there, far from that, being known as the maverick that
26 I am.

1 Most of the questions that I had to raise were
2 covered prior to this, but I would like to raise three
3 very technical points.

4 The first one occurs on page 3.8 where they call
5 for what is called a strike plate in the annular space
6 of any double wall tank in order to permit stick monitoring
7 to be used. That requirement is nothing more than an extra
8 plate which takes the impact of the stick dropping through
9 and developed from a previous problem to two other problems
10 and really has no meaning in this connotation, in this
11 context.

12 The reason it has no meaning, in most of the tanks
13 there's only a space of between one and a half and three
14 inches, and when the tanks were assembled, at least steel
15 tanks, that is, it would be almost impossible to put that
16 plate in and to see it, and it would serve no function.
17 There's no fluid in that area. There is no possibility
18 of corrosion and you can't put the stick through the tank.

19 I don't want to get into a technical argument if
20 I can help it, but I believe that's an oversight and is
21 really meant for materials that are subject to penetration.

22 MS. ONORATO: Mr. Robbins, may I interrupt and
23 ask staff -- is it premature to ask if that is worthy of
24 further evaluation or can you make any kind of comment
25 at this time?

26 MR. SINGER: If you want to continue with the

1 discussion and let me talk with the staff a little and
2 we will try to get an answer at the end.

3 MS. ONORATO: Well, we have got two more very tech-
4 nical questions.

5 Is that all right, Mr. Robbins?

6 MR. ROBBINS: Fine.

7 MR. FINSTER: You are talking about steel tanks?

8 MR. ROBBINS: Yes, I am talking about steel tanks.
9 It is not valid for steel tanks, in my estimation.

10 The second item I have I must preface by saying
11 I am currently embroiled in massive litigation against
12 the people who propound this and what I am about to say
13 is guaranteed to antagonize probably the majority of our
14 customers, so based on what Mr. Noteware said before about
15 biting the hand that feeds one, I will plunge fearlessly
16 into this anyhow.

17 It involves the tank-lining process and I specifi-
18 cally refer to page 6.5. The first one is just a comment
19 where it talks about lining, certification processes either
20 within a year of the passing of the regulations or within
21 a year of their being promulgated by an outside agency,
22 they have been promulgated and available since last April
23 by Underwriter's Laboratories, and that is the reason that
24 there is so much controversy in the field right now. That's
25 just a statement. Those are available and haven't been
26 used.

1 The much more important one is on page 6.7 where
2 the vacuum test is called for and the number is given of
3 5.3 inches of mercury. I believe a mistake was made in
4 taking that number again out of context as part of the
5 Underwriters' Laboratories test procedure. What they said
6 was you run a vacuum or a loading test on the thing and
7 then add 5.3 inches of mercury. The 5.3 inches of mercury
8 has very little relative meaning in terms of testing any-
9 thing..

10 To give you an idea of what that means, the prob-
11 lem is that a tank is underground. It has deteriorated
12 as shown by the evidence that it leaks. You go to repair
13 that tank and the question is, is it structurally competent
14 to withstand forces on it, namely, if it floods, if there's
15 water all around it.

16 There's water all around it as can be ascertained
17 by the fact it is now leaking, that's where the leak came
18 from. In the testing process of all new tanks one is re-
19 quired to pull the vacuum inside of the tank to simulate
20 that load. That is the load an underground tank takes.
21 For the lining process Underwriters' Laboratories specified
22 that you will take a tank, line it, it will then be tested
23 to their specification. Their specification was to simu-
24 late the vacuum loading inside the tank. Again that simu-
25 lates the water on the outside.

26 You stand for a period of time and then you add

1 the safety factor of 5.3 inches of mercury to make sure
2 the tank doesn't collapse on anybody working on it. Some-
3 how that 5.3 got in there, but the rest of the test didn't.

4 MS. ONORATO: Do you accept that comment, Mr. --

5 - MR. SINGER: I think we would have to review that
6 UL listing again and maybe discuss it with you to see what
7 they were intending with that. I don't think we can re-
8 spond to that at this point.

9 MR. ROBBINS: I warned everybody that it was rea-
10 sonably technical.

11 MS. ONORATO: No, but I appreciate your raising
12 these points.

13 MR. ROBBINS: One final comment on the precision
14 test that Mr. Singer mentioned before. Having quite a
15 bit of experience with these precision tests, the way they
16 are administered for the most part for an independent user
17 is that there testing organizations who have certified
18 their credibility who run the test and these people, third
19 party, certify to the accuracy of the test.

20 MS. ONORATO: And that would be your recommenda-
21 tion?

22 MR. ROBBINS: Oh, yes. It's being done all the
23 time, and there's no problem in the technical aspects of
24 it at all.

25 MS. ONORATO: Thank you very much, Mr. Robbins.

26 Were there any questions of Mr. Robbins?

1 Mr. Rinehart, representing CIOMA. He is not back.

2 Mr. Shuster from Shuster Oil.

3 MR. SHUSTER: I am Bob Shuster from Escondido,
4 California, of Shuster Oil, down in Southern California,
5 where it is not raining incidentally.

6 I am still a little bit concerned on the inventory
7 reconciliation. 2644(c), inventory reconciliation, does
8 not take into account under Section (c) the small businesses
9 who may have need to use product to fuel vehicles on week-
10 ends or holidays, but do not have the office staff availa-
11 ble to comply with the restrictive bookkeeping requirements
12 that are required, and they would be there on the next
13 normal working day, but a lot of the plumbers or television
14 repair technicians, cable companies that would use the
15 product over the weekend or at night don't have anyone
16 there to monitor the tanks, so to speak. They draw their
17 fuel and report it and leave, but they can't do the daily
18 inventory that would be required of that tank over the
19 weekend and holidays.

20 It also does not allow for the use of card or key-
21 lock operations at sites that provide for 24-use during
22 weekends or holidays, our commercial sites.

23 MS. ONORATO: Staff, is there any way to meet those
24 concerns?

25 MR. SINGER: Let me address the second concern
26 first on the key locks. During the weekdays there is

1 someone that goes to the facilities on a periodic basis,
2 I assume, to check it?

3 MR. SHUSTER: Well, we are there during the week-
4 day.

5 MR. SINGER: It's not a key lock during the weekday?

6 MR. SHUSTER: Yes, it's a key lock during the
7 weekday also. In my particular instance, it's a bulk plant.
8 We have a key lock out front and, you know, we monitor
9 our tanks then, but on Saturdays, Sundays and holidays,
10 we are not down there to monitor and stick the tanks, but
11 we do stick them Monday morning when it is the next normal
12 workding day that we will be checking our inventory. I
13 don't think one or two days there that would be required
14 to not monitor it for that type of an operation would have
15 any significant impact on a leak.

16 MR. SINGER: I think we agree with the concept.
17 We were looking at the two days off on a weekend as not
18 a significant compromise in terms of monitoring, and I
19 think we can take that into account.

20 MR. SHUSTER: Okay, thank you.

21 And the small tank exemption, I understand the
22 federal regulations would have one that would exempt tanks
23 of 1100 gallons or less for motor vehicle fuel or home
24 heating storage tanks. Why can't that be applied to the
25 State of California?

26 MS. ONORATO: You should ask the author.

1 MR. SHUSTER: I don't want to ask him anything.
2 He's after us.

3 MS. ONORATO: I do think we have every indication
4 from Mr. Sher's staff person this morning, Mr. Shuster,
5 that the author was concerned about all threat regardless.
6 I don't think he had any intention of exempting anybody.

7 MR. SHUSTER: Unfortunately, I don't think he
8 did either.

9 I left an article with the people over here. It
10 was taken out of the San Diego Union about two weeks ago,
11 I believe. I don't have the date on it, but there is a
12 small businessman that's very concerned that he will be
13 able to comply with anything. So, that's my concern, is
14 the small business.

15 MS. ONORATO: Thank you, Mr. Shuster.

16 Are there any questions of Mr. Shuster?

17 I would like to call Mr. Bert McCormack of McCor-
18 mix Corporation.

19 MR. McCORMACK: Thank you. I am Bert McCormack,
20 President of McCormix Corporation. I am representing
21 McCormix Corporation as well as 1500 commercial accounts.

22 I have to apologize, I don't have a formal presenta-
23 tion to present today due to the time factor. We did not
24 receive your draft until the 19th. CIOMA did not receive
25 theirs and it was not here on the 9th. They didn't receive
26 it until the 13th and we just did not have time to run

1 a business and sit down -- I don't have a staff like you
2 do over there to, you know, go through this like we should
3 have.

4 So, I'm asking the Board to consider this and not
5 make any decision today, and I am not the only one that's
6 saying this today.

7 Even the big boys, even major oil companies, have
8 not had time to really review it and I think from the com-
9 ments you have heard this morning and, you know, this thing
10 isn't over yet, and the impact it will have on the small
11 businessman is devastating.

12 And I'm asking your Board to consider this very
13 seriously and, you know, we could live with Article 5 if
14 it wasn't so stringent, and maybe a .5 or half of one per-
15 cent we could live with, but if you wait and say, well,
16 we will change it down the road a year or so, there's going
17 to be a lot of innocent businessmen hurt.

18 You know, I would like to see it done right the
19 first time around and not wait a year before someone else
20 gets hurt.

21 MS. ONORATO: Mr. McCormack, you are aware of the
22 time frame.

23 MR. MCCORMACK: I am quite aware of that.

24 MS. ONORATO: That we have to adopt some regula-
25 tions.

26 MR. MCCORMACK: Your staff was supposed to have

1 this out on the 9th. We didn't receive it in Southern
2 California until the 19th.

3 MS. ONORATO: I can't understand that because I
4 know it was available on the 9th. It's the mails, I guess,
5 we have to bother --

6 MR. McCORMACK: Arthur Van Orden Water Engineering
7 Design Division of Los Angeles received his Monday of this
8 week, so, you know --

9 MS. ONORATO: We have no control. I tell the audi-
10 ence that this was available and mailed out from our office
11 on the 9th. Now we have --

12 MR. McCORMACK: CIOMA was at the office on the 9th
13 and could not receive it.

14 MS. ONORATO: Would you comment?

15 MR. RICHARDS: I can't comment on whether CIOMA was
16 there and whether or not they received it on the 9th, but
17 copies of the regulations were available on the 9th. There
18 is no requirement that they be mailed out on the 9th. In
19 fact, the draft regulations for many of the people on the
20 mailing list, certainly for all the people who had com-
21 mented on previous drafts, were mailed out. Other copies
22 were not mailed out until people requested them pursuant to
23 the notice that was circulated. But there were copies
24 available at the offices of the State Board as is required
25 by the Administrative Procedures Act on the 9th.

26 MR. McCORMACK: Well, I contradict you because we

1 had a meeting down in Long Beach and we were having a car-
2 rier come by and pick it up and bring it to us because we
3 were that concerned, and we could not get it, and I was on
4 your mailing list because I did testify at your last hear-
5 ing, and I got mine on the 19th.

6 I am a small businessman and I can't fly up here
7 pickk it up, and I don't think you can expect any small
8 business all the way from Southern California or Northern
9 California to get it. You might be going by the letter of
10 the law, but I contradict, it was not ready on the 9th.

11 MS. RUIZ: Madam Chair.

12 MS. ONORATO: Yes.

13 MS. RUIZ: I, too, have been approached by members
14 of the regulated community who have expressed concern not
15 just on this matter, but other matters that have been be-
16 fore this Board, that these drafts were not available even
17 though Board Members may have received theirs on that speci-
18 fic date, that people were sent around to pick up these
19 drafts and they were not available.

20 I think we face this problem every time we issue or
21 adopt regulations, and I think it is something that bears
22 further study by this Board, and perhaps we need to address
23 this problem by way of policy.

24 MS. ONORATO: Well, we certainly will take it into
25 consideration. I am quite shocked, Mr. McCormack, because
26 as far as I knew, they were mailed out and available on the

1 9th. That's what I was told.

2 MR. McCORMACK: I figured that because I read your
3 letter and I wanted to bring it up to the Board because we
4 would have been more prepared today. We just didn't have
5 the time and I'm not the only one.

6 MR. ANTON: May I explain what the availability was?
7 There were a number of copies available in my office or in
8 my secretary's office right outside my door on the 9th. To
9 my knowledge, we never ran out of them in that area. I
10 don't know, people may have asked in the wrong location.
11 They were not mailed out the 9th. I want to correct that.
12 We did have them available on the 9th, but the mailing did
13 not get out until Tuesday because Monday was a holiday. That
14 would have been on the 13th when they were actually mailed
15 simply because of the logistics of reproducing the thousand
16 copies that we had to produce and get mailed out.

17 So, they weren't mailed out until the following
18 Tuesday. However, they were available in my office on the
19 9th.

20 MR. RICHARDS: Everybody who appeared in the Office
21 of the Division of Technical Services or in the Office of
22 Chief Counsel and requested a copy of the regulations on
23 the 9th had access to one.

24 MS. ONORATO: The date stamped on this one is the
25 15th.

26 MR. McCORMACK: For such a monumental things as

1 we are all going through, it is our livelihood in the small
2 business. "It was out of my front office by the front
3 door." That's hard for me to buy.

4 MS. ONORATO: Nevertheless, Mr. McCormack, you
5 stated clearly you sent someone by on the 9th and they
6 were told it was not available. I think Mr. Anton was
7 trying to rebut that comment.

8 MR. McCORMACK: And he said, "I need more than
9 that." Mr. Devine said he needed more than that, and the
10 girl said the military had come by and picked up all the
11 other copies and she only had two.

12 Now, if you want to know who the girl is, when Mr.
13 Devine comes back, we will give you her name.

14 MR. WILLIS: I think we have heard the comment.
15 The important thing is the fact that we had a workshop,
16 an additional workshop which was not scheduled except the
17 Board decided to do so at the first hearing, and we are
18 having this hearing, and there's even yet the possibility
19 of further consideration after today if the Board doesn't
20 vote today, and I think it's worth considering that the
21 Board under the basic statute that has been handed us by
22 the Legislature is trying to bend over backwards to provide
23 as much time as possible and still meet the letter of the
24 law to have these things adopted by the end of this calendar
25 year.

26 There have been inordinate changes made, rather

1 dramatic changes made in these regulations, and while I
2 feel, you know very sensitive to your comments, sir, and
3 I can only respond that the world is not a perfect place,
4 but we certainly are trying to make this as good an opera-
5 tion as possible.

6 MR. McCORMACK: And we are trying to stay in busi-
7 ness, and granted, your staff looks like they have done
8 a lot of changes; like they removed "historic," but let
9 me read you this sentence:

10 In certain situations, determining if hazard-
11 ous substances are present in the area around
12 the underground storage tank,"

13 I mean, they took out the word "historic" and in one sen-
14 tence that is very ambiguous, we are right back to ground
15 zero. They didn't do anything.

16 MR. WILLIS: What section?

17 MR. McCORMACK: 4.1(a), go right past where they
18 scratched out "historic," and they say:

19 Any unauthorized release that may occur in
20 the future; and in certain situations, de-
21 termining if hazardous substances are pres-
22 ent in the area around the underground stor-
23 age tanks."

24 That gives you, you know, your counties to go
25 after "historic."

26 MR. WILLIS: Madam Chair, with your indulgence,

1 I would ask staff if they would respond to that.

2 MR. ANTON: I would like to point out again, I
3 pointed out to Mr. Zipp the fact that the law specifically
4 provides for an analysis of soil borings at the time of
5 initial installation, and does not in all instances totally
6 preclude the concept of determining what is there at the
7 time that the installation and monitoring system goes into
8 place.

9 MR. MCCORMACK: You make it clear, it looks like
10 you did what we asked you to do, take out "historic," but
11 you put it right back in.

12 MR. ANTON: No, the point is if the law provides
13 for us to do something, we can't ignore that section of
14 the law simply because someone suggested that we do so.

15 MS. RUIZ: But that doesn't explain then why the
16 cosmetic change of eliminating the word "historic." If,
17 in fact, you have the statutory authority, then why was
18 that stricken?

19 MR. ANTON: Okay.

20 MR. SINGER: The reason the wording is like it is
21 "in certain situations," those situations are only those
22 monitoring alternatives where groundwater or borings for
23 vadose monitoring are to be required. Those are the situa-
24 tions and those are the only situations that soil boring
25 samples are required and that then addresses this sentence
26 in the regulations.

1 It is only in certain situations and those situa-
2 tions are where borings for groundwater or vadose zone
3 monitoring are required.

4 MS. RUIZ: That doesn't explain why the word "his-
5 toric" would have to have been removed then. Why was the
6 word "historic" removed from that?

7 MR. SINGER: The comments that we received earlier
8 were that we were looking for historic problems associated
9 with any tank. What we are now looking at is baseline
10 or background data that may affect future monitoring and
11 in certain situations the determination of historic prob-
12 lems will not impact future monitoring such as inventory
13 reconciliation.

14 If you have contaminants outside the tank, that
15 doesn't impact the ability for reconciliation to be per-
16 formed.

17 So, in those situations we are not asking for what
18 would be called historic or background data.

19 MS. RUIZ: But in this given situation now it could
20 be a circumstance where you will be asking for historic
21 background data even though the word is not used; is that
22 correct?

23 MR. ANTON: It is background data. We are not look-
24 ing at whether or not it was historic or how long it has
25 been there, but the concern is for determining what is
26 there at the time of the boring.

1 MR. McCORMACK: Who is going to clean it up?

2 MR. ANTON: His concern is who is going to clean
3 it up? There are other authorities that can be addressed
4 to determine if cleanup is needed and who would be responsi-
5 ble for that cleanup. I don't think we can escape that
6 provision of the law if evidence does show that there is
7 a contamination situation there.

8 MR. McCORMACK: Well, you know, your staff just
9 didn't do anything from all the testimony in your last
10 hearing.

11 MS. ONORATO: Mr. McCormack, please, I want to
12 say something. You have been to the earlier meetings.
13 We had a meeting on the 23rd of October. We got the record
14 back from the reporter as quickly as possible. Our staff
15 then had to take that record and you know how much testi-
16 mony there was. It was all day. I think they came up
17 with the draft regulations on September 9, which was no
18 mean feat.

19 Now for you to blame them for the law itself, I
20 can't accept that.

21 MR. McCORMACK: I am not blaming them for the law.

22 MS. ONORATO: But you are suggesting that we are
23 not emphathetic enough to the concerns you have raised,
24 but we are constrained --

25 MR. McCORMACK: They put a costmetic effect on and
26 they did what we asked, but they didn't really change

1 anything. They just x'd out some and put in another para-
2 graph that is very ambiguous.

3 MS. ONORATO: But, Mr. McCormack, they just an-
4 swered your question as directly as they could by pointing
5 out --

6 MR. MCCORMACK: We are back to "historic" and we
7 are going to be responsible for something we didn't do
8 that was done before we were born, and I have to clean
9 it up?

10 MS. ONORATO: Mr. McCormack, let me put it to you
11 this way. If we are going to monitor the area around an
12 underground tank, we have to know what is in there already.
13 We have to know what the background is and if that does
14 show some kind of historic problem there, then I don't
15 know -- on a case-by-case issue, you will have to seek,
16 or the local implementing agency or county agency or city
17 agency will have to seek the historic responsible person,
18 but in the meantime, it goes without saying that someone
19 is going to have to clean it up, and I don't think anyone
20 can change that fact, and I don't think our staff is able
21 to do so either, Mr. McCormack.

22 MR. MCCORMACK: Other people have called this a
23 witch hunt, and it is. You are after the independent oil
24 people and you are going to run us all out of business
25 and we are going to go bankrupt.

26 MS. ONORATO: Mr. McCormack, I think Mr. Finster

1 would like to make a statement.

2 MR. FINSTER: I would like to make a statement.
3 I disagree with your statement that we are out to get the
4 small businessman. I'm sure we are not.

5 I would like the record to show he has indicated
6 the change wasn't made that was requested. I think we
7 should look into it and we will, but everything that was
8 testified at the other one doesn't mean we are going to
9 make the changes. In other words, all I would expect you
10 to do is advise us and the Board that those changes you
11 requested were not made. But just the fact that you made
12 them beforee doesn't mean we are going to make those
13 changes.

14 MR. McCORMACK: We didn't expect it, but I didn't
15 expect the cosmetic treatment.

16 MR. FINSTER: Well, I'm just saying, I appreciate
17 your comments regarding the contents of it, but the state-
18 ment that it was not made just because you requested it
19 is not a valid statement.

20 MR. McCORMACK: Well, I would appreciate a little
21 more time to study it and I am not the only one. I think
22 I talked to a lot of people --

23 MS. ONORATO: Thank you, Mr. McCormack.

24 Are there any other questions?

25 Mr. Gerry Hagy, staff engineer for WOGA. Good
26 afternoon, Mr. Hagy.

1 MR. HAGY: Good afternoon. Once again, my name
2 is Gerald Hagy and I am employed by Shell Oil Company which
3 is a member of Western Oil and Gas Association, or WOGA.

4 Today I am speaking on behalf of WOGA and I have
5 participated in WOGA's effort to put these comments together,
6 and also, on prior draft comments to the proposed regula-
7 tions and the current draft also.

8 At the outset, again, I want to let the Board know
9 that WOGA appreciates this opportunity to comment on the
10 proposed subchapter 16 regulations for underground storage
11 tanks of hazardous substance.

12 WOGA also appreciates the Board's efforts to an-
13 swer some of WOGA's prior comments and others in this re-
14 vised draft. We recognize that this has been done and
15 that it is, I think, greatly appreciated by all.

16 Our written comments contain a detailed section-
17 by-section analysis of the proposed regulations and we
18 have been told by staff that the Board has already received
19 those from the staff, and staff has them also.

20 These comments that we did put in writing were
21 reviewed yesterday, into the evening yesterday, with your
22 staff. This was the earliest that we could get together
23 with your staff after receiving the regulations, at the
24 earliest possible date putting together our own comments
25 and in getting our group together, but we did feel that
26 it was important to try to review them with the staff.

1 Unfortunately, that really isn't enough time.
2 The comments, we felt, were fairly extensive. They con-
3 tained some major items and quite a few minor items.

4 We did get some indication from staff that some
5 of the minor items they had probably already found and
6 identified and agreed to. However, again, we really feel
7 there was not time, you might say, to sufficiently explore
8 the major concerns. At any rate, to be as brief as I can
9 today, because I feel we have gone over a lot of this
10 material already, we will bring up just a few of the major
11 concerns.

12 First, we believe that the revised draft regula-
13 tions still go well beyond the statutory jurisdiction
14 granted to the Board in Section 25284.1(b)(2). The revised
15 regulations continue to pre-empt some of the decision-making
16 authority expressly given to local agencies to approve
17 the location and number of wells, the depth of wells and
18 the frequency of monitoring.

19 For example, in Table 4.1 which summarizes the
20 monitoring alternatives there are very specific instruc-
21 tions regarding the minimum number of groundwater monitoring
22 wells and the minimum monitoring frequency of groundwater
23 monitoring wells.

24 WOGA believes that by setting these minimum levels,
25 the Board has effectively removed some of the discretion
26 from the local agency that was given to it by the statute.

1 Our second general comment is in regard to Section
2 2640 of the proposed regulations. In the prior draft of
3 the proposed regulations, subsection (f) of Section 2640
4 provided that additional monitoring methods could be
5 approved by the local agency if they would be as effective
6 as those methods in the regulations. That subsection was
7 dropped from the current draft. WOGA asked the Board to
8 keep that subsection in the regulations. It would allow
9 the local agency the necessary flexibility to approve a
10 monitor method which is not described in the regulations
11 but may well be suited to a specific situation in question.

12 It would also provide an incentive for owners and
13 operators of underground storage tanks, equipment manu-
14 facturers, et cetera, to review new technology and imple-
15 ment it if it is going to be practical.

16 MS. ONORATO: May I interrupt you and ask staff,
17 why did we drop that section (f)?

18 MR. SINGER: We felt that the initial regulations
19 provided basically one monitoring method; that is, differ-
20 ent forms of monitor between each other and that there
21 may be other types of monitoring that may be appropriate.
22 The revised draft has now provided alternatives and we
23 feel that most of the alternatives that can be provided,
24 the minimum levels have been taken into account with the
25 alternatives that we are now proposing, and that we would
26 not want to see local agencies approve monitoring

1 alternatives that would be less stringent than what we
2 are now proposing.

3 MS. ONORATO: However, the law provides if they
4 have adopted less stringent monitoring as of January 1
5 of 1984, you can't do anything about that; can you? So,
6 you can't change it?

7 MR. RICHARDS: With respect to those cities and
8 counties which have adopted ordinances and are issuing
9 permits prior to January 1, 1984, those cities and counties
10 have an exempt program. They can do anything they want
11 to.

12 The State Board staff and you as the Board Members
13 are not in a position of oversight over those cities and
14 counties. Whether or not their program meets the require-
15 ments of the statute as is required by the statute is not
16 a decision that is given to the State Board to make.

17 The regulations that are proposed for adoption
18 by the State Board, which will be implemented by other
19 cities and counties, are not binding upon the cities and
20 counties that have an exempt program.

21 MS. ONORATO: Thank you.

22 Pardon me for interrupting you.

23 MR. HAGY: If I might just make a comment about
24 that, we were not addressing those agencies that had the
25 regulations in place. This addresses the regulations as
26 they would apply to the local that come under this statute.

1 We, nevertheless, feel that that is a very viable option
2 because I think we will all be better off given that a
3 lot of new things will be developed as time goes on. People
4 are already talking about them.

5 When you stop and think, when the law was written,
6 we weren't even talking about double-walled tanks and,
7 of course, now it's a very viable and very welcome solu-
8 tion to our problem.

9 Our third general comment involves tank-testing
10 intervals. It is true that the statute allows the Board
11 to establish testing intervals. However, WOGA believes
12 that testing all existing tanks annually is too frequent
13 for all cases and subsequently increases the cost of com-
14 pliance with little or no added protection to the ground-
15 water.

16 For example, a recently installed fiberglass
17 tank should not be required to follow the same testing
18 schedule as the 15-year-old unprotected steel tank, and
19 yet, that is the way we would interpret the regulations.
20 It is suggested that an interval schedule be established
21 based on tank material, age of tanks and other criteria
22 that might be considered.

23 Fourthly, our general comments concern section
24 2641(c), under alternative 8 of that subsection. The num-
25 ber of alternative monitoring methods are established for
26 small businesses, owners who are planning to close their

1 facility within three years, and governmental agencies
2 with budget constraints. WOGA, again, asks the Board to
3 formally recognize the impossibility of compliance with
4 monitoring alternatives before July 1, 1984, recognizing
5 the recent change by the Legislature.

6 We do realize that is law, but we are also recog-
7 nizing that you have already partially reacted to that
8 and that is a welcome change.

9 We think that still we will not be able to meet
10 that date and, therefore, we have asked you to consider
11 further alternatives.

12 We believe that once again, to be a little bit
13 redundant, that there are many reasons to substantiate
14 that. Many of them I think you are well aware of, but
15 one of them that maybe we haven't made as clear as we should
16 have, is the impact on the local agencies. We are really
17 not going to be able to react until we can get together
18 with the local agencies on site specific solutions to the
19 regulations. And I have talked with many of all size local
20 agencies in the last six to nine months and that is the
21 one thread that I hear from all of them, we are all for
22 all of this, but how do we handle it? And I think we can
23 see even with those agencies that have passed their own
24 regulations prior to the first, they are not even living
25 up to their own regulations for that reason.

26 So, it is something that really should be

1 emphasized.

2 We suggest that the Board allow such owners and
3 operators to implement those monitoring techniques such
4 as tank testing and inventory reconciliation which can be
5 implemented relatively easy and still provide protection
6 until other alternatives become available similar to what
7 you have done for small businesses for economic reasons,
8 and for new tank installations because we will all be better
9 off with new tanks.

10 Since the regulations provide for an 18-month
11 period before local agencies must issue permits, this phased
12 in compliance with the monitoring alternatives would be
13 consistent with the phased in adoption of permits. In other
14 words, you have built into the regulations appropriately
15 a time period for final permits to be issued and this kind
16 of a new alternative would coincide with that.

17 Finally, we recognize that the Board is under a
18 statutorily imposed deadline, January 1, 1985, to promul-
19 gate these regulations.

20 We must point out regulations which are impracti-
21 cal or unable to be implemented, even though they may be
22 adopted by January 1, will not serve the best beneficial
23 purpose. These regulations suffer from defects such as
24 lack of statutory authority or create needless duplication
25 of effort on the part of industry.

26 For these reasons, we urge the Board to provide

1 a more thorough review of the regulations before promulga-
2 tion.

3 We are interested in additional workshops as we
4 have been in the past with the Board and the staff, and
5 with that, I will close my comments.

6 MS. ONORATO: Any questions? Yes, Mr. Willis.

7 MR. WILLIS: Mr. Hagy, you mentioned about tank
8 testing and you pointed out we have the disparity between
9 an annual test for a fiberglass tank that was five years
10 old or newer compared to a fifteen-year-old steel tank
11 which was a pretty good example, but am I to read into
12 your comment then that if a fifteen-year-old steel tank
13 should be tested annually and that a five-year-old fiber-
14 glass tank should be tested biennially or some other kind
15 of period?

16 MR. HAGY: Well, I think it's appropriate to say
17 here that I have a problem with trying to solve individual
18 technical problems in this manner because I think they
19 are too detailed, they impact too many different things.
20 Our point is that we should recognize that there is a dif-
21 ference and my example is only to illustrate what would
22 be a very common situation.

23 The industry in the past five to ten years have
24 installed a lot of fiberglass tanks and we did it because
25 we really felt they are a lot better than unprotected steel
26 tanks.

1 So, to say that, okay, let's test them all the
2 same, to me suggests that you are not testing often enough
3 for a steel tank, but you are testing too often for a fiber-
4 glass tank, so we are not saying don't test or anything
5 like that, but we are saying take that into account. It
6 just has a lot of logic, I believe.

7 MR. WILLIS: As a regulations read right now under
8 the fifth option in the alternatives everybody would be
9 testing their tank once a year, so one could presume that
10 if you have a very old steel tank that would be an adequate
11 testing procedure as far as the tank is concerned. What
12 do you suggest for a tank that has been put in the ground
13 in the last ten years?

14 MR. HAGY: As a suggestion, you know, this is
15 just me talking now because you get three heads in a room
16 and we will all disagree.

17 MR. WILLIS: You sound like attorneys.

18 MR. HAGY: You know, as a suggestion, I would
19 think in terms of something in the order of 15 years or
20 in excess of 15 years, and then not every year. You might,
21 after 15 years, go on a three-year or five-year testing
22 program.

23 MS. ONORATO: Are there any further questions?

24 Thank you very much.

25 Mr. John Knox, Jr.

26 MR. KNOX: Thank you, Madam Chair and Members of

1 the Board. My name is John Knox and I am an attorney from
2 San Francisco, and I represent today Genelco corporation
3 of Dallas, Texas, which provides you for a change of pace
4 today for a different perspective and that is that we repre-
5 sent the manufacturer of, I think without fear of contra-
6 diction, the finest monitoring device available in the
7 United States today, and we feel that the regulations
8 that have been proposed do not make room for this device
9 which is the latest technology for the purpose of monitor-
10 ing leaks from tanks and pipelines in connection with those
11 installations in California.

12 Now we think that this device can be shown to be
13 the most cost effective; that is, that it provides the
14 most monitoring for the least cost, that it is the most
15 dependable in the sense that the technology, while it is
16 new, as it is combined for this particular purpose, is
17 technology that's been tested over and over in various
18 applications throughout the country; that it's of the least
19 damage to the environment of any of the techniques that
20 have been proposed, and it is totally state of the art.

21 And yet, the alternatives that are provided in
22 the suggestions that we are talking about here today do
23 not really make room for this device. It makes room proba-
24 bly most closely in alternative No. 6, which allows for
25 the use of this device which is an electronic device, moni-
26 toring without puncturing the aqueous layer, but what it

1 does is add so many other regulations that it takes away
2 the cost effectiveness for the industry and that's too
3 bad.

4 Now we have with us today Mr. Rinehard, consulting
5 chemical engineer, who is prepared to answer any technical
6 questions, but let me point out that what this device does
7 is provide a total monitoring of any leaks in the tanks
8 or in the pipes to the tanks on a continuous basis, not
9 just on a daily or monthly or quarterly basis, but a con-
10 tinuous basis, with a continuous tape that monitors time
11 and everything else, that the technology is widely recog-
12 nized, used in leak detection, plume detection, air pol-
13 lution control and many other things, so that this type
14 of device has been tested.

15 It's not new in the sense it's off in the wilder-
16 ness somewhere. They are very capable, and in addition
17 to monitoring the tanks and piping, they monitor themselves
18 as well so that you can find out whether or not there has
19 been some mechanical or other fault in it so that you can
20 find out what's going on.

21 Now what we suggest is that there ought to be an-
22 other alternate in your proposal here and that is to allow
23 for the sole use of vadose zone monitoring by a device
24 such as this, use limited to an electronic means that have
25 the capability to monitor all the tanks and the piping,
26 and it should have the capability and should be required

1 that it have the capability of monitoring itself, and then,
2 if somebody still was worried about an additional monitor-
3 ing, you could provide on a periodic basis that the device
4 itself be monitored on some kind of a quarterly or monthly
5 or whatever other basis.

6 But the principal environmental advantage is that
7 it would not require, as is required in many of your alter-
8 nates here, the puncturing of the aquifer. We feel that
9 that's extremely dangerous. Every time you punch a hole
10 to have a water-monitoring well, then you are giving addi-
11 tional exposure to that water level of additional pollu-
12 tants that can go into the so-called monitoring well, and
13 there's much literature that indicates that that takes
14 place and it is a very dangerous thing and was adverted
15 to by Mr. Noteware in one of his remarks this morning that
16 once the pollutant's in the water table, in a sense it's
17 too late. It's already down in there and the great damage
18 has occurred, and what we are proposing with this kind
19 of monitoring is that you will find out about this leak
20 before it gets into the water table or at least you have
21 an extra chance to find out about the leak before it gets
22 into the water table and you could do something about it
23 because you would be warned right away.

24 There are devices on this to ring bells or other-
25 wise give warnings where there is an extreme spill occur-
26 ring so people can do something about it right away. That's

1 the kind of monitoring I think the people in this state
2 deserve and need and, of course, it is in our interest
3 because we manufacture it and that's clear what our inter-
4 est is, but that is the kind of monitoring that will work,
5 that will solve the problem.

6 There is a lot of talk about dip sticks, talk about
7 everything, wells and all of the other things that are
8 adverted to here, but those aren't the ways that you are
9 going to solve this problem.

10 I think what is clearly occurring here is that
11 not only is the cost of monitoring costing a lot of diffi-
12 culty for a lot of people, and that is understandable,
13 but if the monitoring actually works, and I have to assume
14 that everybody on the Board worries about that and I trust
15 everybody in the room worries about it, but the cost of
16 fixing a leak, of course, can be potentially astronomical,
17 but I think it has been determined by the Legislature that
18 this is a serious problem.

19 All the literature indicates it is a serious prob-
20 lem. It may well be a problem far more serious than any
21 of the literature indicates, and yet, we have to approach
22 it in a way which will solve that problem because if we
23 don't, we are going to damage ourselves in a way which
24 may not be reparable at all, if we haven't in some areas
25 reached that point already.

26 Mr. Hanselka is here and if you have some questions

1 about this approach --

2 MS. ONORATO: I know Mr. Noteware has a question
3 for you, Mr. Knox.

4 MR. NOTEWARE: Mr. Knox, what family of chemicals
5 is this effective for?

6 MR. KNOX: Well, as I understand it, and you better
7 start coming up here, Mr. Hanselka, because --

8 MS. ONORATO: Mr. Hanselka, would you come up?

9 MR. HANSELKA: It tests hydrocarbons on a vapor
10 approach.

11 MR. NOTEWARE: I was wondering about its use
12 for things like TCE and some of the other horrible things.

13 MR. KNOX: Well, let's ask Mr. Hanselka.

14 MR. HANSELKA: Well, the device can be specifically
15 sensitive to a variety of substances, TCE being one, methy-
16 lene chloride and so forth.

17 MR. NOTEWARE: The continuous monitoring then,
18 is it like a line drawn on a drum that rotates or how is
19 it recorded?

20 MR. HANSELKA: This specific device is just a
21 tape printout indicating the concentration of the vapor
22 present.

23 MS. ONORATO: Mr. Hanselka, you did meet with tech-
24 nical staff, meet with our staff?

25 MR. HANSELKA: Yes, several times.

26 MS. ONORATO: I would like our staff to comment.

1 Obviously, the system was found in and of itself unable
2 to stand up to the criteria that you felt that the order
3 had established.

4 MR. SINGER: I think I would like to disagree with
5 many of the comments Mr. Knox made to begin with. The sys-
6 tem that is being proposed here would fit very clearly
7 under alternative 3 or 2 or 5 or 6. It's not precluded
8 in any of those. Alternative 3 is a vadose zone monitoring
9 device in and of itself with the exception of soil monitor-
10 ing when the boring goes in in annual tank testing. It
11 does not require any other forms of monitoring to go along
12 with it.

13 So, this is one device that has the ability to
14 meet some of these criteria.

15 I think some of the other points I would like to
16 make on that is that the device itself has not been tested
17 in many of the applications that they are proposing to
18 use it in. We have been in discussion with the company
19 to do some testing and to provide some results, and they
20 are in the process of doing that right now.

21 I think the other thing, too, is I would like to
22 make the offer to Mr. Knox, if he has some information
23 that puncturing aquifers for the purpose of monitoring
24 allows contaminants to move down those wells, I would really
25 like for him to provide that.

26 And the final point, it is not a continuous

1 monitor in most of the cases that we have seen that the
2 application would be used in. It's a cyclic monitor in
3 that it would cycle through a number of different ports
4 and would monitor each port maybe once every hour or two
5 hours, so it is not a continuous device.

6 MS. ONORATO: Ms. Ruiz.

7 MS. RUIZ: Yes. Mr. Singer raises an excellent
8 point and one I am very much interested in. You indicate
9 there's a great level of literature out there which supports
10 your contention that this is a vehicle for contamination
11 of the aquifers. If you would, I would like a listing
12 or bibliography of that work in order to know what you
13 are referring to.

14 MR. HANSELKA: On some technical clarification,
15 (a) and (d), this specific device does monitor continuously
16 in a cyclic pattern of all, essentially many ports around
17 an underground tank installation.

18 And the other question you had, Harold?

19 MR. SINGER: They weren't questions, they were
20 comments.

21 MS. ONORATO: This thing about the background.

22 MR. HANSELKA: The historical scenario -- one
23 of the nice things about vadose zone monitoring, in fact,
24 the local quality control board is using this type of de-
25 vice for monitoring plume propagation right now. In fact,
26 your own Peter Johnson uses that for his vadose zone

1 monitoring. In fact, he is experimenting with it right
2 now and finding a tremendous amount of success, but this
3 would preclude any type of soil analysis, just driving
4 the device into the ground and sucking vapors.

5 MS. ONORATO: Mr. Knox, I don't think it is ever
6 the intention of staff, I hope and I certainly know it
7 is not our intention to restrain development of new tech-
8 nologies or to make it so onerous, you know, additional
9 requirements, but what you are suggesting, of course, is
10 that the accompanying monitoring and so forth would still
11 be required to make it not financially feasible for someone
12 to buy this technology, and I would only say the staff,
13 and I think I reflect the whole Board, if this stands up
14 to the monitoring test, you know, to the standards set
15 by the author in the bill, you do know that the Board would
16 be very supportive and would not want to preclude this
17 from being an economically feasible alternative.

18 Does that satisfy you, Mr. Knox?

19 MR. KNOX: Well, in part it does, and I appreciate
20 that, Madam Chair.

21 The problem is that if we could get a situation
22 where we could be sure that the thing would be tested by
23 an agent, we will be glad to provide testing, but obviously
24 the testing of the manufacturer is always looked at some-
25 what askance because the manufacturere obviously has an
26 interest.

1 If we would be assured this Board would mandate
2 testing of this, we are satisfied it will stand up, and
3 we are willing to gamble on that, but if we don't have
4 that kind of guarantee, we are right back to square one
5 because the matter has to be tested by the regulators to
6 determine whether or not they will find it will do what
7 we say it will do, and we are satisfied it will.

8 MS. ONORATO: I think the Board would be much
9 more comfortable if you could seek a private business who
10 would give you that opportunity and have the Regional Board
11 or our staff monitoring, but certainly, this Board, ladies
12 and gentlemen, would be uncomfortable with sponsoring a
13 private --

14 MR. HANSELKA: It has been tested. We have done
15 that. That's all been done and that can be provided for
16 the Board, and I think has been provided to the Board.
17 That's been done.

18 MS. ONORATO: In the State of California?

19 MR. KNOX: Yes.

20 MR. SINGER: There has been some preliminary test-
21 ing of the equipment done, but it has been very isolated
22 and it really hasn't been proven conclusively.

23 MR. KNOX: Give us some guidance as to what the
24 Board needs and we are willing to meet any test, but it
25 has to be a test accepted by the Board because it won't
26 help the situation if it isn't.

1 MS. RUIZ: Mr. Knox, I believe what you are asking
2 this Board to do is mandate technology or a preference
3 for a technological approach.

4 MR. KNOX: Obviously, we would love that, but
5 we don't expect that.

6 MS. RUIZ: Nor do we possess the jurisdiction,
7 statutorily or otherwise, to do that. We find it interest-
8 ing and do not wish to preclude the development of these
9 newer technologies. I think you understand our hands are
10 somewhat bound in this area.

11 MR. KNOX: No, I fully recognize that, Ms. Ruiz.
12 I would not expect the Board to mandate a particular tech-
13 nology. That would not be proper. While it might be de-
14 sirable to us, it probably isn't right.

15 What we are saying is, if the Board will put a
16 situation, and maybe with the help of its staff it can,
17 where this advanced technology, which is cheaper and better,
18 can be used, the public will be benefited, we will be bene-
19 fited, but the public will be benefited, but it has to
20 be a situation where we can test; we are testing now here
21 in California. We have tested in California. We are test-
22 ing in Florida, we are testing in Texas.

23 We are prepared to test anywhere anybody wants
24 us to test, but that test has to somehow get the imprimatur
25 of the Board to be accepted as one of these alternates,
26 but if you wrap up these alternatives without something

1 that works for this technology, I do not think it is in
2 the public interest.

3 I think you ought to find a way, if it has to be
4 delayed for three months, where the alternate No. 7 or
5 9 or whatever the proper number is, goes into effect three
6 months or six months from now, I understand that.

7 MS. ONORATO: Mr. Knox, let me explain to you
8 that the Board can always do -- and everyone should be
9 aware of this -- can notice and have a hearing on these
10 regulations in the future also, but I assure you that we
11 would not delay adopting the regulations based on your
12 request.

13 MR. KNOX: No, I am not requesting that either.

14 MR. NOTEWARE: Mr. Knox, I am curious about cost
15 as I am sure a lot of other people are, too. Say, for
16 instance, the public works department or a hospital had
17 a standby generator with a buried diesel tank that didn't
18 have any product going out of it for months at a time or
19 so, would it be realistic to use your system to monitor
20 the ground around that tank?

21 MR. HANSELKA: The current 12-probe monitor would
22 probably not be cost effective. It would be the smaller
23 model, the smaller version that is in production right
24 now. There are stages of protection required and that is
25 obviously the least threat situation described.

26 MS. ONORATO: Thank you, Mr. Hanselka.

1 Are there any other questions?

2 Thank you very much.

3 MR. KNOX: Thank you very much.

4 MR. SINGER: May I make one final comment? We
5 want to make it very clear at this point that the tech-
6 nology that is being proposed is not precluded by the ex-
7 isting alternatives. I don't think you would have to come
8 back aand adopt a new alternative to allow this technology
9 to be adopted.

10 MR. KNOX: I will finish with one sentence. That's
11 arguable. The technique can be used, but there are so
12 many other requirements that it would make the technique
13 impractical, and that's the difficulty.

14 MS. ONORATO: Ms. Margaret Allender representing
15 the California Rental Association from Jackson, California.
16 Good afternoon.

17 MS. ALLENDER: Good afternoon. My name is Margaret
18 Allender. I represent the California Rental Association.
19 We represent approximately 800 members state-wide and we
20 rent everything from cement mixers to Rototillers and com-
21 pressors to forklifts, backhoes and trucks.

22 We feel you have heard many comments about the
23 regulations and we feel that we are in a particular situa-
24 tion here of a small business that is not a fuel producer,
25 but rather a fuel user, which I think at this point puts
26 us in a little bit different situation than in the past.

1 To give you an idea of our membership, we ran an
2 informal survey to find out exactly the size of the tank,
3 the through-put and so forth, to give you a very general --
4 I wouldn't want to swear to this --

5 MS. ONORATO: May I ask the people in the back
6 of the room to please setp outside. I like quiet so we
7 can listen.

8 MS. ALLENDER: We wanted to give you a vague idea
9 of where our membership is and we think also this is repre-
10 sentative of probably a lot of the small business people
11 who we feel are not aware of these regulations, perhaps
12 they don't have associations now that are informing them
13 of these. The most common size tank used by our members
14 of 500, 550 and 1,000 gallons. Seventy-three percent of
15 the membership that responded reported their tanks were
16 1,000 gallons or less.

17 The through-put on an average in a month is some-
18 where between 900 and 1100 gallons, or approximately 12,000
19 gallons a year.

20 Therefore, these people have relatively small
21 volumes. They are small tanks, but they have enough and
22 consistent turnover to reinforce some very conscientious
23 inventory reconciliation methods.

24 We support the increased versatility and efficiency
25 of this draft of the regulations. We appreciate the work
26 staff has put into it. From a small business point of

1 view, however, we still see some problems and we would
2 like to ask the Board to consider these. One is the problem
3 that we have that was touched on at the workshop, that
4 we felt should be reinforced to you, is the definition
5 of motor vehicle fuel. Certainly, the definition that
6 is in this draft of the regulations deletes the words "for
7 highway use." We appreciate that. That's much better
8 than the previous draft.

9 However, restricting the motor vehicle fuel defi-
10 nition to those vehicles which are self-propelled and which
11 are designed to draw or move a load eliminates a lot of
12 uses for small business people who might be fueling cement
13 mixers, Rototillers, or other types of machinery. We think
14 this fails to address motor fuel which is used in exactly
15 the same type with the same kind of turnover, therefore,
16 reinforcing the same kind of inventory reconciliation as
17 for motor vehicle fuel.

18 We feel this is especially applicable to small
19 business where a variety of uses for fuel will come from
20 a single tank. We felt staff commented on this at the
21 workshop about the designation of aviation fuel and that
22 that was an example of why motor vehicle fuel should be
23 split out as it was.

24 We would argue rather that the reference to avia-
25 tion fuel expands the definition and that there appears
26 to be no provision in the law at all to include machines

1 and motors using the same type of fuel in the same manner
2 but which are not in self-propelled vehicles.

3 This is important, obviously, as you know, because
4 we feel that inventory reconciliation standards set forth
5 in these regulations are attainable and usable by our mem-
6 bers because of their small tanks and small through-put,
7 but we don't wish to see this monitoring alternative blocked
8 by those who can meet the criteria of using that fuel in
9 self-propelled vehicles.

10 I might mention that members of the California
11 Rental Association have informed us that well over 50 per-
12 cent of their use of their fuel is for self-propelled vehi-
13 cles, but we think that this item really needs clarifica-
14 tion because it's going to be implemented at the local
15 level and we would like to see this clarified.

16 MS. ONORATO: May I ask staff, because you did
17 make this same comment at the earlier workshop, and I would
18 like to ask staff to comment because this is not new. It's
19 been raised before. Could you deal with -- is there any
20 way to deal with the concerns as presented by this group
21 of small businessmen?

22 MR. ANTON: I believe that -- unless they didn't
23 have any vehicle -- if the fuel tank was used for a mixed
24 bag of rental equipment, including some vehicles, it could
25 qualify under this particular provision. I don't know
26 exactly how to address, how the locals would interpret

1 that. In many instances, the local agencies are going
2 to have to interpret it. Alternatively, I guess it could
3 be tightened up to make it absolutely certain that the
4 locals couldn't misinterpret it.

5 MS. ALLENDER: We are in an awkward position of
6 not having wording to suggest to you because we couldn't
7 come up with a way of tightening it up either. But this
8 is something when it gets to the local level, this is an
9 area where there could be an interpretive problem.

10 MR. WILLIS: I would like to ask you a brief ques-
11 tion. Would it be your assertion that you would have
12 rental facilities that might have a gasoline tank and never
13 on any occasion take fuel from that tank for a truck, lawn-
14 mower you can sit on, a tractor, a dumpster, you name it?

15 MS. ALLENDER: From our point of view, we feel
16 that rental association people are in a pretty good posi-
17 tion on it because of that.

18 MR. WILLIS: I have never seen a rental facility
19 and I believe I have used more than one or two, and I have
20 never seen one that didn't have something in the yard that
21 I could have driven away if I had wanted to pay for it.

22 MS. ALLENDER: Exactly, and we do feel we are
23 in a pretty good position, but we feel the way the defini-
24 tion reads now that it is not clear. It could be inter-
25 preted by local agencies that conversely, if there was
26 fuel in a tank and it was being used for something other

1 than self-propelled vehicles, as the definition reads now
2 that that would exclude it from the inventory reconcilia-
3 tion monitoring procedure. We felt it could be interpreted
4 the othper way around and that there are yards and there
5 are small business people who probably are not in as defi-
6 nite a position as we are. There are some yards that have
7 the majority, more than 50 percent of their inventory in
8 things like Rototillers, cement mixers, compressors and
9 generators, and their inventory is not as balanced with
10 trucks, forklifts, backhoes, that kind of thing.

11 MS. ONORATO: Is there any way in plain English --
12 can't you in a regulation in plain English say something
13 like the rental business in California should be given
14 special consideration or something like that, because I
15 think that we are going to be splitting hairs from here
16 to eternity trying to get a definition of motor vehicle
17 fuel.

18 MR. WILLIS: Why don't we say any kind of self-
19 propelled vehicle that will pull, haul, carry, and includ-
20 ing Rototillers?

21 MS. ALLENDER: Lawnmowers and cement mixers.

22 MS. ONORATO: One always hopes that people who
23 implement this will use common sense, and I don't want
24 to rely on that too heavily.

25 MS. ALLENDER: That is our problem. We felt this
26 is something we should bring to the Board now and it was

1 something that you should consider.

2 There was a suggestion that surface was a delinea-
3 tion of the term vehicle. We are talking about motor fuel.
4 We are using it for motors and we have assumed that staff
5 had a concern about fuel that was not regularly turned
6 over, people that would not have reinforcement to institute
7 conscientious inventory reconciliation. We have that rein-
8 forcement. We have it even greater now because of these
9 regulations and we can do that, but "motor vehicle" could
10 leave some of our members in a lurch.

11 MR. FINSTER: I would like to ask staff a ques-
12 tion. What is the problem in defining a tank just con-
13 taining motor fuel, period; or gasoline, period, or some-
14 thing. What is the concern?

15 MR. RICHARDS: The problem is the statute speaks
16 to motor vehicle fuel, not to gasoline. The statute pro-
17 vides certain special provisions for the installation and
18 monitoring of motor vehicle fuel tanks.

19 MR. FINSTER: That is correct, but motor vehicle
20 fuel can be contained for stationary items and it doesn't
21 have to be moving vehicles. Is there --

22 MS. ALLENDER: That's our point.

23 MR. FINSTER: In other words, our standby situa-
24 tion -- what's the concern we are trying to -- the defini-
25 tion of fuel that's in that stationary tank, whether or
26 not it is used in a moving vehicle is no different than

1 one used at a gasoline station. Why can't it be defined,
2 I guess, is the question?

3 MR. RICHARDS: It could be defined in that way.
4 This is one of the issues that was raised at the November
5 2 workshop. Staff's recommendation was that the defionition
6 tion for motor vehicle fuel should remain restrictive in
7 order to implement the intent of the Legislature which
8 was to develop a protective program for groundwater threat-
9 ened by leakage from these underground storage tanks.

10 The Legislature created a very narrow exemption
11 for motor vehicle fuel tanks based on their recognition
12 of the fact that there were very very many gas station
13 tanks in California which were in their view entitled to
14 a certain special consideration.

15 Staff would recommend that the Board remain very
16 restrictive in any effort to expand the scope of this ex-
17 emption to other forms of fuel that might be used in motors
18 for motors that are not in motor vehicles as fairly strictly
19 defined.

20 MR. FINSTER: You made reference to the Legisla-
21 ture and the bill itself, but motor vehicle fuel, to me,
22 is a fuel concern and not how you use it. I could take
23 the engine out of my car and put it on a pedestal and drive
24 a generator, and it is still motor vehicle fuel that is
25 being used. Why can't we define tanks containing motor
26 vehicle fuel? I still don't know what the danger -- I

1 know there was some concern over other types of fuel that
2 may be used in race cars, something of this nature. I don't
3 quite understand all that, but it seems that a stationary
4 tank, whether it be used to load in gasoline to a car that
5 is driven or load gasoline into an engine that is driving
6 something else should be considered the same.

7 MR. ANTON: A concern that we also had is the one
8 you alluded to. Almost any material that could be burned
9 could be construed to be a fuel for a motor, albeit a steam
10 engine or something else. If we opened it up, we could
11 wind up having a very difficult problem of defining what
12 exactly was a motor vehicle fuel and what wasn't. I think
13 that if we opened it up broadly, we would want to limit
14 it to certain fuels at a minimum to make sure we didn't
15 open it too wide.

16 MR. FINSTER: I recognize that concern. I think
17 that's the point I was trying to bring out, is can we de-
18 fine the material rather than define the use?

19 MS. ONORATO: I think Mr. Willis has a comment.

20 MR. WILLIS: Madam Chair, if it is the decision
21 of the Board to continue the matter beyond today, I would
22 suggest with the approval of the Board that we just simply
23 direct the definition as it stands would be so and that
24 we would add to it a phrase that would read "mechanical
25 appliances used for domestic, industrial and agricultural
26 purposes," and if that doesn't cover everything I have

1 ever seen in a rental yard --

2 MS. ALLENDER: That's excellent.

3 MR. WILLIS: I think that even covers chainsaws.

4 MS. ONORATO: He is going for a degree in seman-
5 tics.

6 MS. ALLENDER: I had a couple more points, if
7 I may -- I mentioned, the California Rental Association
8 members feel that they can work with the inventory recon-
9 ciliation standards as outlined in this draft of the regu-
10 lations. Obviously, I am on thin or non-existing ice here
11 after Assemblyman Sher's representative commented to you
12 this morning, but we wish to argue that this strict thresh-
13 hold your staff has established, and it is a strict thresh-
14 hold, for inventory reconciliation for tanks of the size
15 and the through-put that we are talking about with this
16 group of people, that inventory reconciliation should be
17 sufficient.

18 We feel that you have the authority to adopt this
19 kind of single monitoring standard by the legislation which
20 specifies that there is no specification for any further
21 amount of monitoring over inventory reconciliation in sec-
22 tion 25284.1(b)(3). We agree very much with Board Member
23 Willis that while this standard has never been required
24 before and, therefore, we find it very difficult to support
25 Mr. Lipper's comments on behalf of Assemblyman Sher, that
26 small business people with small tanks are responsible

1 for lots of leaks.

2 Indeed, we would even argue that our members have
3 to be very conscientious about their fuel supply because
4 of the domestic machinery and it has to be maintained in
5 good order or the machinery is down and, therefore, we
6 would argue that small tank people aren't any more likely
7 to have leaks than anyone else.

8 While the new regulations do afford a certain
9 flexibility, we feel that the geologic and hydrologic con-
10 ditions that are attached, that you already heard about
11 today, calling for groundwater monitoring, vadose zones,
12 wherever those situations occur because of the level of
13 groundwater, could actually put small business in a very
14 tenuous situation.

15 The way the regulations are presented to you now,
16 it appears that small businesses are more or less exempted
17 from a lot of the requirements. We don't see that at all.
18 We think that actually going to a strict inventory recon-
19 ciliation monitoring provision actually and adequately
20 addresses the actual hazards from these small tanks.

21 We would ask the Board to give strong considera-
22 tion to this level of hazard that is posed and to relieve
23 small businesses which are able and willing to meet the
24 strict inventory reconciliation threshold, from further
25 monitoring requirements.

26 Obviously, if there is a disparity at that level

1 of the inventory reconciliation, then further monitoring
2 will be necessary, but we think that this actually does
3 allow for the interpretation and designation of any possi-
4 ble leaks that may reach the groundwater from these small
5 tanks.

6 We very much appreciate the interim monitoring
7 procedures. They are very welcome, they are very impor-
8 tant for small business.

9 You have heard something on this issue before,
10 but we feel that this definition of interim monitoring
11 must be expanded to allow operation for all small busi-
12 nesses until certification, some kind of approval, some
13 kind of list of approved testing or technology comes
14 through for any business which may be susceptible to some-
15 thing other than inventory reconciliation.

16 You have heard in previous hearings the example
17 of the devastating impact on the small business victimized
18 by the vapor recovery mandate and this has the same poten-
19 tial. People go on selling technology to small business
20 people who don't have engineers, they don't have the tech-
21 nical know-how or the ability to judge whether this will
22 work or not, and while certainly it's up to local govern-
23 ment to provide this designation of what will work and
24 what won't work, we think that business actually is in
25 a lead position here and they will be, according to the
26 regulations asked to prove the integrity of the system

1 and we think it is very likely that a lot of small business
2 people, and our members will be victimized as they were
3 in the vapor recovery system by systems they are sold,
4 told would work, but they don't have any way of knowing
5 it.

6 We feel that until this list comes out, and I would
7 say it's very difficult with what staff has said to find
8 out where the list will come from, that any small business
9 must be allowed to continue operating in an interim stand-
10 ing.

11 I refer to Assemblyman Sher's comments before and
12 I think on behalf of the small business, I have to make
13 a politically inexpedient comment, but at the risk of being
14 too brash, I will do so.

15 We respect very much that the author of the bill
16 is an important figure and certainly has every right and,
17 if you will, responsibility to converse with you on his
18 or her intentions in the bill. However, our system being
19 what it is, that bill was a compromise. It came out of
20 the Legislature which reflects a diversity of opinion and
21 it was signed by Governor Deukmejian, who, it may be safe
22 to say, does not share all of Assemblyman Sher's perspec-
23 tives, and we would say then, therefore, that it is up
24 to the Board to enact this law as it was passed and cer-
25 tainly it perhaps was not passed in the form as strict
26 as Assemblyman Sher would have liked to have had it passed.

1 The law is before you and on behalf of the small
2 business we suggest that there is the leniency within the
3 law that allows the Board to take some steps that will
4 not unduly cripple our industry, and we would ask you to
5 consider that.

6 The California Rental Association is very aware
7 of the liability and responsibility of its membership in
8 the maintenance of their underground fuel storage tanks.
9 We look forward to cooperating in a comprehensive program
10 which adequately and judiciously addresses groundwater
11 hazards from underground tanks.

12 We have submitted written comments. We would re-
13 quest, also in support of the other people you have heard
14 here today, that you take the time to review all of the
15 written commentaries prior to making any decision.

16 Thank you very much. May I answer any questions?

17 MS. ONORATO: Are there any questions of Ms.
18 Allender?

19 I would like to call Mr. Jim Campbell representing
20 the California Service Station Council.

21 MR. CAMPBELL: Madam Chair and Members of the Board,
22 that is a tough act to follow, by the way.

23 I am Jim Campbell. I represent 3,000 service sta-
24 tion dealers and 300 independent garages in California,
25 all small business people.

26 I want to thank the Board and I want to thank the

1 staff for attempting to make some changes in the regula-
2 tions that we could live with, particularly as it deals
3 with daily inventory controls and this type of thing.

4 I am also a retailer myself and I would also like
5 to thank you personally for attempting to possibly find
6 some money for small independent business people out there
7 that may or may not be available. I ask you not to give
8 up at this stage of the game.

9 Section 2641, page 4.18, just a little clarifica-
10 tion on the input meters on delivery trucks. It states that
11 we have to use the meter readings from the trucks on our
12 daily inventories. I don't think it will come as a total
13 surprise, but the gasoline trucks don't have meters on
14 them today with the exception of the small trucks that
15 deliver less than 5,000 gallons.

16 MS. ONORATO: Could we have a comment from staff?

17 MR. SINGER: What page of the regulations were
18 you referring to?

19 MR. CAMPBELL: It is 2641, page 4.18, and it states
20 that we are to use the meters from the delivery trucks
21 and delivery trucks don't have meters.

22 MR. SINGER: I don't think we say trucks, we say
23 input metering and that implies if it is metered into the
24 trucks, that is the meter reading you use.

25 MR. CAMPBELL: That's what you're talking about -
26 okay, that's fine.

1 Section 2634(c) requires yearly testing of tanks
2 if we inventory with the sticks, and I want to point out
3 that to do that, to check the tanks yearly, costs us approx-
4 mately \$500 a tank or \$1500 a year.

5 Let me say that some of it is \$1300, but it is
6 going to be in the thousand-to-fifteen-hundred-dollar
7 range.

8 The last time I talked to you, I was up just last
9 week to Etna, Fort Jones, Yreka, but in the areas, the re-
10 sort areas, most of the service stations up there are served
11 by grocery stores, not AM-PM's, but grocery stores with
12 pumps in front. There is no grocery store with a pump
13 in front with two pumps that can pay a thousand or fifteen
14 hundred dollars a year to determine if, in fact, our tanks
15 are leaking. There isn't a need.

16 But I would like to give you some creative alter-
17 natives, but don't stick us with that one, because if you
18 stick us with that one, we don't have -- the alternative
19 basically is not an alternative, daily monitoring.

20 Let me make some suggestions, though. Bob Short
21 said that there is a test for \$5 that you could check the
22 tanks and I will buy that tomorrow. We will all buy that,
23 but I know how staff works and with all respect, I know
24 you want the right thing to happen, but they are not about
25 to approve a \$5 test. A \$1500 test, yes, but \$5, no, so --
26 I like the way Bob walked away, everybody was smiling.

1 But I know that's not going to happen. We have
2 been here too long. If you have a test like that, fine,
3 we will go along with the yearly deal, but it's not that.

4 Seriously, it is a thousand or fifteen hundred
5 dollars.

6 The other thing is we have no problem with daily
7 inventorying and leaving our records there available for
8 the Department of Measurement Standards or whoever comes
9 in. The Department of Measurement Standards checks our
10 pumps. We have no problem with paying a little, an addi-
11 tional fee perhaps to have maybe once a year, every two
12 years, every six months, whatever you want. The fire mar-
13 shal comes out to our service stations and charges \$30
14 to see if we are complying. I don't know what the right
15 fee is, but if you had a state person come out, he looks
16 at our records, and, you know, someone said the fudge fac-
17 tor. I can't fudge. I am going to get caught. There's
18 no way for me to cover the 50 or 100 or 150 gallons unless
19 I flat out lie, and there's enough, I think there's enough
20 in the regulations now if I lie, that if I don't go to
21 jail, I am going to pay a devil of a fine.

22 Staying with that, that would be one approach to
23 it. Another approach, would this Board with the Department
24 of Measurements and Standards come up with their own test?

25 By the way, we have heard the Kent Moore and some
26 other tests used. I, frankly, seen some of the tests and

1 I know one station on the peninsula, not to be named, that
2 spent \$1500 to interior coat all their tanks and there
3 was not one leak in the tanks.

4 Now the operator of the equipment apparently didn't
5 know what he was doing. The particular individual, an
6 oil company representative, didn't want it to get back
7 to the oil company that a mistake was made, saw it was
8 done; but they were told these tests are not perfect, but
9 I am saying the State of California, if you want to test
10 us once a year, come up with that test. We will pay the
11 state. Don't give us the \$1500 approach.

12 Seriously though, not just the store in Yreka,
13 Fort Jones or Etna have the service station dealer that
14 pumps 75,000 gallons, which is about average in California,
15 is going to be hard pressed to pay \$1500 for a test that
16 isn't necessary.

17 Stick inventory, contrary to what Kip said today,
18 and I respect Kip and Mr. Sher, there is no history, and
19 I asked Harold last time, is there one case of gasoline
20 loss from stick monitoring that they can show to us that
21 wasn't detected and wasn't repaired, and Harold said last
22 time, no.

23 I will tell you, the large loss in Santa Clara
24 County was a government transit system that lost something
25 like 30,000 or 50,000 gallons of diesel fuel, not a business
26 person that pays a buck a gallon for everything that goes

1 in.

2 Section 2641, page 4.18, it's a little difficult
3 to live with some of the numbers you have put down there,
4 the 25 and the 50 and the 75 and the 100 gallons, but we
5 can live with it if we have one correction there.

6 And I think what you are looking for is shortages;
7 isn't that correct? It's a shortage we are looking for.
8 So, if you could just put in there the hundred-gallon short-
9 age, but if I come 50 or 60 gallons over at the end of
10 the month, I don't want to be penalized, I don't want to
11 run core samples. As it is written now, it goes either
12 way.

13 MS. ONORATO: Surely we meant shortages.

14 MR. CAMPBELL: I would feel better if we put it
15 in.

16 MR. ANTON: We were concerned if you are over,
17 it is an indication you ought to be checking things as
18 well. It doesn't automatically cause drilling a well,
19 but it is an indication you ought to take a look at your
20 inventory control, reanalyze your numbers and see if you
21 made an error.

22 MS. ONORATO: I would presume any businessman
23 would do that. I don't think it is necessary.

24 MR. ANTON: There's one other factor and that
25 is if the tank is above groundwater, normally a leak will
26 admit water rather than lose volume.

1 MR. CAMPBELL: Exactly.

2 MR. ANTON: So an increase in volume could also
3 be an indication of water coming in which, of course, could
4 be detected by other means, but may not be.

5 MR. CAMPBELL: Let me suggest -- I understand
6 what you are driving at and I agree with what he is saying,
7 but if you would put the word shortage in; in other words,
8 loss, that's what we are looking at, and add "check for
9 water," we do that -- we don't do it daily, some do and
10 some don't, but if we have an increase, we have got a chemi-
11 cal we drop down and we can tell if we have water. In other
12 words, let's address the problem. The problem is shortage,
13 not overage.

14 Would it meet your concerns if you added in the
15 regulations if we simply in the event of an overage, we
16 simply test and assure there is no water in the tank?

17 MR. ANTON: We could change it around in the
18 event of an overage that you should check to make sure
19 that you don't have water or don't have errors in the sys-
20 tem.

21 MS. ONORATO: I would like that if it is all right.

22 MR. ANTON: If it is the Board's pleasure to hold
23 this over, we can make that kind of change.

24 MS. ONORATO: Does everyone agree? They agree.

25 MR. CAMPBELL: I appreciate that. Thank you very
26 much.

1 The one last thing or two last things I want to
2 cover -- let me cover this one first. We would like to
3 see at least a six-month extension before we have to com-
4 ply. We will start complying --

5 MS. ONORATO: Speak to him -- direct that to Kip.

6 MR. CAMPBELL: To Kip. Kip is going to get up
7 and say shoot all those guys anyway. No, I am only kidding.

8 The reason I say six months -- I understand July
9 1, I believe that is correct -- let's say that there are
10 15,000 facilities in the state, which there are roughly,
11 and let's say there's three tanks, and I am just talking
12 about service stations, so now we are talking about 45,000,
13 and some of them have at least detectors on already, so
14 let's knock 10,000, so we have got to buy 30,000 leak de-
15 tectors and have them installed by July of this year? I
16 don't think so. That's just one question.

17 I am just saying, consider it, see what you can
18 do, and I would like to keep out of jail until December
19 of next year.

20 The one last section I would like to deal with,
21 and I think there's a great deal of bias on this, and I
22 don't think the Board is even aware of it, and I think
23 the bias is not bias in the sense that we don't like the
24 guys, but it is because they don't understand, and that
25 is interior coating. I don't sell interior coating and
26 I have no interest in the company, but I have had my tanks

1 interior coated.

2 The regulations as promulgated today, and someone
3 else can get up and tell me what it means, not me, as they
4 are promulgated today would basically not prohibit us from
5 interior coating. As a matter of fact, there was a bill
6 carried in the past and was signed into law that said you
7 can't interior coat.

8 But if we follow these regulations, it is going
9 to make it very very difficult. Interior coating should
10 be encouraged. Frankly, what I am going to do in one of
11 my locations in January of this year is go in and interior
12 coat my tanks so that I don't have a problem. If I wait
13 until I have a leak four years from now, then I have got
14 to put on the bells and the wells and whatever it is. I
15 am going to do it now, so the staff should be encouraging
16 the interior coating, not throwing up obstacles to interior
17 coating.

18 Thank you very much.

19 MS. ONORATO: Thank you, Mr. Campbell.

20 Are there any questions? Are there any comments
21 staff wants to make about their bias on interior coating?

22 Next is Bob Meacham representing the Southwest
23 Tank Liners.

24 Do you do interior coating?

25 MR. MEACHAM: My name is Bob Meacham. I am with
26 Southwest Tank Liners, and we do interior coat tanks.

1 First off, something that really concerned me at
2 the top of the meeting this morning was, I believe Mr.
3 Richards' statement that nothing substantial was changed
4 within these draft documents that was not dealt with at
5 the November 2 meeting.

6 I think the record will show that nobody talked
7 about interior coating at all at the meeting. This is the
8 first time in public hearings that we have had the oppor-
9 tunity to discuss anything that was different from what
10 the law stated, the first time we have seen anything brought
11 to us by staff.

12 I might also say that I have not yet received my
13 copy of the draft. I don't know what that says.

14 But some of the points I would like to make; first
15 of all, on page 6.4, section 2661(c), point 4, that addi-
16 tion there goes beyond what is specified in the statute.

17 Another point, I was surprised when we got the
18 list of amendments on page 6.5, the last sentence in sub-
19 section (b), and if I am not mistaken, that reads:

20 An example of such a practice is the American
21 Petroleum Institute's recommended practice
22 No. 1631.

23 Again, that document is listed in the state statute
24 as saying if you are going to interior coat a tank, you
25 must do it according to those guidelines. I might further
26 say that API is referenced in this document, the draft

1 that we have, on page 3.35 as being one of the areas where
2 standards are taken from -- 3.35, item 6,

3 The ASME Code stamp, API monogram, or the
4 listing mark of Underwriters' Laboratories.

5 So, API looks like it's being taken as an authority
6 in one area and not in another.

7 MS. ONORATO: May I ask staff on page 6.5, does
8 the single underline, not the double underline, indicate
9 you're dropping all that out? I don't think so.

10 MR. SINGER: It's the errata sheet that drops that.
11 The reason for dropping that is the fact we cannot refer-
12 ence, as Mr. Richards pointed out earlier, other documents
13 in these regulations without jumping through some signifi-
14 cant hoops that we would have to go through.

15 We felt also item (d) on that same page talks about
16 the listing or certification process of any proposed repair
17 processes once those listing processes are available and
18 that would cover something similar to what the API proposes.

19 MR. MEACHAM: Which brings me to another point.

20 MS. ONORATO: Does that satisfy --

21 MR. MEACHAM: that explains why 1631 was dropped.
22 It is still listed within the current legislation and cur-
23 rent law.

24 MR. RICHARDS: Ms. Onorato.

25 MS. ONORATO: Yes.

26 MR. RICHARDS: One other point on this. The last

1 sentence of 2662(b), that has been deleted. In the past
2 we have received comments from OAL that that kind of lang-
3 uage is non-regulatory and, therefore, should not be in
4 the text of the regulations like this. What we have done
5 is we have provided an appendix that refers to some methods
6 that are acceptable. That seems to satisfy OAL, but they
7 don't like to see language like this which is non-regulatory
8 in the text of the regulations.

9 MR. MEACHAM: I would rather see something that
10 says a nationally recognized engineering practice much
11 more than I like to see it saying that our process must
12 be listed or certified by some independent organization,
13 and the reason for that is not because that would not be
14 good, but is it better than the years of work that went
15 in through API to develop a standard?

16 MS. ONORATO: You are not listening to us. In other
17 words, we would not argue that point with you and obviously
18 by including it originally the staff agreed with your
19 assessment, but OAL -- when we do such a referencing, don't
20 we have to extrapolate the whole thing and footnote it?

21 MR. RICHARDS: We have to do quite a bit.

22 Also, another factor, if API should ever change
23 their process, then we would have to go through the whole
24 process again. The problem is that OAL does not like us
25 to incorporate by reference documents, procedures, tests,
26 et cetera, which could change in the future. So we try

1 not to require in the regulations compliance with standards
2 that are set else where and where we did it here is simply
3 cite an example. That's not an incorporation by reference.

4 However, we get in trouble because that is non-regu-
5 latory language. We are not requiring that that be done,
6 and, therefore, we are deleting that to address another
7 problem that we encounter at the Office of Administrative
8 Law.

9 MS. ONORATO: Mr. Meacham, we are very sensitive
10 to this because we have just been through that.

11 MR. MEACHAM: I apologize. I did not make myself
12 clear. The point I am dealing with is (d) on page 6.5
13 to require that "The repair material and lining process
14 shall be listed or certified by a nationally recognized
15 independent testing organization. The requirement shall
16 become effective one year ... " et cetera.

17 What that does, in effect, is say that we may not
18 use API as a guideline because they do not publish stand-
19 ards, they publish guidelines. They publish nationally
20 recognized guidelines that are recognized throughout the
21 industry and it seems in this instance API is not an auth-
22 ority or it will not be an authority when earlier we say
23 that it was. That concerns me very greatly.

24 We heard that Underwriters' Lab has a listing --
25 I have a letter from Underwriters' Lab -- I don't have
26 it with me -- with the short time I had to prepare I was

1 not able to bring everything, that Underwriters' Lab says
2 if somebody brings something to us to see about acquiring
3 a listing, here is what we would propose to do. They are
4 proposals. UL does not have a listing for the lining of
5 underground storage tanks. They have a proposal saying,
6 here is what we will do.

7 I don't know how much it would cost for a small
8 company like ours to try to get an Underwriters' Lab list-
9 ing. I have no idea. It would be cost prohibitive, I'm
10 sure.

11 MS. ONORATO: How can we meet this concern, Mr.
12 Singer? It sounds legitimate in nature.

13 MR. SINGER: Let me maybe comment on the concern.
14 We heard two speakers ago from the California Rental
15 Association about small business not having facilities
16 or somebody who certifies equipment, and I think what we
17 are trying to do here is provide some sort of certification
18 which is similar to anybody that goes out and buys a tank
19 and wants it installed, it has to be a listed tank. It's
20 the same type of certification procedure where we are ask-
21 ing that a third party certify the process such that it
22 has been reviewed.

23 MR. MEACHAM: API.

24 MS. ONORATO: It can be API, but we cannot specify
25 it has to be API.

26 MR. SINGER: We have specified a nationally

1 recognized testing organization.

2 MS. ONORATO: And that's as far as we can go under
3 OAL regulations as far as they are concerned. That's a
4 wise way to approach this. We are all getting dull talking
5 about this, you know. Can we bring this -- what can we
6 do? You want us to certify, to specify API?

7 MR. MEACHAM: No, I don't need you to specify API.
8 What I need you to do is indicate that it may be listed
9 or certified or engineered according to nationally recog-
10 nized engineering practices, something of that nature,
11 but to say that it must be certified by a nationally recog-
12 nized independent testing organization says one thing,
13 Underwriters' Lab. They are the only ones I know of.

14 I checked with Factory Mutual and they don't do
15 this type of testing.

16 MS. ONORATO: All right. Will you fix this? I be-
17 lieve Mr. Willis has a comment.

18 MR. WILLIS: I want to ask a question with regard
19 to your comment that it meets certain guidelines of API.

20 Who is going to say that it meets those guidelines?

21 MR. MEACHAM: The local inspector. We routinely
22 have fire inspectors come onto the job site. They look
23 at our testing procedures. They witness the sandblasting,
24 they witness the repairs, they witness the coating, they
25 witness the entire process, whatever they want to see,
26 and before we go in and get the permit, we say we are doing

1 this according to API 1631, we are doing it according to
2 June 27, Bridgeport Chemical, which are compatible, and
3 we give a ten-year guarantee on that tank that it will
4 not leak.

5 MS. ONORATO: I think we want some kind of standard
6 and certification. I don't think anyone objects to this.

7 MR. SINGER: Ms. Onorato, let me make a try at this.
8 The nationally engineering recognized standards that we
9 have included, that we have taken out of the regulations,
10 were included in the appendix.

11 As you go down through most of these, most of these
12 are non-industry-type organizations. They are ASTM, UL,
13 other types of organizations. We don't consider API an
14 independent organization for reviewing tank repair materials.
15 They provide guidelines. They do not list or review the
16 applicability of certain materials, and I think that's
17 what we are looking for again, is third-party certification
18 that is a nationally recognized independent testing organi-
19 zation to certify that procedure, and again, we have said
20 within one year after such process becomes available.

21 So anybody that repairs a tank now, until that pro-
22 cess, until UL or any other organization comes out with
23 a procedure for listing or certifying repairs, right now
24 there is nothing out there and there's no requirement that
25 they must be certified or listed.

26 MR. MEACHAM: So, what I hear you saying is as soon

1 as something becomes available, either I spend X amount
2 of dollars -- let's say, for lack of a better number --
3 \$150,000, to get this thing listed, or I line tanks for
4 a year and then I'm out of business.

5 MR. SINGER: That's what the regulations would say.

6 MR. MEACHAM: That's what I thought. I think that
7 is contrary to the intent of the law.

8 I left a packet of material for you to look at this
9 morning. I don't know whether you have got it. It's a
10 packet that's so thick and it starts with the copy of the
11 current legislation, the current law, Assembly Bill 3781,
12 Chapter 1584, and in that it does make a chapter change
13 on the number, but as you can see, on page 11 and page
14 13 that I have copied for you, 11, 12 and 13, it is clearly
15 laid out there what is required to interior coat a tank,
16 a tank that is repairable and one that is not, and so forth.

17 I don't know where the concept of something, a hole
18 within six inches of a well or a seam mark or something
19 came from. That was added, which is again extraneous from
20 the law.

21 MR. SINGER: Can I interrupt a moment? You are
22 referring to a law that takes effect January 1 of 1985.

23 MR. MEACHAM: That is correct.

24 MR. SINGER: We are not dealing with that law in
25 these regulations.

26 MR. MEACHAM: Why regulate something that the law

1 may change?

2 MS. ONORATO: I think Ms. Ruiz would love to tell
3 you why -- because we can't deal with it until it becomes
4 law, period.

5 MS. RUIZ: That states the case.

6 MR. MEACHAM: Okay. That's fine. You can't deal
7 with it until it becomes law. When it becomes law, are
8 we going to come back and redo all this?

9 MS. ONORATO: That is right. That is the great
10 joy of being on this Board.

11 MR. MEACHAM: Another item of concern to me, before
12 I sit down and cry, is the vacuum test. The vacuum test
13 has been taken out of the law that will come into effect
14 on January 1, but I have left again in the documentation
15 in front of you ample documentation indicating that the
16 vacuum test serves no useful purpose. The vacuum test
17 that was developed by technology of Canada, Athabaska Re-
18 search, Ltd., is designed to detect leaks in tanks. It
19 is not designed to vacuum test the tank.

20 The story that we got, it's gone from one thing to
21 another. It went from testing to see if the epoxy bonded
22 to the wall, and since they decided that it wouldn't do
23 that, I guess they have decided to test the structural
24 integrity of the tank, and that's clearly taken care of
25 in the existing statute.

26 Integrity of the tank is determined through various

1 tests that are listed in the statute today. A vacuum test
2 is unnecessary and does nothing but drive up the cost of
3 repair.

4 MS. ONORATO: Could you comment on that?

5 MR. SINGER: Again, we have used the criteria based
6 on the UL proposed listing procedure for tank liners, and
7 that does contain a vacuum testing procedure. That's why
8 we included it. I do agree with you that the new law does
9 not include that specifically and again, you notice in
10 our language in the existing regulations we have said "where
11 technically feasible," so we are not requiring it in every
12 single case.

13 MR. MEACHAM: We have finally, after a long search,
14 found somebody that can come out and do the vacuum test-
15 ing on tanks that have been lined.

16 Number one, the first outfit that we found wanted
17 \$2,000 a site to do it and we paid it, not us, but the
18 customer paid it, and therefore, the consumer is paying
19 for it.

20 And then we found somebody who could come out and
21 do it at a cheaper cost, but it still accomplishes nothing.
22 You have got the existing burden on the tank, you check
23 the tank for the thickness of the steel, you sandblast
24 it. If it is going to collapse, it would have collapsed
25 already.

26 MR. SINGER: Ms. Onorato, maybe if I can help this

1 along, the earlier speaker indicated that we didn't utilize
2 the UL procedure correctly. This speaker is saying it's
3 not applicable. It seems we need to go back and find out
4 what UL had in mind when they put this in.

5 MS. ONORATO: Would you do that, and everyone, re-
6 member those words.

7 MR. MEACHAM: I have ample documentation and letters
8 from Underwriters' Lab in Northbrook, Illinois, that I
9 would be glad to share with you regarding --

10 MS. ONORATO: Please do so, Mr. Meacham.

11 MR. MEACHAM: I will do that. Let me make sure I
12 haven't left anything out. We will be clarifying the 5.3
13 inches of mercury. I think that that --

14 MS. ONORATO: Yes, that was agreed upon.

15 MR. MEACHAM: Thank you for your time.

16 MS. ONORATO: Thank you for your time.

17 I would now like to declare a ten-minute recess.

18 (Recess)

19 MS. ONORATO: If everyone will be seated, we will
20 resume the meeting.

21 I would like staff to note that representatives
22 of CIOMA would like the Board to enter into the record
23 the question that they have already submitted in writing
24 and that is they take note of the fact that there is no
25 appeal process in law or the regulations regarding the
26 decision of a local entity, and CIOMA itself is disturbed

1 about this and would like some comment from staff on the
2 written form that they submitted this issue to the Board
3 for consideration. I would like to -- Mr. Willis, did you
4 have a suggestion that you wanted to interrupt the floor
5 of the witnesses and make some comments at this point in
6 time?

7 MR. WILLIS: Yes. Madam Chair, I think that based
8 on much of the information that's been brought up to date
9 and the obvious discussion that has occurred, that there
10 is a desire to make some further change, and as a conse-
11 quence, I think we ought to put the audience on notice
12 that if the Board feels the same, that we are not going
13 to attempt to adopt the regulations today, but that we
14 are going to try to spend the balance of our time finishing
15 with the witnesses and making, hopefully, some specific
16 recommendations to the staff, or directions to the staff,
17 I should say, as to areas where change should be made and
18 possibly some changes should occur.

19 MS. ONORATO: Fine. I would like the other Board
20 Members to comment on this.

21 MR. NOTEWARE: Is it your thinking then that we
22 would have this on our next Board meeting, December 20?

23 MR. WILLIS: I would like to further suggest this,
24 Madam Chair, that this would indicate that we would try
25 to do this, make a decision on the 20th of December, our
26 next Board meeting. However, taking into consideration

1 that there could be more work required of our staff than
2 time would allow, vis-a-vis, if we were to include a hear-
3 ing on the 20th of December, we would have to have a 15-
4 day notice and that means that by next Wednesday, the 5th,
5 we would have to have redrafted the regulations with the
6 changes. I'm not so sure that that will be possible. I
7 think that another alternative is this, that we need only
8 notify the public that we are going to vote on the decision
9 ten days prior to doing so.

10 That's another option, but I would propose that next
11 Wednesday we make a determination as to whether or not
12 we will proceed on the 20th. If we intend to proceed on
13 the 20th, we will make a notice ten days prior to that
14 time. In other words, by December 10th, we will have to
15 put out a public notice.

16 MS. ONORATO: Of our intent to adopt the regulations.

17 MR. WILLIS: If we indeed do adopt them on the 20th.

18 MR. NOTEWARE: I would like to remind Mr. Willis
19 that we are going to be dealing with the Kesterson Reser-
20 voir that same date probably. We might need a auditorium
21 bigger than this.

22 MR. WILLIS: Well --

23 MS. ONORATO: Do you have any other suggestions?

24 MR. NOTEWARE: I really don't have any other sug-
25 gestions.

26 MR. WILLIS: I would just point this out, first

1 of all, I don't think we have to decide right now if you
2 want to have a hearing or not, but if you wanted to take
3 time to consider an adoption procedure, then that does
4 not allow for a hearing process such as we're going through
5 today, in which case, it would be a much simpler matter.

6 But we would not have to make such a determination
7 until the 10th of December.

8 MS. ONORATO: Ms. Ruiz, do you have any comment
9 on this?

10 MS. RUIZ: My concern is that that may not give
11 us sufficient certainty as to how we are proceeding. I
12 would propose then that in light of the very major issues
13 facing this Board within the next 30 days, that we allow
14 the record to remain open, (1) because there were a couple
15 of items which staff has requested even during the course
16 of testimony here today, but that we allow the record to
17 remain open for a given period of time. I leave that to
18 the rest of the Board to assist in determining, but that
19 we look to an adoption hearing that would occur sometime
20 after the 20th and possibly during the first week of Janu-
21 ary.

22 MS. ONORATO: And you are confident, being our legal
23 representative, that we wouldn't be arrested for not doing
24 this?

25 MS. RUIZ: Well, if so, then they will have to take
26 me and my baby and every member of this Board.

1 MR. WILLIS: Madam Chair, I would just indicate I
2 realize that there is a legislative intent of getting this,
3 not an intent, but a direction, mandate to get this done
4 by the end of the year. However, there have been some
5 critical issues brought up and I think we are extremely
6 close. I'm not exactly sure how much time staff needs
7 and my feeling is that it would be better to try to get
8 this done -- I wouldn't say perfectly -- but as close to
9 correct as we can on the first cut than it would be to
10 have to turn around and reopen the hearings in the near
11 future in order to make changes or to possibly see a flurry
12 of new legislative proposals in January and February seek-
13 ing changes in the law.

14 So, it is, you know -- but it's the Board's -- that's
15 my feeling.

16 MS. ONORATO: You would prefer then to just have
17 a noticed adoption vote on these regulations?

18 MR. WILLIS: If we feel comfortable by the tenth
19 of December, we can do that.

20 MR. FINSTER: I basically concur with what Darlene
21 has indicated. I think we should give staff adequate time.
22 I think there have been a number of questions raised today
23 as there was in the preceding hearing, and I think we should
24 give staff sufficient time to review all the material
25 submitted today and to discuss whatever they need to dis-
26 cuss with other parties concerning their request, and come

1 up with a final document that we can all live with, and
2 I think if we have to do it after the first of the year,
3 I think we will just have to face that reality, and I may
4 have to go to jail with Darlene and the baby, but at any
5 rate, I think we should give it due time, and if staff
6 feels they cannot meet it by the end of the month, I have
7 no objection whatsoever to carrying it over to the first
8 of the year.

9 MS. ONORATO: Mr. Noteware.

10 MR. NOTEWARE: I am concerned with what Mr. Richards
11 said earlier about the 45-day requirement if we do carry
12 it over past the first of the year. I think then that
13 it's not going to be a simple matter of doing it the first
14 week in January; then we are looking into March or some-
15 thing like that, and maybe there's an advantage there in
16 that we can then eliminate the confusion of having drafted
17 some regulations that have to be updated because of the
18 additional laws that are going into effect in January.

19 MS. ONORATO: Mr. Richards did want to say something.
20 Could we have your --

21 MR. RICHARDS: That's essentially what I wanted
22 to remind the Board of was once January 1 comes around
23 the underlying law will change and we will be in a position
24 of proposing amendments either to the proposed regulations
25 or to the adopted regulations to accommodate the legisla-
26 tive changes made during this 1984 session, which affect

1 a number of the provisions in subchapter 16.

2 Those amendments that would be necessary to accommo-
3 date the changes in the law since they were not a fore-
4 seeable outgrowth of these proposed regulations as noticed
5 in August of this year, would require an amended notice
6 with the 45-day period for public review and commentary.

7 MS. ONORATO: So the time line would fall back at
8 least until mid-March?

9 MR. RICHARDS: Yes.

10 MS. RUIZ: If I may, is there anything that would
11 prohibit us from going forward with those changes in the
12 regulations to implement the new changes that become effec-
13 tive January 1, 1985, separate and apart from these, or
14 at least narrowing any further hearing to those changes
15 alone and not necessarily having to open up the full hear-
16 ing on all the proposed regulations?

17 MR. RICHARDS: Yes, that would be possible. What
18 I am also concerned about, however, is if the Board pro-
19 poses to adopt regulations which are inconsistent with
20 the law, as it will be after January 1, we will run into
21 problems with the OAL.

22 MS. RUIZ: I'm almost confident that's going to
23 be a sure thing anyway.

24 MR. RICHARDS: That certainly seems to be the case.
25 A possibility would be to go forward -- we will have to
26 investigate this possiblity. I'm not --

1 MS. ONORATO: Mr. Richards, may I interrupt you
2 for a moment. Another thing I would like to have for con-
3 sideration before the Board and staff is with the deadline
4 already objected to of July 1, the audience must appreciate
5 that we would be delaying implementation if we were unable
6 to present to you a list of regulations. In other words,
7 you wouldn't know where you were going, wouldn't know what
8 you were trying to implement.

9 So I am deeply concerned about that, too, and that
10 might just incur the Legislature's wrath to some extent,
11 which I think we must consider.

12 MS. RUIZ: Or it may incur their cooperation in
13 an effort to have emergency legislation put through in
14 order to resolve this problem.

15 MS. ONORATO: That's wishful thinking.

16 MS. RUIZ: Perhaps, but we might be putting the
17 ball back where it rightfully belongs.

18 MR. RICHARDS: One final point -- I have just dis-
19 cussed very briefly with Mr. Singer the possibility that
20 we could go forward with part of the proposed regulations,
21 those parts which would be unaffected by the legislative
22 changes, and withdraw and essentially renotice and proceed
23 on a different time line with the regulations that would
24 be affected by the need to change.

25 We will have to evaluate the feasibility of that
26 possibility, but that might resolve some of the conflict

1 between attempting to get the regulations in place by the
2 end of the year to satisfy the existing Sher bill and the
3 prospect of then immediately coming back and attempting
4 to change portions of those regulations in response to
5 the 1984 legislation.

6 MS. RUIZ: Aren't we talking, though, about some
7 pretty substantive areas of these regulations?

8 MR. RICHARDS: Some of them are very substantive.

9 MS. RUIZ: With those deletions, is it possible
10 we may be submitting something that is absolutely ludicrous
11 to OAL?

12 MR. RICHARDS: If that were the case, then we would
13 not recommend doing it that way. But I believe that we
14 will have to take a look at the regulations and see what
15 kind of a package would be left under those circumstances.

16 MS. RUIZ: Well, I believe if any staff can do this,
17 certainly ours can, and you have indicated you can work
18 under this kind of pressure. What is your time line for
19 providing us with that kind of assessment?

20 MR. RICHARDS: Next week.

21 MS. ONORATO: I must tell you that I am very reluc-
22 tant to extend this beyond the date of December 31 of this
23 year. That is the legislation. I feel that that is a direc-
24 tive to this Board and I feel that to risk a renoticing
25 and throwing this matter back into March would be really
26 at odds with the intent of the author in terms of

1 implementation, and I would be most uncomfortable with
2 that. I would much prefer to do what Ken is suggesting.
3 I am not prepared today to adopt the regulations either.

4 I am telling the other Board Members that, myself,
5 I would prefer to notice a ten-day intent later this month
6 to adopt them.

7 MR. WILLIS: I would like to demonstrate to the
8 Legislature that we are seriously attempting to keep good
9 faith with the direction that they gave us by trying to
10 get this adopted by the end of the year.

11 On the other hand, I don't want to throw the baby
12 out with the bath water. There's got to be a better
13 analogy.

14 I would like to ask question, though, of Mr.
15 Richards. If the Board were to adopt the regulations on
16 the 20th and if, indeed -- well, indeed, we will have to
17 have hearings on the changes under the new laws in 1985,
18 and if the Board felt strongly that they wanted to explore
19 reevaluation of any areas not covered in the new law, we
20 could so notice for our hearing that we would be discussing
21 particular areas and ask for public comment; could we not?

22 MR. RICHARDS: Certainly, that remains a possibility
23 at any time and certainly in the context of the changes
24 necessary to address the 1984 legislation it would be appro-
25 priate to notice a reconsideration of adopted regulations.

26 MR. WILLIS: So, if our comfort level on the 21st

1 of December were not near perfect, we could correct that
2 sometime in February or March?

3 MS. RUIZ: Well, I'm not so much concerned with
4 our comfort level as much as the certainty with which the
5 regulated community would need to be able to proceed on,
6 and if we are now talking about doing something that we
7 are going to throw open again and rereview in January in
8 order to meet the new changes in legislation as well, we
9 are talking about another revamp that doesn't provide them
10 any certainty.

11 MS. ONORATO: But we are already dealing with that
12 in reality because certain aspects of these regulations
13 will be impacted after January 1.

14 MS. RUIZ: And from what I understand substantive
15 portions of these regulations, I would agree, but then
16 it appears that there may be some room for us to adopt
17 portions which aren't going to be subject to change.

18 MR. RICHARDS: An initial assessment would be that
19 the greatest changes occur in what, the repair -- for in-
20 stance, in the repair area and do not impact the construc-
21 tion standards for new tanks and the monitoring alterna-
22 tives for existing tanks to the same extent.

23 So, we could presumably go forward with the construc-
24 tion standards and monitoring requirements.

25 MR. WILLIS: I think the -- of course, I don't
26 expect everyone to jump up and agree with me, but I think
the most important provision is Article 4 dealing with

1 monitoring requirements and I feel fairly confident that
2 we ought to be able to have something workable by the 20th
3 of December, at least something that I think we can count
4 on for a good period of time, and I think industry has
5 to have that if they are going to proceed to meet the un-
6 realistic deadline of July 1.

7 I would also indicate, so Mr. Lipper can carry this
8 back, that I think that we are very strongly in favor --
9 or at least I am, and if anyone on the Board disagrees,
10 I think we are going to be proposing a legislative change
11 that we would hope Mr. Sher would carry dealing with that
12 unrealistic deadline, and I think if anybody in the Legis-
13 lature believes it is realistic, I invite them to join
14 us for half of one hearing of the last three or four that
15 we have had on this issue.

16 But, indeed, this isn't going to work. We are going
17 to literally have thousands of business people out of com-
18 pliance on July 1, no matter what we do. And I would pro-
19 pose that in order to keep half of the small business people
20 in California who deal with oil products from being in
21 violation of the law, that we attempt to get a piece of
22 legislation through PDQ on an emergency basis if need be,
23 to extend that deadline, because quite frankly, I will
24 tell you that I would never arrest anybody for not meeting
25 that deadline. It just wouldn't be realistic.

26 MS. ONORATO: All right. Now we have two views

1 here of what we should do, and I think it is time we should
2 ask -- is there any more debate that should occur or com-
3 ments?

4 MS. RUIZ: Just simply that I would ask that every-
5 one keep in mind Mr. Noteware's concern, and that is that
6 on the 20th we are going to be dealing with another contro-
7 versial matter.

8 MS. ONORATO: May I point out, though, that we have
9 not committed to that. We don't know that for sure.

10 MS. RUIZ: Well, as I understand, some action is
11 currently determined to take place on the 20th and that,
12 therefore, we will need to take that into account.

13 It would seem that given some of the difficulties
14 that need to still be explored legally about the amendment
15 process, that we should still look towards maybe the first
16 week in January possibly and start that noticing procedure
17 for continuance to that time at a minimum.

18 MR. FINSTER: In my mind, there's nothing magic
19 about the 20th. That just happens to be our next Board
20 meeting. We still have another week left in December dur-
21 ing the holiday season. If it is a problem trying to get
22 the staff to come up with the proper regulations to meet
23 the deadline by the 20th, I would rather see us meet the
24 following week, say the 28th or something like that, and
25 adopt them in the last part of the year, give them another
26 week.

1 MR. WILLIS: I would support that if staff can re-
2 serve a very large ski hut.

3 MR. FINSTER: I don't ski, so --

4 MS. ONORATO: Are you absent for --

5 MR. WILLIS: Yes, I would be absent after the 20th.
6 What I would like to suggest is that we would consider
7 for adoption on the 20th without a public hearing or dis-
8 cussion, and that if the Board feels that by the 10th that
9 would not be sufficient, then I will certainly go along
10 with that if --

11 MR. FINSTER: Can I ask one question of staff. If
12 we do make major changes in the regulations, do we not
13 have to have another hearing?

14 MR. RICHARDS: We do not have to have another hear-
15 ing. If we make substantive changes in the regulations,
16 we must have a text of the proposed regulations as modified
17 available to the public for a 15-day period and we must
18 receive comments and we must respond to those comments,
19 but it is not necessary to hold a public hearing.

20 MS. ONORATO: That would mean this would have to
21 be completed by the date of December 5. Is that possible?
22 I don't know that it is possible and I don't know if it
23 is possible for the reporter to get a transcript available
24 to staff for a while anyway, and I don't know what you
25 are talking about, though, with substantive changes. You
26 know what I am saying, I don't know.

1 I suppose to bring this to some kind of conclusion
2 that we will perhaps -- would it be agreeable with all
3 of the Board Members that -- when is our next informal
4 discussion scheduled for -- it's the 12th. That would
5 be too late.

6 MS. RUIZ: We have a Board meeting scheduled for
7 the 7th of December on Kesterson.

8 MS. ONORATO: Could we make the determination then?

9 MS. RUIZ: Well, the 15 days would not be adequate
10 at that time.

11 MR. WILLIS: Very clearly, you only need 15 days'
12 notice if we are going to have a hearing.

13 MS. RUIZ: No.

14 MS. ONORATO: Substantive changes to the draft
15 regulations -- well, I don't know --

16 MR. FINSTER: Let's make the decision at this point
17 to shoot for the 20th and that we will make a determination
18 on the 7th of whether we can make it or not because that's
19 sufficient time in advance of the hearing to file the notice;
20 is that right?

21 MS. ONORATO: Ten days. Well, that would be to
22 adopt, but you could not make substantive alterations in
23 the present regulations. Isn't that correct, that has
24 to be noticed by the -- they would have to be out by the
25 fifth?

26 MR. RICHARDS: They would have to be out by the

1 fifth.

2 MS. ONORATO: Well then, I would say to the Board
3 Members we do not have that alternative. We simply can't
4 make substantive changes if we determine to vote on this
5 before the end of the year. Don't you agree?

6 MS. RUIZ: I am not prepared on the basis of the
7 record as it currently stands to commit to only cosmetic
8 changes. I think the Board needs to consider all that
9 has been presented and still remains to be presented, and
10 then address its changes to staff. Otherwise, we are cut-
11 ting out an entire opportunity to be heard.

12 MS. ONORATO: I agree, but I am just trying to put
13 this in the framework -- I don't know what to do -- between
14 a rock and hard place. When could staff have this before
15 us -- in the normal chain of events, when will we have
16 a product out from staff as a result of today's hearing?

17 MR. ANTON: I don't think we have ever been in a
18 normal chain of events.

19 MS. ONORATO: What did you anticipate in the event
20 that we did not adopt the regulations today, and I think
21 it is safe to say non one on the Board is of a mind to
22 do so.

23 MR. ANTON: We did give consideration to what might
24 happen and as you certainly must realize, a major part
25 of the problem we have is the logistics. Even after we
26 have done the thinking in determining how to get the proper

1 words together, getting the word processor to work without
2 breaking down, making sure we have actually done all the
3 work in getting a piece of paper out that has all the
4 changes on it is a major job in and of itself.

5 We did consider the fact we might be able to do so
6 by the fifth and that is still possible. It would be very
7 difficult and our hat is getting flat and we are running
8 out of rabbits, but we could possibly do that.

9 If we tried something like that, we will have to
10 take a look at what we can do and get back to you as that
11 time approaches. I don't believe I can promise that we
12 can do it at this time.

13 I would like to point out that the law only requires
14 that we have these regulations available. We have always
15 mailed copies to everyone that was interested. We seem
16 to have caught a lot of comments about people that didn't
17 get them until late. I do want to reiterate we are doing
18 that because we believe you need to get a copy in the mail,
19 but that's not part of the law and it isn't required speci-
20 fically. We will continue to try to get those out, but
21 that's a part of the problem, is simply reproducing a thou-
22 sand copies or two thousand and getting them all mailed.

23 I guess the bottom line is we can try to put together
24 a package. If we get all the areas that we need to change
25 down in terms of policy issues, we could probably make
26 those changes in that time. It won't be easy and I can't

1 guarantee right now it's possible.

2 MS. ONORATO: Based on that, does anyone have
3 further suggestions?

4 MR. WILLIS: I would vote for trying.

5 MR. NOTWARE: That's the way I feel. I don't think
6 that the first week in January is a realistic option because
7 of the 45-day problem that we run into there. Either we
8 do it by the 20th of December or it's going to be next
9 March.

10 MS. RUIZ: I disagree with that analysis and cer-
11 tainly don't think we have legal authority here today to
12 make that determination that we would be compelled to carry
13 over the whole package until March.

14 I would opt for us being able to do this and do
15 it right, give the necessary time to staff in a very diffi-
16 cult time when they are dealing with so many controversies,
17 that they be given adequate time through the month of Decem-
18 ber and allow this thing to be scheduled for adoption the
19 first week in January.

20 MS. ONORATO: Let's do this, if it is all right
21 with you: John Richards, would you please have, most im-
22 portantly, a legal opinion as to whether or not we have
23 the right to do this. I would much prefer to take the
24 tack Ms. Ruiz is recommending. I think all of us would
25 and we would get a better product, and she's right, this
26 should be researched, I think, by legal staff. Could we

1 start with that as soon as possible? That's what we want.
2 Is that agreed to by Board Members, let's get a legal
3 opinion?

4 MR. NOTEWARE: Sure.

5 MS. ONORATO: Depending on that determination, we
6 would ask staff with all due speed, if necessary, and if
7 we cannot have a meeting on these regulations extending
8 into the month of January, with all due diligence to try
9 to get a product to the Board as soon as possible, and
10 hopefully, with that date of December 5 in mind should
11 it prove in law necessary.

12 Sorry to be so vague, but the audience will appre-
13 ciate what we are trying to do here and I hope all of you
14 will understand what we are trying to do is give a direc-
15 tive to staff.

16 MS. RUIZ: If I may ask a further clarification,
17 I would also ask that the Board consider leaving the record
18 open at least for some period of time to allow for some
19 of the information which --

20 MS. ONORATO: Yes, I was going to mention that.
21 Now, what would you consider a reasonable --

22 MS. RUIZ: I don't see any great prejudice to the
23 Board even if they do adopt on the 20th and we do proceed
24 to that date, leaving the record open until five o'clock
25 on the 19th.

26 MS. ONORATO: Oh, boy, you are tough. Any comments?

1 Do you concur with that?

2 MR. WILLIS: It's just racing through my mind.

3 MS. ONORATO: That is a long time. Does it have
4 to be that long? That's given the fact that we could ex-
5 tend the hearing into January.

6 MS. RUIZ: right.

7 MS. ONORATO: What if we can't? What if there's
8 a finding that we can't?

9 MS. RUIZ: I don't believe in the word "can't,"
10 and I think when the legal conclusion issues that there
11 will be room at that time for us to go ahead with the
12 adoption proceedings in the first week of January with
13 a full record closing on the 19th.

14 MS. ONORATO: And recognizing that the full record
15 closing on the 19th we are into Christmas week and New
16 Year's week, and staff will have to deal with all those
17 comments to that late date.

18 MS. RUIZ: Well, the comments will have to be ad-
19 dressed before this package goes over to OAL. It doesn't
20 necessarily have to be -- the comments addressed by the
21 time we adopt.

22 MS. ONORATO: Okay. All right, then the record
23 will be open till the 19th of December. Is that agreeable
24 with the Board Members?

25 MR. WILLIS: Okay.

26 MR. NOTEWARE: Okay.

1 MS. ONORATO: Okay.

2 MR. RICHARDS: Ms. Onorato, I hate to bring this
3 up, but the openness off the record depends to a certain
4 extent on what is open for scrutiny and at the moment we
5 have got a draft of the regulations dated November 9 upon
6 which we have solicited comments, and it was originally
7 proposed we should close the comment period on that draft
8 at this hearing today, and you may choose to leave the
9 record open to collect further comments on this draft.

10 MS. ONORATO: No, I think what we are talking about --

11 MR. RICHARDS: The record will have to remain open --
12 we are talking about making what must be regarded as sub-
13 stantive changes in the regulations as a result of the
14 comments received to date. The record must remain open
15 for a period of 15 days once we have available a draft
16 of the rerevised --

17 MS. ONORATO: The next draft.

18 MR. RICHARDS: The next draft, the December 5th
19 draft, if you will, if we are so lucky to have a draft
20 by December 5. The record on that draft will have to re-
21 main open for a period of 15 days.

22 MS. RUIZ: By five o'clock the 20th.

23 MR. RICHARDS: Which would mean at the hearing on
24 the 20th if you propose to adopt on the 20th. The record
25 would have to close before you adopt the regulations to
26 give you an opportunity to consider the comments made,

1 but that would be it, from the 5th to the 20th would be
2 the 15-day period, and I advise against having two comment
3 periods on different drafts running simultaneously if we
4 can possibly avoid that.

5 MS. ONORATO: No, I don't think that was our intent
6 and I am sorry if I stated it that loosely. Wasn't that
7 your intent on the next go around based on --

8 MS. RUIZ: My concern was that there are comments
9 still remaining to be submitted on this draft that need
10 to be responded to, or not responded to, but people have
11 been asked to submit material on. If they are not going
12 to be able to provide us that literature or bibliography,
13 the things we have requested and so indicate, then what
14 you are talking about is from the 5th through the 20th
15 we have a comment period for the new draft that is antici-
16 pated to be completed by the 5th and available on the 5th.

17 MR. RICHARDS: That is correct.

18 MS. ONORATO: Let's just ask the audience that has
19 been requested and has offered to give us data to do so,
20 please, as soon as possible. It is very important for the
21 staff to have it and the Board for their consideration
22 in the next go around, and I can only hope you can get
23 that to us as soon as possible.

24 I now would like to call Mr. Naglestad from Sacra-
25 mento. I am not sure who you are representing, Mr.
26 Naglestad.

1 MR. NAGLESTAD: My name is Fred Naglestad. I am
2 representing the California Service Station Council and
3 Southwest Tank Liners.

4 I have a couple of suggestions and a couple of obser-
5 vations. On the current version of the proposed regula-
6 tions, minus the six pages of errata that we received today,
7 on page 6.5 I would respectfully request and suggest that
8 you delete from your proposed regulations subparagraph
9 (b) and on page 6.7 that you delete the new language in
10 2663(a), for a couple of reasons.

11 One of them, despite what we were told at the begin-
12 ning of today's hearing, the words contained in those two
13 sections have never been the subject of hearings or work-
14 shops, and I have attended them gavel to gavel.

15 Secondly, I find them selective in the extreme and
16 would cite you the current law and I understand your prob-
17 lem of trying to juggle AB 1362 which is in effect now
18 and AB 3781 which goes into effect in four or five weeks.

19 So, let's deal with AB 1362, page 14, subparagraph
20 (a), which refers to an ultrasonic test. The regulations
21 are silent on that. I will say parenthetically the new
22 legislation retains the ultrasonic test, the legislation
23 that becomes effective next year.

24 Subparagraph (b) on page 15 refers to a hydrostatic
25 test. That is not in your proposed regulations, and wisely
26 so. It has been repealed as of January 1, 1985.

1 Now we come to subparagraph (c), a vacuum test which
2 for the first time surfaces in these regulations without
3 prior discussion, which indeed, has been repealed by
4 legislation that becomes effective January 1 of 1985.

5 And we then come to subparagraph (d) in Mr. Sher's
6 current bill, AB 1362, and we find that that is also not
7 in your new proposed regulations, although it does stand
8 in next year's legislation.

9 So, rather than trying to amend these two paragraphs
10 in 1985, why don't you just excise them in 1984, and rest
11 on the statute as written?

12 I would further point out that the Legislature and
13 the legislation adopted in the form of AB 1362 nowhere
14 refers to subparagraph (d) as it exists on page 6.5. All
15 of this UL business, it's not in this year's law, it's
16 not in next year's law, and all of a sudden we are seeing
17 it in the regulations. I think that in and of itself would
18 pose a problem with the Office of Administrative Law on
19 the basis that it's in excess of what's required by either
20 current or prospective statute.

21 With regard to the matter of vacuum testing, I can't
22 think of anything that's been preyed over more in the
23 Legislature the last three years than vacuum testing. There
24 have been three bills all dealing with this issue and the
25 end result of all of this business dealing with vacuum
26 testing which now, as I say, has all of a sudden surfaced

1 on page 6.7 of your proposed regulations, the bottom line
2 is the Legislature has rejected it effective next year,
3 so why put it in this year? And that's why I would appeal
4 to you to excise this new language that's been placed
5 in your proposed regulations.

6 On further comment with regard to the American Petro-
7 leum Institute whose name has been at least quasi taken
8 in vain during the matters under discussion today, again
9 with due regard to counsel's concern for prospective legis-
10 lation, while it is true that AB 1362 does not dignify
11 the American Petroleum Institute by reference of a legis-
12 lative citation, as of January 1, 1985, when you look at
13 AB 3781, you will see that page 11 cites the American Petro-
14 leum Institute's recommended practices not once, but twice.
15 It's good enough for the Legislature, it's written into
16 the statutes that you will be confronting next year and
17 in anticipation of that, perhaps you can give them a little
18 more credence than has been extended thus far.

19 And my final comment and I'm so glad you are putting
20 this in for further revision, you have done a lot of work
21 and you have been patient with us and we will continue
22 to observe and to offer our comments in a constructive
23 manner, and even the errata section today contains an er-
24 rata. On page 5 there is a citation to page 6.5. It says,
25 "The first line of subsection (c) should read," and actually
26 that turns out to be subsection (a).

1 With all due respect, this is an extraordinarily com-
2 plex issue with many ramifications of which we are all pain-
3 fully aware. I only wish half the people in this room had
4 been in the legislative process during the last two or three
5 years. Maybe some more of this could have been cleared up
6 before it got to you.

7 Nonetheless, that's what we are given and I really
8 don't think the world will spin off its axis if these regu-
9 lations are not adopted by December 31 of this year, and
10 I like your idea of, let's do it right, or at least to
11 the best of our ability.

12 MS. ONORATO: Mr. Naglestad, let's just hope that
13 Mr. Sher shares your views. Thank you very much.

14 Are there any questions? Would staff please take
15 note of those sections he has cited as being redundant
16 and deal with that?

17 Mr. Richard Fahey of Diablo Petroleum, Martinez,
18 California.

19 MR. FAHEY: I am Richard Fahey and I am with Diablo
20 Petroleum in Martinez, a small jobber. We also have a
21 general engineering license.

22 I don't think I had mentioned this to you before,
23 but we have installed a couple of hundred tanks in the
24 Bay area. We have never had a tank fail.

25 There are many responsible people in the industry
26 and it could be argued that overregulation would benefit

1 us because it would certainly give us a great deal of work
2 in the tank installation and monitoring installation field,
3 but we are not encouraging what we feel is overregulation.

4 I was perplexed by the letter of Mr. Sher that was
5 read into the record by Mr. Lipper this morning. The reason
6 I was perplexed is that I happened to be reading the act
7 as I happened to have it open when he was reading the let-
8 ter, and in section 25284.1, paragraph 3, the reason I
9 was perplexed, he seemed to be criticizing the Board for
10 including inventory reconciliation as an alternate, and
11 in this section they talk about alternate monitoring and
12 they say, and I would like to read this so it can be in
13 the record as well:

14 For monitoring tanks containing motor vehicle
15 fuel daily gaging and inventory reconcilia-
16 tion by the operator if inventory records are
17 kept on file for one year and are reviewed
18 quarterly, the tank is tested for tightness
19 hydrostatically or when appropriate with
20 pressure between three aand five pounds
21 inclusive per square inch at time intervals
22 specified by the Board and whenever any
23 pressurized system has a leak-detection
24 device to monitor for leaks in the piping,
25 the tanks shall be tested for tightness
26 hydrostatically, or where appropriate, with

1 pressure between three and five pounds in-
2 clusive per square inch whenever there is
3 a shortage greater than the amount which
4 the Board shall specify by regulation.

5 There is also a reference made to that section in
6 a previous section where they are talking about single
7 wall tanks.

8 And then, I won't read this, but this Assembly Bill
9 3565, which I think is referred to as a clean-up bill,
10 and it also is a bill by Mr. Sher, the very same wording,
11 unaltered, word for word, so I am perplexed, and in case
12 you were and you hadn't had a chance recently to read the
13 legislation, I wanted to do that.

14 Also, it was mentioned that Mr. Sher was very con-
15 cerned because his home district is an area that has had
16 a great deal of problems and I live very near. I am not
17 a constituent of Mr. Sher's, but I live in Contra Costa
18 County which is very close, and I am certainly very aware
19 of the many problems that exist in the silicon valley with
20 underground tanks and the air quality and so on, traffic.

21 But the last two weeks I have been reading a report
22 and I'm not trying to minimize the problem, but I think
23 that it will be of interest to you if you haven't seen
24 it or read it. It's called a white paper. The title is
25 "Groundwater and Drinking Water in the Santa Clara Valley."
26 It's issued by the California Department of Health Services,

1 by the California Regional Water Quality Control Board
2 No. 2, the Santa Clara County Department of Public Health,
3 the Santa Clara Valley Water District, the U. S. Environ-
4 mental Protection Agency, and it is dated October 5, 1984.

5 MS. ONORATO: Yes.

6 MR. FAHEY: The major point that I wish to make you
7 aware of, you probably are aware of it, but I just want
8 to make it part of the record, they have found that there
9 has been no contamination of deep water aquifers according
10 to this report and they have, in Tables 7 and 8, or 8 and
11 9 maybe it is, it is Table 8, they have a listing of all
12 contaminated drinking water wells. They have them separ-
13 ated by public water supply systems and private wells,
14 and the contaminants are dichlorethylene -- ethan, rather --
15 dichlorethane, isopropyl alcohol, methylethylketone, poly-
16 chlorinated biphenyl, and so on, and I won't read them
17 all.

18 The point I wanted to make is that none of these
19 wells have been contaminated by motor vehicle fuel. I am
20 not certainly trying to state that there haven't been leaks
21 in motor vehicle tanks, but the gasoline industry in gen-
22 eral has been very responsible, much more responsible than
23 the electronic industry who, unfortunately, at least in
24 this one regard, have not been very careful or responsible
25 in their maintenance of tanks.

26 I only introduce this because I think the problem

1 should be in perspective. I hear some outrageous state-
2 ments. I saw the 60 Minute program twice that made my
3 children think -- I have six children -- and for a couple
4 of days the younger ones were afraid to drink water. I
5 saw the local TV show and a local news show where quotes
6 were attributed to you, Ms. Onorato, out of context, where
7 certainly anybody would be terribly frightened. The media
8 doesn't always tell the whole story.

9 And I merely wish everybody to be aware that the
10 public agencies involved have found that certainly it's
11 a problem and we don't want to ignore it, but I hope we
12 can keep it in perspective, and I hope that we can recog-
13 nize the industry that I am a part of and proud to be a
14 part of, has been responsible and with the regulations
15 that you propose in the way of inventory reconciliation,
16 those few members who maybe haven't been responsible, will
17 be forced to.

18 MS. ONORATO: Thank you, Mr. Fahey.

19 Any comments?

20 Thank you very much.

21 Mr. Cupps.

22 MR. CUPPS: Members of the Board, my name is John
23 Cupps, representing the California Council for Environ-
24 mental and Economic Balance.

25 I first would like to commend the Board and the
26 staff for the substantial progress that has been made to

1 date in making these proposed regulations workable. I
2 think the November 9 draft reflects a major step in the
3 right direction.

4 Nonetheless, we still believe that there are signifi-
5 cant problems with the regulations as proposed, and I would
6 like to just briefly comment on them.

7 Several of those issues have already been addressed,
8 but let me just briefly run through them.

9 The first issue of concern to our membership has
10 to do with the visual monitoring requirements. As we read
11 these visual monitoring provisions of the regulations,
12 they would, in effect, require the implementation of an
13 alternative monitoring system if the entire tanks cannot
14 be visually monitored.

15 I would submit that this is unreasonably restrictive
16 in at least certain circumstances. Specifically, if you
17 have a tank that is basically enclosed in a concrete vault
18 and the tank is sitting on the floor, we believe that if
19 there was any leakage from that tank, that it would be
20 detectable on the floor of that concrete vault long before
21 it ever was able to seep through the concrete.

22 Therefore, we would like to see some change in that
23 particular provision of the regulations that says you have
24 to be able to visually monitor the entire tank and the
25 floor beneath it, because with that provision we think
26 that you would be forcing at least certain segments of

1 the industry, and particularly the electronics industry
2 to implement alternative monitoring techniques in situa-
3 tions where they are not necessary to provide adequate
4 assurance of early detection of leaks.

5 Also, I would like to just make a very brief comment
6 about the frequency of visual monitoring. In the particu-
7 lar case I described I would suggest that daily visual
8 monitoring is not necessary. We would suggest that as
9 a more practical time frame weekly visual monitoring.

10 MR. WILLIS: Excuse me. A point to staff, would
11 you please remind us what is the notice requirement when
12 a leak is detected?

13 MR. SINGER: I believe it is within 24 hours of
14 when it should be detected. I don't think that impacts
15 on the frequency of monitoring.

16 MR. WILLIS: Okay.

17 MR. CUPPS: We think the frequency of monitoring
18 should be related to, you know, the ability to detect the
19 leak and the time frame that will allow you to clean it
20 up before it causes a problem in terms of getting into the
21 soil or water.

22 The second point that I would like to address is
23 the definition of motor vehicle fuel tanks. We believe
24 that the proposed definition should not be limited on the
25 basis of the intended use of the product. It should be
26 based on the physical and chemical characteristics of the

1 fuel. There are sound policy reason for taking this
2 approach. The potential threat to the groundwater is the
3 same regardless of the intended use of the fuel. From
4 a legal standpoint, we believe the statutory language,
5 while admittedly it is ambiguous, it does give you suffi-
6 cient flexibility to make that particular interpretation.

7 The third point that I would like to address and
8 actually I am not going to address it in a detailed way,
9 is the alternative monitoring requirement generally. I
10 would concur with the statement of the gentleman from WOGA
11 that the way we read those alternatives is that you are
12 basically infringing upon the discretion that we believe
13 the statute had rested in the local agency to make certain
14 determinations in terms of when those alternatives are
15 to be implemented, and also, in terms of certain specific
16 parameters of those alternatives such as the number of
17 wells, the depth of wells and the location of wells.

18 My final point --

19 MS. RUIZ: Excuse me, Mr. Cupps. You indicate that
20 you feel that that should be the prerogative of the local
21 government. How would you respond then to those local
22 governments who say they don't possess the expertise or
23 the capability, the technical capability in order to make
24 those determinations and are looking, therefore, for strong
25 regulations from this Board?

26 MR. CUPPS: I guess the first way I would respond

1 to that, I would suggest that they talk to those people
2 from local government who make that argument, talk to their
3 legislative representatives up here, because that issue
4 is debated extensively in the Legislature and the repre-
5 sentatives contended that, indeed, they did have the ex-
6 pertise.

7 MR. WILLIS: Well, Madam Chair, excuse me, one wit-
8 ness already testified today that some of the ordinances
9 that have ben adopted by local governmental agencies prior
10 to the first of this calendar year, some of those agencies
11 are having difficulty as to how to implement their own
12 ordinances because of lack of technical skills and ability.

13 MR. CUPPS: That's true. We have heard that.

14 MR. WILLIS: Maybe local government should come
15 to talk to us. We are having all kinds of discussion.

16 MR. CUPPS: The point is that -- I guess the
17 point I am making is that's what we believe the statute
18 requires, and if you are not going to comply with it, we
19 believe that's what the statute requires and that you really
20 have to comply with that.

21 If there is, indeed, a problem, then perhaps local
22 government should come forward and suggest legislation
23 to remedy that, if they say they do not have the technical
24 expertise to make those determinations.

25 MR. WILLIS: Let me see if I understand what you
26 are saying. You assert the legislation says that local

1 government will decide what depth the well ought to be
2 for this particular type of test, if needed and when needed?

3 MR. CUPPS: Yes, that's the way we interpret the
4 legislation.

5 MS. ONORATO: We don't, I presume?

6 MR. WILLIS: From what I read, I don't think we
7 do.

8 MR. SINGER: The way we have interpreted it is quite
9 different than the way the speaker has interpreted it.
10 I think we would like some indication from the Board as
11 to whether they support ours or theirs so we will know
12 what to do on a rewrite.

13 MR. WILLIS: Well, if I could suggest, Madam Chair,
14 I find it interesting because we have had industry spokes-
15 men indicate that local government doesn't know what they
16 are doing. The community I live in, the county I live
17 in, I find out that they adopted an ordinance and they
18 still don't know what the heck they are doing with it,
19 and it is not the smallest county in California, at least
20 certainly by land size.

21 I really must say I'm not convinced that local
22 government has the expertise to know what they are doing.
23 I think if we set some minimum requirements for what they
24 ought to do, I think that's about the only way we are going
25 to be sure they can do it right.

26 MS. ONORATO: I don't see, unless Ms. Ruiz; do you

1 feel differently? I mean, what do you feel about --

2 MS. RUIZ: My concern is does staff feel there is
3 sufficient statutory direction for us to do just that,
4 that it has given us sufficient room in order for us to
5 interpret it that way, that we could justify it not only
6 through OAL, but if necessary, through whatever action
7 may challenge it?

8 MR. RICHARDS: Yes, we do. Our conclusion is that
9 the statute gives the Board the authority and the obliga-
10 tion to develop standards for monitoring and to develop
11 monitoring alternatives and a variety of other things as
12 set out extensively in the statute, and that the regula-
13 tions that we are proposing do provide the kind of guidance
14 and the framework that within which local agencies will
15 have to impose permit conditions on individual tank owners
16 and operators on a case-by-case basis.

17 MS. RUIZ: And I think in further support of that,
18 Mr. Cupps, the fact that if they require more stringent
19 standards, they must then come back to this Board, suggest
20 there is at least a minimum to which we are now trying
21 to address the problem.

22 So, I don't really see that staff is too far off
23 base on this particular issue.

24 MR. CUPPS: Well, without arguing it, there is really
25 no point in arguing the issue here. There are other people
26 that will be examining that issue and making determinations
on it.

1 The final point I would like to address is the in-
2 terim monitoring requirement and basically the point I
3 would like to make there is that we believe that these
4 interim monitoring requirements contained in Article 4
5 should be modified to allow any business, regardless of
6 size, or any local agency to utilize the three-year phase-
7 in period for either tank closure and replacement or for
8 implementation of one of the other seven monitoring alter-
9 natives.

10 Now while admittedly large business may not or
11 probably do not face the same types of budget constraints
12 of either a small business or local agencies, they do,
13 nonetheless, face equally critical constraints on the
14 availability of qualified manpower or necessary equipment.

15 MS. RUIZ: Perhaps staff -- how are we justifying
16 the distinction, simply as big can afford and little can't?

17 MR. SINGER: I think we are justifying it on two
18 means; one, we did get a number of comments that the eco-
19 nomics of imposing requirements on the short term would
20 be severe on small business, that they needed time to de-
21 velop the capital to install these facilities. That was
22 one of the bases. The other, the reason why we don't feel
23 this is a valid comment is that with the alternatives now
24 being proposed there are alternatives that require very
25 little additional work on the part of the regulated com-
26 munity.

1 There is one alternative that allows inventory recon-
2 ciliation which is the current practice in many service
3 stations to just be used. So, we are looking at the point
4 that many industries wouldn't have to do anything other
5 than continue their normal procedures in order to comply
6 with the regulations.

7 MS. RUIZ: That assumes that the locals select the
8 least onerous alternative; is that correct?

9 MR. SINGER: That assumes that the tank owner selects
10 that alternative. It's up to the tank owner.

11 MR. CUPPS: Local government approves that selection.

12 MR. SINGER: That is correct. The only reason they
13 would deny it is if that wasn't the method that was capable
14 of monitoring that tank. They could not pick an alterna-
15 tive just because liked one over the other.

16 MS. RUIZ: Does counsel see any equal protection
17 problems?

18 MR. RICHARS: No, there's a rational basis for pro-
19 viding administrative relief under the circumstances for
20 the small business which would otherwise have a difficult
21 time meeting their obligations within a short time frame,
22 and there is evidence in the record that supports that.

23 MR. CUPPS: Just one other comment for the record.
24 I would like to submit a letter from Hewlett Packard that
25 also addresses the issues I raised relative to the problems
26 we see with visual monitoring.

1 MS. ONORATO: Thank you.

2 MR. WILLIS: On No. 2 here, the motor vehicle fuel
3 definition, did you understand and do you feel that you
4 organization would support the amendment that was earlier
5 suggested when I had a discussion with staff about it?

6 MR. CUPPS: I believe your amendment, as I recall,
7 is too narrowly drawn. I guess what we would like to see
8 is basically, you know, as Mr. Finster indicated, if it
9 is a motor vehicle fuel, regardless of how it is used,
10 it should be afforded the same type of treatment, and I
11 think it shouldn't be that difficult to identify what people
12 commonly understand to be motor vehicle fuels, gasoline
13 and diesel, and I suppose kerosene. Jet fuel becomes a
14 little more ambiguous.

15 In response to your question, I think we would like
16 to see that broader definition or conversely some addi-
17 tional language to your proposal that would pick up some
18 additional types of facilities.

19 MS. ONORATO: You are sure you heard his definition,
20 because I didn't think it could be much broader.

21 MR. CUPPS: I don't think he included standby power
22 generation for various types of utility functions that
23 are major --

24 MR. WILLIS: Mechanical appliances used for domestic,
25 industrial and agricultural purposes.

26 MS. RUIZ: Ken, I think there's still the one

1 loophole I would read into that if I were, in fact, a client
2 what about the person who has a major tank that anticipates
3 using it for a generator in the event of a nuclear holo-
4 caust, and it is sittng there full of gasoline for 15 or
5 20 years. It is still full and still has the potential
6 of leaking into the ground.

7 MR. WILLIS: I would say the guy was very optimistic.

8 MR. CUPPS: Well, there are other nstances short
9 of a holocaust.

10 MS. ONORATO: Any other questions?

11 Thank you very much.

12 Mr. Wllam Stead representing NACE.

13 MR. STEAD: Thank you, Madam Chair and Board Members
14 and staff. I am again representing NACE, National Associa-
15 tion of Corrosion Engineers, some 16,000 members. There
16 are 1400 members in the California area and I have reviewed
17 with our other members the staff report and the new revised
18 regulatons, and would like to make one comment on the review
19 which stated that all primary containers and double-walled
20 tanks shall be corrosion resistant materials or have moni-
21 tored cathodic protection.

22 It's the very strong feeling of all of us in corro-
23 sion that all sealed tanks, coated or not, and steel tank
24 systems, should have cathodic protection. This is recom-
25 mended by NACE, STIP 3, 1979 Uniform Fire Code and I think
26 UL 58. It is in a lesser amount restrictive and recommended

1 by the 1982 Uniform Fire Code and I am on the Flammable
2 Liquid Subcommittee of the Southern Fire Prevention Offi-
3 cers of the California Fire Chiefs, and this is one of
4 the next subjects that will be brought up and discussed
5 because it is felt that these regulations allowing corro-
6 sion resistant materials in lieu of cathodic protection,
7 and it is understood that this includes steel-coated facili-
8 ties, these facilities as described in the attachment to
9 the letter that both of you have from the Engineering and
10 Safety Science recently published.

11 It also points that out any holiday within the sys-
12 tem will give you concentrated corrosion accelerated deteri-
13 oration and penetration of the tank.

14 It's felt that with a good coating system the amount
15 of cathodic protection that is required to maintain good
16 life expectancy for the tank is minimum as opposed to the
17 amount of cathodic protection or the cost of cathodic pro-
18 tection for a bare steel facility.

19 But the problem is if you do not have the cathodic
20 protection on, a system that is coated, there are invariably
21 holidays and those holidays will corrode rapidly, will
22 penetrate the system and you will then have contamination
23 much sooner than you anticipated.

24 In my last presentation I pointed out experiences
25 with some cities in Southern California where with exten-
26 sive cathodic protection over the last 30 years, they have

1 not had any leaks within the tanks that are under cathodic
2 protection. Those within that area that are not cathodic
3 protected is where the leaks occurred, and we would like
4 for you to seriously reconsider requiring cathodic protec-
5 tion for all steel tanks.

6 I would like to, as an employee of GP, a major
7 utility with in excess of 300 standby generators in Cali-
8 fornia, I appreciated the comments from Mr. Willis and
9 Mr. Finster about standby generators which you will also
10 find in rental facilities.

11 If there are any questions, I will be --

12 MS. ONORATO: Yes, I would like staff to comment
13 about the propriety of requiring cathodic protection for
14 all steel tanks.

15 MR. SINGER: We think technically probably it's
16 a very good idea to require for even clad tanks. There
17 is one provision in the legislation, however, where the
18 Legislature has mandated that certain tanks, and I will
19 read it:

20 Glass fiber, reinforced plastic, cathodically-
21 protected steel or steel clad with fiber-
22 glass reinforced plastic meet the intent,
23 so we would probably not have authority to go beyond that
24 to require cathodically-protected tanks in that one area,
25 but we may be able to do it in other areas.

26 MS. ONORATO: Do you understand that, Mr. Stead?

1 MR. STEAD: Yes. It's in that area of clad tanks
2 where we feel the problem will be most prevalent.

3 MS. ONORATO: Any other questions?

4 Thank you very much, Mr. Stead. Thank you for your
5 patience today.

6 Thanks to everyone in the audience for their patience.

7 Dick Davis, Executive Director of the Chemical In-
8 dustry Council. Good afternoon, Mr. Davis.

9 MR. DAVIS: Madam Chair and Members of the Board,
10 I won't repeat my identification since the Chair was so
11 kind to do so.

12 In light of the Board's discussion, I can rapidly
13 truncate -- you should have a copy of the comments which
14 I delivered to staff earlier from the Chemical Industry
15 Council.

16 We have covered many of the points covered by others
17 today, such things as greater local flexibility, local
18 agency flexibility, particularly in the term of the use
19 of exclusion rather than having to rely on variance pro-
20 cedures.

21 For instance, in 2640(f), where the local authori-
22 ties are given authority to require less frequent monitor-
23 ing, they are restricted by three very narrow reasons that
24 they can require less frequent monitoring, one of them
25 being that the inspection would be life threatening or
26 the monitoring would be life threatening.

1 We feel that they should have a broader authority
2 in that area to exclude, for instance, on the basis of
3 local hydrogeological conditions.

4 Our real concern, though, I will leave you to read
5 our comments and not go through all the details, our real
6 concern to this July 1st date, and while you recognize
7 that it is not possible to meet the date, it seems to me
8 that from Mr. Lipper's comments today and from staff's
9 comments, particularly just recently from Mr. Singer, that
10 everyone seems to think that the July date, the July 1
11 date is being objected to because of cost, that trying
12 to do this by --

13 MS. ONORATO: No --

14 MR. DAVIS: Well, as long as we understand that
15 we are putting a large number into involuntary compliance
16 by maintaining that date, we would just like to urge that
17 the Board really proceed with diligence to request the
18 emergency legislative relief from the authors.

19 I would be hesitant or remiss to leave here and
20 not to commend the Board and staff for the efforts they
21 have put forth in the last, since November 2, and we thank
22 you for your efforts and your considerations and your
23 patience.

24 MS. ONORATO: Thank you, Mr. Davis, very much.

25 Any questions? Oh, yes.

26 MR. SINGER: Can I make a comment in response?

1 The section referred to on the frequency of monitor-
2 ing was included based on the workshop discussion which
3 some of the Board Members had concern about people that
4 might have a facility that might be snowed in or other
5 environmental problems where they could not get to it dur-
6 ing certain periods of the year, and that's why that provi-
7 sion was included.

8 So, it was in specific response -- there was a speci-
9 fic reason why that was included and it wasn't really --

10 MR. DAVIS: We think that is a good provision, but
11 it ought to be broadened. That, again, gets back to the
12 local agency flexibility which we believe the law intended
13 for that to happen.

14 MS. ONORATO: I would now like to call Mr. Noel
15 Fletcher, Managing Engineer and Environmental Representa-
16 tive.

17 We also received a letter from ARCO.

18 MR. FLETCHER: Yes, our comments were submitted
19 in writing. I won't reiterate any of them, and that is
20 a promise.

21 I would like to touch on one thing and then I will
22 be through. I will be brief.

23 The law, as I read it, does not provide for any dif-
24 ferent treatment of tank owners or exemptions for small
25 businessmen, or for any other reason. I only wish to men-
26 tion this because small business operators are not limited

1 to service station operators. They also include businesses
2 that use some very toxic materials, some very nocuous
3 materials, extra hazardous materials such as cyanide, sol-
4 vents, cleaning fluids, acids, polychlorinated biphenyls,
5 insecticides, poisons and so on and on. They, too, will
6 have the same three-year period in which to comply with
7 the full intent of your groundwater protection regulations.

8 I think if there are to be exceptions made to these
9 regulations that they should be equally applicable to all
10 tank owners.

11 Thank you for your consideration.

12 I would also commend the staff for the direction
13 in which they are moving and you as Board Members for your
14 actions today. I think you have done a fine job.

15 MS. ONORATO: Thank you.

16 Were there questions of Mr. Fletcher?

17 MS. RUIZ: No, but if I may; staff, has there been
18 any consideration in the development of these regulations,
19 and this has been a big concern of mine throughout these
20 proceedings, of other kinds of tanks besides certainly
21 motor vehicle fuel, for example, the people who have hy-
22 draulic lifts and your car dealerships who have tanks which
23 contain toxic substances.

24 Do you feel that these have been adequately addressed
25 or are addressed within these regulations?

26 MR. SINGER: I have been in discussion with some

1 people in the industry and most of them feel the under-
2 ground tanks that hold hydraulic fluids for a lift would
3 not be considered an underground tank. That is my under-
4 standing in talking with industry. They do not consider
5 that an underground tank.

6 MS. RUIZ: But do we? I can understand why they --

7 MR. SINGER: I'm not sure if we do either.

8 MR. ANTON: We tried to write around that. If the
9 amount of fluid in the equipment is just enough to operate
10 the equipment and not a storage facility per se -- perhaps
11 we haven't done that well enough, but that was our intent,
12 because we felt that the statute was aimed at storage
13 rather than a piece of equipment that contained the fluid
14 that it took to operate it.

15 MS. RUIZ: So, if they leaked, since they are not
16 used for storage --

17 MR. ANTON: It would still pollute the water. We
18 got into the obvious conflict of what about a basement
19 garage that contained cars with a tank of gas in it, and
20 some other less desirable questions that we couldn't address
21 very well either, so we attempted to put the emphasis on
22 storage rather than --

23 MS. RUIZ: I see. Well, I was just concerned be-
24 cause as I read the law, the intent of the law is that
25 we are really looking for potential sources of pollution
26 to the water, and if these kinds of situations do present

1 that threat or potential threat, I was curious as to whether
2 or not these regulations adequately address that kind of
3 problem.

4 MR. ANTON: Well, it's clear that there are a lot
5 of loopholes. This will not solve the potential ground-
6 water pollution problem that exists from facilities that
7 contain hazardous substances.

8 MS. RUIZ: Okay.

9 MR. ANTON: The very instance that you are speaking
10 of does create a problem, hydraulic lifts, hoists, that
11 sort of equipment, all contain a certain amount of hazard-
12 ous substances.

13 MS. RUIZ: Okay, thank you.

14 MS. ONORATO: Any other questions or comments?

15 Mr. Oberti, Environmental Analyst for the Fresno
16 County Health Department.

17 MR. OBERTI: Madam Chair and Members of the Board,
18 thank you for allowing me to speak to you. My name is Larry
19 Oberti. I am with the Fresno County Health Department.

20 We are a potential local enforcement agency for
21 these regulations. My comments are related more specifi-
22 cally to page 4.31, section 2641(d)(2), which has been
23 an issue earlier.

24 We agree with the fact that monitoring methods other
25 than groundwater monitoring should be utilized for under-
26 ground tank monitoring. However, the statement "shall

1 be implemented in these situations if groundwater is less
2 than 100 feet deep" poses some concerns.

3 Those concerns basically revolve around creating
4 conduits to groundwater by improper sealing of those wells.
5 In my experience in dealing with water wells, monitoring
6 wells, for the last ten years with Fresno County, we have
7 found that it's very difficult to seal off stratas in well
8 casings to a sufficient degree that we would prevent that
9 well casing from being a conduit.

10 Assuming that within these regulations and the way
11 they are written currently that somebody were to -- or
12 nowhere in the regulations do we find anything that says
13 other than Table 4.1, requirements under 2, 3 with regard
14 to groundwater monitoring, something with regard to the
15 frequency or the number of wells.

16 Assuming that most service stations that we are
17 talking about, gasoline stations, in our area with ground-
18 water at about an 80-foot depth, it would require three
19 monitoring wells. If you can visualize a street corner
20 or an intersection with one service station on each street
21 corner, that's 12 wells within a 250-foot radius. The
22 potential for conduits to the groundwater becomes great
23 at that point.

24 And I think with the time frame that we are looking
25 at in installing these wells there will be some hasty pud-
26 ding in of the sealing elements and I don't know who is

1 going to be able to monitor and make sure everyone gets
2 sealed properly. But that's the concern we have.

3 We would prefer to see the "shall" changed to
4 "should," and at the end of that sentence "may be required
5 by the local agency."

6 We feel that it would be more beneficial to utilize
7 the other methods for monitoring of the tanks rather than
8 the groundwater monitoring. Obviously, in instances where
9 we have a shallow groundwater, 30 feet or 35 feet, we would
10 be utilizing groundwater monitoring.

11 MS. ONORATO: Could the staff address that? Sounds
12 logical.

13 MR. SINGER: Our feeling on the issue of groundwater
14 monitoring is that where there are beneficial uses of that,
15 I will use the word shallow, less than 100 feet, that we
16 feel some groundwater monitoring should be performed to
17 assure that groundwater is not contaminated.

18 I think the concern Mr. Oberti has is on the conduit
19 being provided through that well and I think we have tried
20 to address that by requiring that certain types of seals
21 be used which we feel are effective in reducing that.

22 We have asked that the material be tremmied in
23 rather than just put in a well which is normally done dur-
24 ing, let's say, some older type groundwater excavations
25 or monitoring methods, or even well development. So, we
26 have tried to address the state of the art in terms of

1 the sealing mechanism that we feel is appropriate.

2 And maybe the question would be the type of sealing
3 that you experienced, have they used the tremming method
4 and have you got any indication whether that is appropriate.

5 MR. OBERTI: That method is appropriate. However,
6 again, it has to be done very carefully and even with the
7 most careful application it's not assured that all voids
8 will be filled. We feel that, you know, in a situation
9 where we have groundwater, where the surface of the ground-
10 water is within 80 feet of the ground surface, the actual
11 wells are perforated from 200 to 700 feet deep, so you
12 are not actually pulling from that top surface of the water.
13 It's a different situation than you have, say, in an area
14 where we have a lot of shallow groundwater wells pulling
15 from the very surface of the water where we would want
16 to be more concerned with protecting that upper layer of
17 water.

18 MS. ONORATO: I wish that there were in cases like
19 this where you have a local responsible agency that they
20 had the option of appealing the regulations or asking some-
21 body, can't we make our own decision and satisfy our own
22 demands within the parameters of your recommendation, and
23 you may be talking about this technology and so forth,
24 but I guess what I am asking you, is is it necessary to
25 have 12 wells just because you have four gas stations?
26 Couldn't they maybe be satisfied with four wells?

1 MR. SINGER: They probably could, yes.

2 MS. ONORATO: That would seem to be reasonable be-
3 cause that's a local responsible agency. Is there a mech-
4 anism in the regulations for this kind of appeal or devia-
5 tion or something like that? I think that's basically
6 what you are asking; isn't it, Mr. Oberti?

7 MR. OBERTI: Yes, that is what I am asking.

8 MR. SINGER: I think you are asking; one, are wells
9 necessary at all?

10 MS. ONORATO: No. What I am saying is I think re-
11 sponsible local agencies on a case-by-case basis should
12 have the right to make a determination of what is adequate
13 monitoring for a certain site specific case given other
14 local concerns which are going to vary from area to area
15 within the state.

16 MR. SINGER: I believe we could make allowances
17 for that type of local agency's authority.

18 MS. ONORATO: Does anyone disagree with me on the
19 Board? Please speak up.

20 MS. RUIZ: I think there is still the problem I
21 indicated when I was speaking to Mr. Cupps, and that was
22 the concern that not all local governments have that capa-
23 bility, or at least have indicated to me they have that
24 capability or expertise to be able to make those kinds
25 of determinations.

26 MS. ONORATO: That's what I am saying, not to give

1 them the right, but to give them the right to appeal that
2 to the Regional Board or State Board where such expertise
3 would rest, where they could go to the Regional Water
4 Quality Control Board or the State Board -- I don't care
5 what it is, and seek out that kind of expertise.

6 I agree with you that you wouldn't want -- that's
7 no insult to Mr. Oberti or any individual county, but there
8 are counties very definitely who do not have anywhere near
9 the expertise for this kind of thing, but I would like
10 to think local counties with specific site situations could,
11 through some mechanism, at the same time maintaining and
12 guarding the public health and welfare, which is the basic
13 cause of this.

14 MR. OBERTI: I believe it needs to be very well
15 specified and clarified when you start listing alternatives
16 that people have. I mean, in our first review of the origi-
17 nal draft or the original set of drafts, we were very con-
18 cerned with what was going to be required and the degree
19 of monitoring that was going to be required, and we felt
20 there was some overkill.

21 As of the November 9 draft, we felt reading through
22 it, we looked at the alternatives and felt those were quite
23 adequate. And then we read through further and find out
24 we might as well throw all of those out because of another
25 statement that says, well, you can't do vadose zone monitor-
26 ing and tank testing, pipeline detection and inventory

1 reconciliation because you have to put in a groundwater
2 monitoring well also. So, it basically throws that out
3 and limits the options significantly anyway in our area.
4 I don't know that that's warranted.

5 MR. SINGER: Again, I think the comment is it doesn't
6 throw any alternative out. It says if you want to do that
7 alternative in that specific hydrogeologic condition, you
8 also have to include groundwater monitoring. So, I don't
9 think it eliminates the use of alternatives. It says if
10 you use that, you also have to include something else in
11 that specific situation.

12 MR. OBERTI: If that method then is sufficient in
13 areas of deeper groundwater to detect leaks, then is it
14 not also sufficient in areas with shallow groundwater as
15 long as the groundwater does not reach up to the tank bot-
16 tom?

17 MR. SINGER: It talks about the risk we want to
18 take as to whether or not we are really protecting the
19 groundwater. I think we are saying that the reliability
20 of these systems is good, but not totally foolproof and
21 what we are saying is in certain cases that we try to
22 identify where the risk of contamination is great because
23 of the shallowness of the groundwater and the potential
24 use or actual use, that in those cases the groundwater
25 monitoring is your only means of saying whether or not
26 that groundwater is, in fact, clean or contaminated, and

1 we are trying to limit that to only those specific cases
2 where the risk to contamination is high because of the
3 shallowness of the groundwater and its use. It has to
4 be both.

5 MR. OBERTI: That's understood, but again, we get
6 into, it is better to utilize the other methods, is it
7 worth the risk of punching holes in the ground as opposed
8 to utilizing those other methods?

9 We have a concern that the trade-off may not be bene-
10 ficial.

11 Another question or comment that I have is as a local
12 entity or if a local entity should choose not to enforce
13 these regulations, what are the ramifications or sanctions?

14 MR. RICHARDS: As I believe I stated before, the
15 State Board is not given the authority to oversee imple-
16 mentation of either these regulations or the Sher bill
17 or this chapter of the Health and Safety Code as they may
18 be implemented by the counties that should be implementing
19 them. However, any citizen, any interested person, could
20 bring an action for mandamus against the county or the
21 city to require the city or county to implement the regu-
22 lations.

23 MS. RUIZ: Well, isn't it true, though, that while
24 we don't have oversight capability under this legislation,
25 that there is a provision that we are to report back to
26 the Legislature just as to how it is being implemented

1 and how it is, in fact, operating to protect groundwater?

2 MR. RICHARDS: We collect from the cities and coun-
3 ties information in their annual report relating primarily
4 to unauthorized releases and the issuance of permits, so
5 we will have a data base at the State Board based on the
6 terms of the permits and reports of unauthorized releases,
7 and we report to the Legislature on those matters.

8 We would also, of course, report to the Legislature
9 if you were not getting anything from the city or county.

10 MS. RUIZ: So while mandamus may be one of the
11 remedies the citizenry may have, but ultimately, the Legis-
12 lature may review where locals are not performing the func-
13 tion.

14 MR. RICHARDS: That's true, but there are no admin-
15 istrative sanctions or judicial sanctions, at least speci-
16 fic judicial sanctions for non-compliance on the part of
17 the local agencies that the State Board could exercise.

18 MS. RUIZ: All right.

19 MR. WILLIS: It would just seem to me that the most
20 obvious thing, though, is that in the event of a leak and
21 any type of contamination that any injured party would
22 find the local government agency wide open and very ripe
23 for just about anything they could take out of them in
24 a court of law as opposed to the local governmental entity
25 being able to direct all of that to the actual source and
26 let him pay for it.

1 MR. OBERTI: Okay, fine. My final comment has to
2 do with the implementation schedule, the July 1 deadline.
3 Your deliberations with regard to promulgating these regu-
4 lations or adopting these regulations and the additional
5 revisions -- it is very difficult as a local entity to
6 try and staff up and present to our Board of Supervisors
7 what we are going to need to implement a program when we
8 don't know what that program is.

9 So, we are looking at a time frame in which, once
10 the regulations are adopted, it may take us three months
11 just to get it before the Board, and another three months
12 to staff up, so we are looking at July 1 before we can
13 even start complying, let alone be well under way to having
14 all the monitoring systems in and under way.

15 I submit to you that you contact the local before
16 you go back to the Legislature and determine what it will
17 take them to implement this program as well as what it
18 would take industry in order to gear up to do it.

19 MS. ONORATO: Thank you, Mr. Oberti. That's a point
20 well made.

21 MS. RUIZ: If I may advise or suggest, you may wish
22 to contact your own legislator yourself.

23 MR. OBERTI: Yes.

24 MR. WILLIS: I would just like to tell the witness
25 I am sorry I started to interrupt you, but at least you
26 added a twist that we hadn't heard today and one that was

1 very well appreciated.

2 MS. ONORATO: I am going to ask staff to look into
3 this matter because the same issue has been raised conver-
4 sationally with me when I was down in Kern County. They
5 are having more and more deterioration of groundwater
6 sources. They feel it is very poor practice of sinking
7 monitoring wells and wells in general, and I am not satis-
8 fied on the point and I am not satisfied that there shouldn't
9 be a mechanism of some sort of check and balances, the
10 overriding concern for public health and safety, for local
11 entities to appeal to these regulations on a site specific
12 basis, and I would like that looked into.

13 Ladies and gentlemen, we have one more person that
14 signed up to speak and someone has just signed up, but
15 I also have an additional eight or nine people who have
16 said they would if necessary. It's almost time to give
17 a rest to our court reporter, so I am going to call Mr.
18 Daniel Hall from Wickland Oil Company and the rest of you
19 will have to reconvene with us in another 15 minutes.

20 Mr. Hall from Wickland Oil Company, Sacramento.

21 MR. HALL: I guess to start off I would like to
22 keep my comments brief. One of the nice things about being
23 last is you have less to say because other people have
24 said it, but one item that I basically do not think has
25 really been given the attention it deserves has to do with
26 the so-called alternative 8 in Article 4, that section

1 2641(c)(8)(A)(II). That is basically the provision that
2 allows for adhering to interim standards provided at the
3 end of a period the tank is either permanently removed
4 or removed and replaced with a new tank.

5 In looking at this alternative, I think that seeing
6 it pop up into the last draft we were glad to see it there,
7 and we would suggest that the three-year term, however,
8 be extended.

9 CIOMA earlier today suggested seven years. We think
10 that would be appropriate and we would be able to go with
11 five. Our reasoning basically for this is several fold.
12 Number one, if you spread out to the extent that you are
13 spreading out costs over a longer period, it allows a com-
14 pany like us -- we are a chain marketer, we have 80 plus
15 units. It allows us to take a longer term look at what
16 we want to do withour stations.

17 Now, at this point, in looking at alternatives 1
18 through 6 withour in-house construction people, we have
19 asked them what is it going to take on a station-by-station
20 basis to comply with this regulation.

21 They have come back and they have said to us, look,
22 we think that on an overall basis when all the dust is
23 settled, you are going to be looking at \$10,000 a station.
24 Now, looking at that, that's an up-front outlay for us
25 of around \$800,000. Now, to the extent that we can take
26 alternative 8 and run it out further than three years,

1 what happens is some of the money that we would have to
2 put up front under alternatives 1 through 7, we cannot
3 expend at this point, and in that process save it for
4 either a replacement process or a removal process when
5 a station is shut down.

6 For example, if you have a ground lease station that
7 the lease runs out in four years and it is a marginal sta-
8 tion, to us the thought of putting \$10,000 into that
9 facility right now is somewhat abhorrent economically,
10 and from a long-point view, because at the end of that
11 four years that station will be knocked down, the lease
12 will be up and the tank will be removed.

13 What we would prefer to do on that type of facility
14 is take advantage of the alternative 8 scenario, go with
15 the interim inventory reconciliation, installation of pipe-
16 line leak detectors and annual tank checks. That gives
17 us the flexibility then to take the money that we have
18 saved in doing that process and put it towards upgrading
19 other facilities by the complete removal of tanks after
20 the five-year period.

21 Now, from the point of view of the Water Resources
22 Control Board, what extending the period from three to
23 five years does is basically give you a better end result.
24 At the end of the five years you either have a situation
25 where the tank has been permanently removed or the tank
26 has been removed and replaced with a new tank complying

1 with the new tank provisions.

2 As we see that, that is ultimately from your per-
3 spective a preferable result. I think we all would admit
4 if money wasn't a limited commodity and nobody had to worry
5 about cost, we all would prefer all the tanks were ripped
6 down and replaced with new tanks. That's not the way the
7 things are, but I think that if you extend from three to
8 five years the interim period, you are going to ultimately
9 end up with a better overall result, and also, with the
10 result that industry retail marketers such as us don't
11 have to suffer such an up-front impact.

12 So, that's the first point that I wanted to raise.

13 Secondly, going back to -- by the way, I do want
14 just to give you an example of how quickly a marketer,
15 a chain retail marketer can turn over units, since 1980,
16 we have sold or rebuilt from the ground up over 20 of our
17 units. Most of the units that we have sold have been not
18 put back into service station service, but have been sold
19 to people who have better profit margins, like McDonald's
20 and Wendy's and what have you, so that those stations are,
21 in essence, coming out of the market. The tanks are being
22 ripped up. So, we really stress it, take a look at the
23 three years and whether there is room to extend that.

24 My second point goes back to alternative 5, which
25 is the inventory reconciliation provision for motor vehicle
26 fuel facilities. Again, we have looked at this and

1 basically feel that the error factors that are stated in
2 that alternative are too hard to meet under existing tech-
3 nology.

4 I know you have heard from a wide variety of people
5 with a wide variety of views. Our view is that that can-
6 not be met. What we would prefer to see is more of a trend
7 analysis monthly approach with a shortage factor of at
8 least .5 percent. That is what our people say we can con-
9 sistently meet.

10 Now the problem that we basically see with the al-
11 ternative right now as it is presently worded is that,
12 really, we don't have, I don't think really, a broad-based
13 consensus on whether or not those standards are realistic.

14 We have from staff some representations that in simu-
15 lations they appear to be realistic. In passing, I don't
16 mean to be too trite, the Pentagon has occasionally used
17 simulations to prove that missiles that don't work work.

18 What I am trying to get at here is that I think we
19 really need to take a close look on a hands on in the field
20 protracted basis at these standards. We have looked at
21 it very closely. We think that the best that can be ex-
22 pected is a .5 loss factor on a monthly basis.

23 Now, again, looking at alternative 5 and relating
24 back to the cost to us of implementing alternative 5, you
25 are talking about \$800,000, and I particularly as a member
26 of the company do not feel that putting \$800,000 on the

1 line up front based on simulations and some other indi-
2 viduals, I think, basically unsubstantiated claims that
3 these inventory reconciliation numbers are realistic, is
4 wise or appropriate.

5 And I harken back to phase 2 vapor recovery.

6 When I first got into the industry that issue was
7 just reaching its culmination. At that time, we were being
8 told as an industry that all this is not going to cost
9 you too much and the technology is there, let's go ahead,
10 let's implement it.

11 Well, I wish that I had a nickle for every dollar
12 we spent on machinery that didn't work, on pulling out
13 lines that the standards had changed, until the things
14 finally was in place. I think you may have a situation
15 here where regulations are somewhat ahead of technology
16 and what we counsel basically is that to the extent that
17 that is the case, it be accounted for, people realize it.

18 Those are the two points that I really wanted to
19 make here. We have submitted some written comments. As
20 I mentioned earlier, we are members of CIOMA and we did
21 participate in the formulation of their comments. These
22 were two areas we thought we wanted to elaborate on.

23 I would respond to any questions you might have
24 at this time.

25 MS. ONORATO: Are there any questions of Mr. Hall?

26 I do think I would tell you that the monitoring

1 alternatives we came up with, we feel that we have been
2 listening to the input of prior hearings here and that
3 they do encompass industry-generated suggestions. I don't
4 think we have just relied too heavily on the point you
5 made and which we are not insensitive to, relying on the
6 technology that is not perfected and also the cost effec-
7 tiveness of it. It's a great concern, and we are all aware
8 of the vapor recovery fiasco of the first few years.

9 MR. HALL: We just hope that it is not repeated.

10 One thing I would like to bring up, if you look
11 at the alternative 5 error factors as they presently are
12 configured, you come up with a somewhat startling, to me,
13 anomaly.

14 MS. ONORATO: Ask staff. What were those based
15 on?

16 MR. HALL: And Harold, let me just give you an ex-
17 ample here. It seems a bit strange to me, for example,
18 if you have a 10,000 gallon tank and no through-put, your
19 error factor for that month is, as I understand it, 100
20 gallons, which works out to be in excess of -- excuse me,
21 75 gallons, which turns out as I calculate it to be in
22 excess of .6 percent.

23 On the other hand, if you run 50,000 gallons through,
24 or if your through-put is to a point of measurement, say,
25 of 50,000 gallons, you are down to a .3 basis. Now, it
26 seems to me that as through-put increases, you really are

1 into a situation where there can be more error or indicates
2 no leak. In other words, a tank sitting there with product
3 in it and no through-put, it seems to me to be the easiest
4 circumstance to measure and measure consistently. But when
5 you have a system where you have a lot of through-put, on
6 the other hand, there's much more change for error and it's
7 a little bit hard for me to figure out why that was
8 structured the way it was.

9 . You might be able to tell me.

10 MR. SINGER: I think it would be easaier for us
11 to get together and talk about it. Let me make one point.
12 The numbers here are not based on simulation. In other
13 words, that was discussed at the November 2 workshop and
14 it was determined that we did not want to go with that
15 level or that type level of inventory reconciliation, and
16 that the numbers here that we propose are based upon what
17 we feel can be met using stick reading, doing it fairly
18 accurately, and that those that can meet that would then
19 fall into alternative 6, which we looked at as being what
20 industry said they could do regardless of how well they
21 monitored their inventory reconciliation. In other words,
22 this was the largest number that anyone proposed in com-
23 ments on the original draft regulations.

24 So, none of these numbers are based on simulations.

25 MR. HALL: Well then, I guess all I can say is that
26 there's a definite risk in the industry on what is

1 attainable and what is not attainable because we don't
2 believe those standards are reflective of reality.

3 MS. ONORATO: Mr. Hall, I think Mr. Noteware has
4 a question for you.

5 MR. NOTEWARE: Yes. Mr. Hall, I have had a question
6 kind of in the back of my mind and I am sure you can answer
7 it. When I was farming we had a couple of underground
8 tanks and we didn't have the type of help that could have
9 monitored them and so forth. I know we would certainly
10 just take them out of the ground and put them on a rack
11 and we would have no more underground tanks, and I'm sure
12 that's what is going to happen in a lot of rural areas.

13 MR. HALL: Farmers' tanks are exempted from the
14 law. That was one of the points we were upset about when
15 we were discussing this with Mr. Sher back when the law
16 was passed.

17 MR. NOTEWARE: But I think there are a lot of con-
18 scientious farmers out there who realize there is a poten-
19 tial hazard, but be that as it may, I am wondering if we
20 are going to see in some service stations in rural areas
21 where they can meet the setback requirement, fire haul
22 requirements and so forth, if some of the tanks are actually
23 going to be installed above ground, or is there something
24 I don't understand? Is vandalism so much of a problem,
25 or can't you get your deliveries?

26 MR. HALL: Well, I have two responses to that.

1 to speak again, and for those diehards who are still here,
2 I don't plan to speak very long.

3 MS. ONORATO: Bless you.

4 MR. DUNCAN: You can't help wondering at times
5 why we can't do something a little bit differently than
6 the course in which we are already chartered to go. You
7 are dealing with a time jam of getting something approved,
8 I recognize something has to be approved, but I wonder
9 if we can't prioritize what we are doing, and it is maybe
10 too late to even try and do that, but I would suggest
11 that, you know, if one of the goals was to get something
12 adopted, then it would appear reasonable to go with some-
13 thing that you can adopt, and I think that you are trying
14 to develop a program state-wide which now has eight dif-
15 ferent boxes that we are going to try to put everybody
16 in, and I recognize that there are some very significant
17 leaks that have affected groundwater, but maybe we could
18 look at them differently.

19 Maybe we could phase our approach, maybe we could
20 say go with something that would protect the groundwater
21 with things other than fuel oil, and then the second
22 phase you come in and address that.

23 I don't think that, you know, if you were to take
24 fuel oil out of these regulations right now, I think that
25 the numbers that are before you would diminish drastically.

26 The heartburn that you would have to deal with would

1 reduce significantly, and I think you would be attacking
2 the problem that is more significant first.

3 If we are talking about, and I think I mentioned
4 it before, an underground storage tank of Johnson & John-
5 son baby oil, and something that is storing formaldehyde,
6 PCB's or something extremely corrosive, I say let's regu-
7 late the extremely hazardous materials first. Let's learn
8 by what industry can come up with as far as monitoring
9 mechanisms and then approach the fuel oil issue later.

10 I think that rather than ignore fuel oil completely,
11 put everybody on mandatory mandatory reconciliation. Let's
12 look at the facts after a year or two of experience. Let's
13 find out where the problems really are. Are we having
14 a significant problem?

15 Fresno County is not here any longer, but I feel
16 the gentleman is extremely optimistic on how we can gear
17 up to the local level to implement this program. He indi-
18 cated it would take three months to get approval and three
19 months to fill the positions.

20 I am here to tell you that there's a shortage of
21 sanitarians state-wide and that, in fact, there are proba-
22 bly a hundred vacancies now before we start implementing
23 this program statewide. It's a process that takes a while
24 to get the students through the academia to be capable
25 of passing the state registration, be hired, and I'm not
26 saying they all have to be sanitarians, but most of your

1 local agencies are environmental health agencies and they
2 do hire sanitarians for these type of operations, and
3 I suspect that if I had a vacancy and I could convince
4 my board I had a need, first of all, it would take me
5 much longer than six months to have a person actually
6 there and doing something.

7 Or, as I indicated before, I guess someone could
8 prioritize which state-mandated programs I would put on
9 the back burner.

10 I think that there was mention -- I can't remember
11 who brought it up, it may have been Mr. Oberti from Fresno
12 County, regarding the specific process for recognition
13 of local program variances.

14 I think it is extremely important. As Chairman
15 Onorato recognizes, I have dealt with the gag lines for
16 sewage disposal and we learned to know that when you had
17 a guideline, it becomes a lot of times interpreted as
18 the law and there may be reasons to allow variances in
19 certain areas, but when those guidelines are interpreted
20 by the state staff, sometimes we don't always agree.

21 MS. ONORATO: Mr. Duncan, is El Dorado County one
22 of the counties that took the lead by adopting regulations
23 prior to January 1 of 1985?

24 MR. DUNCAN: No, we didn't.

25 MR. WILLIS: You are going to use these regulations?

26 MR. DUNCAN: We are going to use whatever is

1 adopted.

2 MR. WILLIS: The regulations we adopt?

3 MR. DUNCAN: Yes. I can see absolutely no advan-
4 tage of emergency regulations locally, local ordinances,
5 and I suspect that more of the counties that did adopt
6 something prior to the deadline are finding out it wasn't
7 to the advantage they thought it was.

8 MS. ONORATO: Most of the regulated communities
9 are waiting for the State Board to adopt their regulations.
10 I have heard this often enough to be convinced it is proba-
11 bly state-wide almost.

12 MR. DUNCAN: And, of course, depending on the regu-
13 lations, the program is going to be dependent --

14 MS. ONORATO: Mr. Duncan, you do understand and
15 I think I am on strong legal grounds even though Darlene
16 isn't here yet, we don't have any option to drop out ser-
17 vice stations from the regulated communities. I think
18 the law said all underground tanks and did not give pri-
19 ority.

20 Your point is well taken because many people argue
21 that this was directed towards those who are using under-
22 ground tanks for disposal of toxic garbage, toxic material,
23 and that the regulations are being interpreted just as
24 heavily on the other users of underground tanks who use
25 it for storage purposes only on a very interim basis,
26 and the Board is not insensitive to that, but, am I not

1 correct, Mr. Richards, we don't have the option in law
2 to treat them on a prioritized basis?

3 MR. RICHARDS: No, we don't have any option in
4 that respect at all. We must have these regulations in
5 effect and for everybody, tank owners and operators must
6 comply.

7 MR. DUNCAN: But on the same line, if your regula-
8 tions were phased such that you are going to deal with
9 how to monitor and otherwise deal with fuel oils at a
10 later time, you still have that option; don't you?

11 MS. ONORATO: Mr. Willis has something.

12 MR. WILLIS: Mr. Duncan, we have actually, be-
13 lieve it or not, we talked about that some months ago
14 and it is an exercise in futility.

15 Is there something else that is of particular con-
16 cern?

17 MR. DUNCAN: Well, my concern was I thought it
18 was a mistake to lump those two together in the first
19 place and it always has been.

20 MR. WILLIS: Well, I don't know, it's not our mis-
21 take.

22 MR. DUNCAN: Well, I didn't blame you directly.
23 I just thought if the heartburn of getting something
24 through is such that you are going to time line on it,
25 I would seriously consider maybe a portion of the program
26 to be implemented or to meet that deadline would be better

1 than continual clashes.

2 MR. FINSTER: I think we are 90 percent there.
3 It is just the last ten.

4 MR. DUNCAN: Well, I would also like to point out
5 that I am concerned about the groundwater monitoring as
6 creating conduits for contamination, not specifically
7 for the process of drilling, but also, from the sewage
8 disposal aspect because in rural areas, there are a lot
9 of service stations, et cetera, on septic systems, and
10 by providing that conduit, you can contaminate the ground-
11 water with other than gasoline.

12 MR. WILLIS: We may be able to put a prohibition
13 on them and give them a clean water grant to put sewers
14 in all of the area.

15 MR. DUNCAN: Well, I don't know.

16 MS. ONORATO: Thank you very much, Mr. Duncan.

17 I would like to call Patrick Couch, registered civil
18 engineer.

19 MR. COUCH: Members of the Board and staff, I just
20 have a very quick question, as you saw on the card there.
21 What is the applicability of this statute to the federal
22 land holdings in the state, and is there any applicability
23 to the state's land holdings?

24 MS. ONORATO: The answer is yes to both, unequivocally.
25

26 MR. COUCH: Who will monitor that or enforce that?

1 MS. ONORATO: The Regional Water Quality Control
2 Board wherever these installations are located will be
3 responsible for them, and the military was not here today,
4 but they have been to our earlier hearings and they were
5 satisfied. We heard from them by telephone --

6 MR. RICHARDS: Ms. Onorato, it would be the cities
7 and counties.

8 MS. ONORATO: The cities and counties, but the
9 military, the federal installations.

10 MR. RICHARDS: Yes, federal installations as well.

11 MS. ONORATO: I'm sorry, it is the cities and coun-
12 ties which have the lead role in this.

13 MR. COUCH: Have the federals agreed to that?

14 MS. ONORATO: Well, they have been relieved by
15 our No. 8, wasn't it, that gave them the three years.
16 Their concern was quite frankly that they have to do some-
17 thing about this and that they are going to make a con-
18 certed effort for authorization in the federal budget
19 to do the implementing of the monitoring and so forth.
20 They are going to try to approach it on a state-wide basis
21 with the Congress, and then they will have to make it
22 an ongoing part of their budget every year, so they were
23 very concerned about the time frame, and they now have
24 up to three years to do that, and again, I'm sorry every-
25 one in the audience for that slip and I'm sorry for the
26 incorrect information, Mr. Couch. It's the cities and

1 counties who have the lead role in the implementing of
2 this Sher bill and they will be responsible for any dere-
3 liction on the part of the armed services or the state.

4 MR. COUCH: Will they also be monitoring their
5 own facilities?

6 MS. ONORATO: They better.

7 MR. COUCH: Okay.

8 MS. ONORATO: The law calls for that.

9 MR. COUCH: I didn't have it written down, but
10 I would like to address one other question. It seems
11 to me that this is going to be such a monumental task
12 to monitor all the underground tanks in the state that
13 the cities and counties are not going to have enough man-
14 power to do this. If the private sector going to be called
15 upon to monitor or assist them on a contracting-out basis?

16 MS. ONORATO: I guess that's going to be up to
17 the entities to make that determination. It's supposed
18 to be self-funding.

19 The cities and counties have the authority in the
20 bill to levy whatever cost must be levied to operate the
21 program and I am certain there are some instances where
22 the counties would not be interested in expanding their
23 work force to do this, and perhaps they will contract --

24 MR. COUCH: So it would be their option?

25 MS. ONORATO: It will be their option.

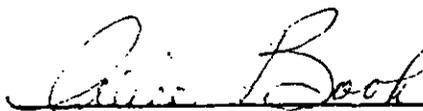
26 Mr. Singer?

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REPORTER'S CERTIFICATE

THIS IS TO CERTIFY that I, ALICE BOOK, a Certified Shorthand Reporter, was present during the public hearing of the STATE WATER RESOURCES CONTROL BOARD, STATE OF CALIFORNIA, held in Sacramento, California, on Tuesday, November 27, 1984; that as such I recorded in shorthand writing the proceedings therein held and that I thereafter caused my shorthand writing to be transcribed into longhand typewriting; that the foregoing 230 pages hereof constitute said transcript; that the same is a true and correct transcription of my shorthand writing for the date herein specified.

Dated: December 7, 1984



ALICE BOOK

4. January 18, 1984 Special
Board Meeting in the matter of
adoption of regulations
governing underground storage
of hazardous substances

Special Board Meeting
STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

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|-----------------------------------|---|---------------------|
| In the Matter of: |) | Subchapter 16 |
| |) | Chapter 3, Title 23 |
| ADOPTION OF REGULATIONS GOVERNING |) | California |
| UNDERGROUND STORAGE OF HAZARDOUS |) | Administrative Code |
| SUBSTANCES |) | |

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Held in
Resources Building
Sacramento, California

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Friday, January 18, 1985
10:00 a.m.

ALICE BOOK
CERTIFIED SHORTHAND REPORTER
P O BOX 710, COLUMBIA, CALIFORNIA 95310
PHONES 916 457-7326 & 209 532-2018

A P P E A R A N C E S

Board Members:

- CAROLE ONORATO, Chairwoman
- WARREN D. NOTEWARE, Vice Chairman
- KENNETH WILLIS
- DARLENE RUIZ
- E. H. (Ted) FINSTER

Staff:

- ED ANTON
- JOHN RICHARDS
- HAROLD SINGER
- W. R. ATTWATER

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I N D E X

| | Page |
|----------------------------------------|------|
| Opening Statement - Chairwoman Onorato | 1 |
| Staff Presentation: Mr. Anton | 1 |
| Monitoring Alternatives - Mr. Singer | 6 |
| Public Comments: | |
| FRANK WINSTON | 11 |
| JAMES LAVINE | 13 |
| F. A. NAGLESTAD | 19 |
| BOB SHUSTER | 24 |
| BERT McCORMACK | 29 |
| TOM ROBINSON | 31 |
| MIKE BONKOWSKI | 34 |
| MARGARET ALLENDER | 37 |
| DON McEDWARDS | 44 |
| E. D. YATES | 48 |
| BOB MEACHAM | 51 |
| GERALD HAGY | 55 |
| RICHARD GRAY | 56 |
| BYRON TAYLOR | 59 |
| RICHARD REISZ | 61 |
| JIM CAMPBELL | 63 |
| LARRY MINET | 69 |

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1 Friday, January 18, 1985, 10:00 a.m.

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3 MS. ONORATO: Good morning, ladies and gentlemen.
4 This is a special meeting of the State water Resources Con-
5 trol Board for the purpose of adopting regulations govern-
6 ing the storage of hazardous substances in underground
7 tanks.

8 These regulations will be codified in subchapter
9 16 of Chapter 3 of Title 23 of the California Administra-
10 tive Code.

11 I am Carole Onorato, Chairwoman. With me today are
12 Doug Noteware, the Vice Chairman; and Board Members Ken
13 Willis, Darlene Ruiz and we expect to be joined in a moment
14 by Mr. Ted Finster, who is having a briefing.

15 The Board will accept testimony today only on the
16 changes that have been made since the November 27, 1984
17 hearing. The Board will also accept argument on whether
18 it should adopt the regulatory package as proposed.

19 Mr. Anton will be making the presentation for the
20 Board.

21 MR. ANTON: Thank you. I just briefly want to sum-
22 marize what has occurred up until this time.

23 The regulations were proposed some time ago and sub-
24 sequent to their proposal, we have had six different noticed
25 workshops with local agencies and various industry groups.

26 We have also had numerous individual meetings with

1 various industry groups to try to resolve the problems and
2 misunderstandings about what was being proposed in the
3 regulations.

4 In addition to those contacted were the regulated
5 community and the agencies that would be implementing the
6 regulations. We have held public hearings on October 23,
7 1984 and November 27, 1984. We also held a public workshop
8 that had much of the characteristics of a hearing in terms
9 of the conduct and timing that was held on November 2, 1984.

10 This public-input process has resulted in a number
11 of changes, we hope most of them for the better, as a result
12 of provisions by the regulated community and people that
13 would be doing the work to regulate the community.

14 Subsequent to the November 27 hearing, we have made
15 some further changes. Copies of those changes have been
16 made available at the back of the room. There may not be
17 enough to go around to everyone, but I believe there are
18 enough that with a little bit of sharing, everyone should
19 have them.

20 I will briefly summarize those changes that we have
21 made since that November time.

22 First, the motor vehicle fuel tank definition:

23 The motor vehicle fuel tank definition, as
24 included in the November 9, 1984, proposed
25 regulations, allows the owner of a tank which
26 is used to fuel motor vehicles to utilize

1 certain construction and monitoring stand-
2 ards which are not available to other tank
3 owners.

4 The staff's intent is to allow this definition
5 to be used for tanks which are used to fuel motor vehicles
6 that also have other uses.

7 Commenters proposed that the definition be broadened
8 to allow the use of special construction and monitoring
9 standards by owners as tanks which store a motor vehicle
10 fuel regardless of its use. The definition of motor vehi-
11 cle fuel tanks has been modified to include all tanks which
12 store a substance which is intended for use to fuel an en-
13 gine in a domestic, commercial, industrial or agricultural
14 use.

15 The second is visual monitoring of new tanks. The
16 visual monitoring alternative has been changed to exclude
17 weekends and holidays as part of daily monitoring. Local
18 agencies have been given the discretion to require more
19 frequent monitoring or less frequent monitoring with a mini-
20 mum frequency of at least once a week.

21 Third is corrosion protection. In response to com-
22 ments, the proposed regulations have been modified to re-
23 quire cathodic protection for all steel underground storage
24 tanks except for those clad with glass fiber reinforced
25 plastic.

26 Fourth, monitoring of new motor vehicle fuel tanks

1 and pressurized piping:

2 As mandated in Section 25291(a)(7)(D) and
3 (E) of the Health and Safety Code, underground
4 tanks and connected pressurized piping which are
5 constructed using the criteria reserved for motor
6 vehicle fuel tanks must be monitored as specified
7 in Section 25292(b)(3) of the Health and Safety
8 Code.

9 The underground storage tanks and connected
10 pressurized piping must be monitored using
11 a continuous leak detection and alarm system
12 located in monitoring wells adjacent to the
13 underground storage tank.

14 This monitoring is in addition to the moni-
15 toring of the leak interception and detection
16 system and replaces the requirements for
17 inventory reconciliation, periodic tank
18 testing and the use of leak detectors on
19 pressurized piping in previously proposed
20 regulations.

21 Number five, State Board authority: Commenters
22 questioned our interpretation of the statute which gives
23 the State Board the authority to establish monitoring alter-
24 natives for existing tanks and minimum standards for moni-
25 toring methods.

26 The statute clearly states that the local agency

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may require and shall approve the specifics of any monitoring alternative pursuant to State Board regulations. The proposed regulations are minimums and subject to approval by the local agency. Therefore, the proposed regulations have not been changed in response to the questioning of the State Board authority to identify monitoring alternatives.

Number six, monitoring alternative 8 for existing tanks: This alternative was developed to address the fiscal impact to small businesses by allowing them more time to achieve compliance. In addition, it was provided as an option to any tank owner who committed to eliminate the tank or replace it with a new secondary-contained tank within three years.

Commenters requested the State Board to provide this alternative of delaying the implementation of more reliable monitoring to all tank owners. The regulations have not been modified in response to this comment.

Number seven, groundwater monitoring: Arguments were presented at the November 27, 1984, meeting suggesting that the requirement for groundwater monitoring in recharge areas where the groundwater is less than 100 feet deep is unnecessary.

The regulations have been changed to give the local agency the discretion to require groundwater monitoring in recharge areas if it deems it necessary to assure the

1 protection of beneficial uses.

2 Eight, underground storage tanks repair: The pro-
3 posed regulations have been modified to provided greater
4 detail to the section on tank repair evaluations. Certi-
5 fication of tank integrity by a special inspector prior
6 to repair is required to be based on specific criteria,
7 including tank material, thickness, compression, seam splits,
8 perforations, tension, and other factors.

9 That is a summary of the changes and areas where
10 we did not change based on significant concern raised.

11 At this time, I will ask Harold Singer to very
12 briefly explain the monitoring alternatives that are pres-
13 ently in the proposed regulations. I do this because there
14 still seems to be some confusion in the regulated community
15 about what these alternatives are.

16 Harold.

17 MR. SINGER: Before I get into the actual alterna-
18 tives, I just want to give you a very brief background on
19 the basis for the eight alternatives.

20 First of all, the legislative mandate indicates
21 that the minimum frequency of monitoring must be monthly
22 so in any of the alternatives the frequency of monitoring
23 can be no less than monthly for at least one of the moni-
24 toring methods in order to comply with the legislation.

25 Secondly, the statutes clearly provide for three
26 monitoring alternatives. We have developed alternatives

1 1, 2 and 5, in order to meet the legislative intent. Alter-
2 natives 3, 4, 6 and 7 have been developed by the Board
3 staff as other alternative methods of monitoring and this
4 is consistent with the statute authority that gives us the
5 authority to develop other monitoring alternatives.

6 And finally, alternative No. 8 is developed as
7 an interim monitoring alternative which has specific uses
8 and can be used for a period of up to three years.

9 Finally, the implementation of these alternatives
10 is intended such that the tank owner would develop a moni-
11 toring alternative for his or her specific tank, and pro-
12 pose that alternative to the local agency. The local
13 agency would review the alternative, could approve it, could
14 reject it, or could require more stringent monitoring as
15 part of that alternative that is being proposed.

16 So, the approval process is to the local agency.
17 However, the initial proposal does come from the tank owner
18 as to which alternative they would like to implement for
19 their tank.

20 So, with that brief introduction, let me go through
21 the alternatives briefly.

22 The first alternative is a tank-testing alterna-
23 tive. This is typically known as a pressure test or preci-
24 sion test. It's a test that is performed on the tank.
25 Again, it's one type of testing. Therefore, the minimum
26 frequency can be monthly. And there are no other tests

1 required as part of that.

2 The second alternative, again from the legislation,
3 requires some form of vadose monitoring which could either
4 be vapor or liquid monitoring, and groundwater monitoring
5 as part of that on a less frequent basis, and on soil
6 sampling at the time that the borings are placed in the
7 ground.

8 Alternative No. 3 has also been developed. This
9 is not part of the statutory mandate. This would allow
10 for vadose monitoring plus soil sampling at the time the
11 borings are placed in the ground, and periodic or annual
12 tank testing. We have provided some specific minimums where
13 this alternative can be used, and let me just go through
14 that briefly.

15 We have indicated that this alternative is appli-
16 cable in areas where groundwater is either deeper than 100
17 feet or in areas where groundwater is shallower than 100
18 feet, if that groundwater is shallower than 100 feet if
19 that groundwater has no beneficial uses or is hydraulically
20 connected to groundwater that has beneficial uses.

21 Alternative No. 4 is an alternative that allows
22 for groundwater monitoring and soil sampling. Groundwater
23 monitoring -- this is in the errata, but let me make sure
24 everybody understands it, the frequency for groundwater
25 monitoring is monthly and the soil sampling would be done
26 on installation.

1 In this case, we have limited to this area where
2 groundwater is shallower than 30 feet and also, that ground-
3 water doesn't have any actual potential uses.

4 Alternative No. 5 is the first alternative that
5 is only applicable to motor vehicle fuel storage. This al-
6 ternative would provide for inventory reconciliation, tank
7 testing and pipeline leak detectors. The basis of the
8 alternative here is what we believe to be the most accurate
9 level of inventory reconciliation that could be achieved
10 using sticking measurements.

11 Alternative No. 6 is also available strictly to
12 motor vehicle fuel tanks. It involves inventory reconcilia-
13 tion. However, the trigger mechanism or the limits on this
14 are less stringent than those in alternative 5.

15 Based on those less stringent limitations, however,
16 we are also requiring either a vadose zone monitoring or
17 groundwater monitoring as a backup to the inventory recon-
18 ciliation.

19 Alternative No. 7 is mainly imposed in here for
20 smaller tanks. We did not define small tanks. However,
21 we indicated what accuracy the gaging must be done to. This
22 would normally be applicable to tanks of roughly about 2,000
23 gallons or less. We are looking at this as standby tanks
24 which are not used very frequently, potentially individual
25 residence tanks that are small tanks that they may make
26 a withdrawal once a week for fueling their car, something

1 where the tank does not have daily or every other or every
2 two or three day inputs and withdrawals, and can be measured
3 very accurately, and this would involve again tank gaging
4 on a weekly basis and tank testing on an annual basis.

5 And finally, alternative No. 8, which I indicated
6 was an interim alternative -- this is mainly put in here
7 to reflect the small business situations. We are trying
8 to impose this alternative as being something that can be
9 implemented without the installation of physical facili-
10 ties; that is, with very minimal costs up front. This is
11 probably more of an operational-type alternative.

12 The main cost on this would be the tank testing that
13 would be required annually, and then the inventory recon-
14 ciliation would be required on a daily basis or a tank
15 gaging with pretty tight accuracy.

16 The inventory reconciliation we have used the num-
17 bers that we have used in alternative 6, which is the more
18 relaxed number for inventory reconciliation, and again,
19 this would be limited to three groups; that is, small busi-
20 ness that come under the definition of small business in
21 the statute; second, it would be limited to those tank
22 owners that make a formal commitment to remove that tank
23 after the three-year period of time, and by removal we
24 either mean totally remove the tank and stop using any form
25 of underground storage, or replace the tank with the double-
26 contain facility at the end of that three years, so removal

1 could be either one of those two things; and finally, the
2 last group that would be applicable to would be governmental
3 agencies.

4 So, that is a summary of the alternatives.

5 MS. ONORATO: Thank you very much. Are there any
6 questions of the staff at this time?

7 Thank you.

8 Then we can proceed to taking comments from the pub-
9 lic. I am going to limit very stringently the additional
10 input and this is with the concurrence of my fellow Board
11 Members. Individuals will be limited to five minutes and
12 organizations to ten minutes, and ladies and gentlemen,
13 please, also, would you limit your comments to what has
14 been noticed for the hearing.

15 Mr. Frank Winston representing Genelco, Inc., from
16 San Francisco. Good morning, Mr. Winston.

17 MR. WINSTON: Good morning, Madam Chairman.

18 Many of our concerns have been eliminated by the
19 explanations from Mr. Anton and Mr. Singer. However, I
20 am still concerned and my clients are concerned about your
21 alternative 2 and the use of monitoring wells.

22 I can only refer you to your own files in the Santa
23 Rosa area, a major industrial user. My information was
24 not accurate initially. I thought a man making a delivery
25 had inadvertently dumped trichlorethylene into a monitoring
26 well. I find it is much more serious than that. It was

1 an employee of the company with the responsibility for dis-
2 posing of used solvent who had dumped it directly into the
3 groundwater through the monitoring well that had been
4 drilled by the company within all of the required security
5 areas and concerns that are outlined in your regulations.

6 Consequently, if it can happen once, it can happen
7 many times.

8 We have a simple alternative that we would like to
9 request. We don't say outlaw wells. We ask you to take
10 one stroke of your pen today on alternative No. 3 and sim-
11 ply draw through the lines that say "this alternative shall
12 not be used when first groundwater is less than 100 feet
13 deep."

14 If it is an acceptable technology for vapor zone
15 monitoring above 100 feet, or when the groundwater is 100
16 feet deep, why isn't it equally acceptable and why shouldn't
17 it be an equally acceptable alternative to say you may use
18 vadose and soils and tank testing, period. What is the dif-
19 ference?

20 Staff tells me the difference is the cost of drill-
21 ing a well below the 100-foot level. Is water that much
22 cheaper below 100 feet? Is it that much less important,
23 or is it acceptable technology to monitor the vapors in
24 the vadose zone at the 100-foot level; therefore, why isn't
25 it at the 50-foot level or the 30-foot level, and what would
26 be the problem of just eliminating much of the concern

1 that is felt about groundwater monitoring wells by saying
2 that at any depth of groundwater you may use vapor monitor-
3 ing?

4 Beyond that, I think most of the comments that I
5 had are unnecessary and I want to thank the fog here in
6 Sacramento that held two of our engineering consultants
7 that were going to fly up, one from Tuscon and one from
8 Los Angeles, so that they couldn't be here and take up your
9 time today; and the remainder of my time I would like to
10 give to a gentleman whom I know is familiar to you and is
11 here at our request, Mr. James Lavine, former engineer for
12 the Regional Water Quality Control Board No. 2, now Presi-
13 dent of Lavine/Fricke Engineers in Walnut Creek, consult-
14 ing engineers in hydrogeology.

15 MS. ONORATO: Good morning, Mr. Lavine.

16 MR. LAVINE: Good morning, Members of the Board.
17 I was asked to come up here and try to help shed some light
18 on some of the monitoring alternatives and I am doing so
19 more or less on my own time.

20 Right now, just a little bit about my background.
21 I was with Water Quality Board Region 2 as staff engineer
22 for about four years. From there I was the manager of the
23 Waste Management Group at Woodward/Clyde Consultants for
24 a year and a half, and now President of an engineering and
25 hydrogeology firm in Walnut Creek.

26 I would say I have a lot of experience in

1 monitoring wells. We make at least 50 percent of our money
2 in putting in monitoring wells.

3 We have also been involved in vadose zone monitor-
4 ing and a whole range of other environmental issues.

5 I think in looking through these alternatives,
6 I think the staff has done a good job in a complex issue.
7 What I want to address myself to is some of the specifics
8 of it.

9 They have, in putting this together, very correctly
10 stated that there are some situations where vadose monitor-
11 ing is going to work better and some where monitoring wells
12 will work better.

13 In think in choosing that 100-foot cutoff drop they
14 have overskewed the decision toward monitoring wells and
15 I think there's going to be some degradation of water sup-
16 plies due to that if that is enforced the way it is.

17 There are several reasons for that. Where you are
18 talking about motor vehicle fuels or volatile chemicals
19 like trichlorethylene and the majority of solvents that
20 are used today, vadose monitoring, in my opinion, is much
21 more reliable and much more effective than groundwater
22 monitoring is.

23 There are a few reasons for that. Say the ground-
24 water is at 80 feet in depth. In order for the material
25 to be picked up in a monitoring well, you are going to have
26 80 feet of contaminated soils before it hits there. In

1 many cases these storage facilities are very close to build-
2 ings and the state has in the past and will in the future
3 accept cleanups that don't require excavating all that soil
4 because you can't move a building very easily.

5 So, there's a lot of degradation and long-term prob-
6 lems that are caused by waiting until the material hits
7 the water table before you find it.

8 The other thing is that in making its way down to
9 the water table, it can run into all kinds of clay layers
10 and things like this which will cause the material to di-
11 vert away from the direction of the wells, and it's very
12 hard sometimes to judge -- well, let me say it this way:

13 Downgrading or upgrading doesn't mean anything in the soil
14 column above the water table. The solvent or the chemical
15 as it is making its way down does not feel the gradient
16 until it hits the water. So, if it does move in any other
17 direction due to location of utility lines, trenches, all
18 the other things that will cause materials to move in any
19 direction, following the course of least resistance, it
20 can move away from monitoring wells, especially if they
21 are deep like that.

22 My feeling is that if you want to use an alterna-
23 tive where you have a cutoff depth, I would recommend the
24 cutoff be somewhere in the order of 20 feet.

25 My experience with vadose monitoring is -- I helped
26 to put together a test of some vadose equipment in 1984.

1 We were chosen for the test because we put in monitoring
2 wells at the site and the monitoring wells were working
3 very well. The test at that location showed that the vadose
4 monitoring equipment, and this is an active device, it sucks
5 air into the equipment, for the active device it was able
6 to detect leaks of gasoline within hours after the event.

7 Okay.

8 We are talking about with the monitoring wells,
9 it would take days and sometimes weeks to detect that same
10 event.

11 I want to talk a little bit about reliability. Most
12 of these volatile organics partition very heavily into the
13 air. That's why air stripping is a very effective treat-
14 ment technology. Air and a vapor can move in every direc-
15 tion once it is in the soil, and if you have an aspirating
16 device it will create a pressure gradient which will cause
17 air and vapor to move toward that device.

18 In my opinion, it's a much more reliable way of
19 monitoring than monitoring wells. It is more sensitive.

20 If there is one part per million of gasoline in
21 the water, there's going to be about 50 parts per million
22 in the air. It's basic physics. You don't need a lot of
23 testing to confirm that.

24 An air device can inherently be more sensitive and
25 this was demonstrated on the test, I believe, results from
26 the test that was done in Palo Alto have been submitted

1 to your staff. We would be available to help interpret
2 those. We would be willing to volunteer at least some time
3 as a citizen to help interpret those if needed.

4 The other alternatives that are listed here, I want
5 to say that my experience with the Water Board, a lot of
6 people who are using inventory reconciliation and tank test-
7 ing and there were a lot of situations where those things
8 were in use and there were still leaks that affected bene-
9 ficial uses of water simply because inventory reconcilia-
10 tion -- what a guy does, he takes a stick and puts it down
11 in the tank, and these are not really highly qualified in-
12 dividuals doing these tests and they are not very careful
13 and they are very imprecise.

14 Secondly, on tank testing it is well known that
15 the pressure test and hydrostatic tests are really only
16 capable of detecting leaks down to a level of about .05
17 gallons per hour. So, if you are dealing with material
18 such as gasoline or some material that may be more toxic,
19 it is just not good enough.

20 People can follow through these alternatives and
21 do a good job sticking the tank, good job of this tank test-
22 ing and still have a leak that will not be detected, and
23 it's going to add up to a lot of business for me if that's
24 what happens, but I can find other ways of making money
25 and I would rather not see the state's water end up like
26 that.

1 MS. ONORATO: Thank you very much, Mr. Lavine..

2 MR. LAVINE: Is my time up?

3 MS. ONORATO: Yes. Thank you for your comments.
4 Does staff wish to say anything at this time?

5 MR. ANTON: If you would like us to address it,
6 I believe most of the concerns that were raised are essen-
7 tially covered in the regulations as they are. For in-
8 stance, that 80-foot reference --

9 MS. ONORATO: Pardon me, just a minute.

10 MR. WILLIS: Madam Chair, I would like to ask staff
11 if they would also cover something else, and that is that
12 much of what we just heard we have heard in several hear-
13 ings on this, and I don't need to hear for the ten thou-
14 sandth time a description of how someone puts a stick in
15 a tank.

16 I would appreciate it if staff would feel free to
17 cut in on any commentator who gets off the fact that we
18 are hearing comments only on the two changes to the regula-
19 tions. Thank you.

20 MR. ANTON: I had wanted to reiterate that, too.

21 MR. WILLIS: I would encourage staff to please cut
22 in.

23 MR. ANTON: We should reiterate perhaps what the
24 Chairwoman said, that we are here to hear testimony only
25 on the changes, or arguments on whether or not the regula-
26 tions should be adopted or considered at this time by the

1 Board.

2 MS. ONORATO: Please continue, Mr. Anton.

3 MR. ANTON: The only other comment I had is in re-
4 gard to most of the comments raised. I believe that we
5 are requiring vadose or vapor monitoring for many of the
6 instances that he referenced. We are also requiring
7 groundwater monitoring, but in the examples stated by the
8 last speaker, vapor monitoring would be required as well
9 in most instances, so we feel that we have the water quality
10 concerns covered.

11 MS. ONORATO: Thank you very much.

12 Mr. Naglestad representing CSSC and SWTL. I am
13 sorry, Mr. Naglestad, I don't know what those stand for
14 and would you identify them?

15 MR. NAGLESTAD: I will be glad to. They stand for
16 a lot of words and there wasn't room on the card.

17 Madam Chair and Members, my name is Fred Naglestad.
18 I am representing the California Service Station Council
19 and the Southwest Tank Liners, Inc.

20 MS. ONORATO: Thank you.

21 MR. NAGLESTAD: So, we have cleared up the initials.

22 Frankly, I had hoped to follow my clients, but you
23 will be hearing from them. I will refer specifically to
24 one problem just in a very general fashion, and Mr. Jim
25 Campbell, who is Chairman of the California Service Station
26 Council, would wish to comment in depth about these various

1 alternatives, the eight or nine alternative that were de-
2 scribed by staff, specifying that a couple of them were
3 limited for the underground storage of gasoline only, motor
4 vehicle fuels.

5 Our concern is the way they have been drafted. A
6 local authority need not choose one of those that you have
7 carefully designed to solve our problem, and they may go
8 off and pick one that would be horrendous from the point
9 of view of my client, and Mr. Campbell will explain that,
10 so I would like to yield to him on that point.

11 I would like to comment specifically on three new
12 things that appear in these proposed drafts.

13 On page 6.6, and while commenting I am going to
14 be looking at the legislation that was adopted and I am
15 referring to the second paragraph in the right-hand column.
16 It's V. It says:

17 "Any failure or opening within six inches
18 of any seam or weld."

19 Now, that does not appear in Mr. Scher's bill that
20 became effective January of this year. However, some of
21 the material preceding, for example, on 6.5 and 6.4 and
22 6.3, starting with subparagraph (c), all duly underlined
23 as new material to these regulations, which indeed, it is,
24 that is taken almost verbatim from Mr. Sher's bill that
25 was passed last year and became effective this year, so
26 I am pleased to see the staff has delved into areas that

1 have become effective as of the first of this year, so you
2 don't have to redo everything, but they have picked out
3 of the air an item that they have created that does not
4 exist in statute, and I would then refer you to a similar
5 problem on page 6.8, subparagraph (d). This has never ap-
6 peared in any of Mr. Sher's bills in any form, including
7 the one that was passed last year, and last and certainly
8 not least, if there's anything that was prayed over in the
9 California Legislature the last two or three years, it's
10 6.10, No. 2663 referring to primary container monitoring,
11 and it's the second sentence that refers to this vacuum
12 testing.

13 That was in a bill that Mr. Sher had two years ago.
14 Mr. Sher took it out of last year's bill, which is in effect
15 now. The Legislature specifically repealed a section that
16 the staff persists in inserting.

17 Now, it seems to me that those three sections
18 clearly have no authority in Mr. Sher's legislation.

19 I'm sure the Office of Administrative Law have
20 trouble with them and I can assure you that if they remain,
21 we will see to it that they understand these situations.

22 And I would close by asking a question of staff.
23 Do any of these three items which I feel, and my clients
24 feel, should be removed, do any of these three items come
25 as a result of suggestions, recommendations or support from
26 Assemblyman Sher or anyone on his staff:

1 Through the Chair I would like to have an answer.

2 MS. ONORATO: Mr. Richards, I presume you are the
3 person to answer this. Mr. Richards is our staff attorney.

4 MR. RICHARDS: I'm afraid I cannot answer that ques-
5 tion because I do not know whether these matters had been
6 discussed with Mr. Sher or not. I think Mr. Singer could
7 probably answer better the rationale for putting these mat-
8 ters in here. However, not only does the Board have the
9 responsibility and the obligation to implement the specific
10 provisions that appear in this legislation, but the Board
11 also has the obligation to develop regulations which would
12 assist local agencies in the implementation of the program
13 established and authorized by this legislation.

14 Therefore, it is not necessary for specific provi-
15 sions to be called out in the legislation for them to be
16 authorized by that legislation.

17 MS. ONORATO: Thank you very much.

18 MR. NAGLESTAD: If I may briefly respond, Mr. Sher's
19 representative is here today, Mr. Kip Lipper, and I would
20 be very surprised to hear if Mr. Sher or Kip, or anyone
21 on his staff had anything to do with these three amendments
22 because they were discussed in depth over the last several
23 years and Mr. Sher specifically repealed it.

24 MS. ONORATO: Mr. Naglestad, this is no longer --
25 the regulations are being drafted by this Board. In other
26 words, Mr. Sher wasn't party to the regulations being

1 drafted. I would like to make that very clear. And this
2 is just an area of disagreement which you may pursue.

3 MR. NAGLESTAD: Except he has presented his views
4 to the Board by a letter.

5 MS. ONORATO: Fine, and the Board is apparently
6 very comfortable, and unless I hear a motion otherwise with
7 the staff's determination -- we have a wide representative
8 of expertise to this Board, including a legal representa-
9 tive, and unless Ms. Ruiz indicates so, I am very comforta-
10 ble with it.

11 MS. RUIZ: Madam Chair, if I might add, this Board
12 is very familiar with what your remedies are under OAL as
13 well as with the courts, so I would ask that you please
14 refrain from making threats, and I certainly hope that if
15 you choose to do so, your remedies exist, your rights ex-
16 ist, and this Board is aware of them.

17 We are simply interpreting the statutes as we un-
18 derstand them.

19 MR. NAGLESTAD: And my problem is with the staff
20 continuing to put in things that were specifically taken
21 out by the Legislature, and I am just a little vague as
22 to why after a thing goes through the legislative process
23 and they repeal it, staff puts it back in. I am a little
24 troubled with that.

25 I am not threatening, I am just saying I am really
26 troubled by that procedure.

1 MS. ONORATO: Thank you very much. We appreciate
2 your input.

3 Does Mr. Anton wish to comment?

4 MR. ANTON: I have one very brief comment. The
5 regulation that was referenced very specifically regarding
6 the vacuum test, the sentence that was read was followed
7 by another sentence that says:

8 "The vacuum test shall not be required if
9 technology is not available for testing un-
10 derground tanks on site using engineering
11 practices."

12 I think there's a concern that the test may not
13 be appropriate for that kind of test.

14 MR. NAGLESTAD: I would like to respond to that
15 and to say this, that we are aware of that, that that was
16 in the law two years ago, but the experience of my client,
17 and he will express it articulately because he has been
18 directly involved, is that the local entities read that
19 and say, as far as we are concerned, there is such a test,
20 and we are going to hold you to it, and he will explain
21 to you in painful detail why that has been a problem.

22 MS. ONORATO: Thank you, Mr. Naglestad.

23 And now I would like to call Mr. Bob Shuster, San
24 Diego County Oil Jobbers of Escondido, California. Good
25 morning, Mr. Shuster.

26 MR. SHUSTER: I am Bob Shuster, Escondido.

1 California, and I have one question of Ms. Ruiz, boy or girl?

2 MS. RUIZ: It was a girl.

3 MR. SHUSTER: I was just curious.

4 I am Bob Shuster, the owner of Shuster Oil and
5 Chemical Company in Escondido, California. I am represent-
6 ing the oil jobbers and small business tankers of North
7 San Diego County, at this underground tank regulation hear-
8 ing.

9 Regarding Section 2635, general construction stand-
10 ards, (b), Item 4, and that was answered already, I think.
11 That had to do with the single-walled primary containers
12 of steel and the outer surface of double-walled underground
13 storage tanks constructed of steel, with or without coat-
14 ings, shall be protected by a properly installed, main-
15 tained and monitored cathodic protection system.

16 I wondered what the rationale behind it was, but
17 you have corrected it pretty well, but it says: "single-
18 walled tank." Does that also go ahead and say double-walled
19 tanks, too?

20 MR. SINGER: Yes.

21 MR. SHUSTER: Include double-walled tanks.

22 MR. SINGER: Yes.

23 MR. SHUSTER: Okay. Howard Robbins asked me to
24 make some comments. He called me this morning at the hotel.
25 He is still in Escondido. He tried to get out and couldn't.

26 MS. ONORATO: I'm sure that has happened to many

1 people.

2 MR. SHUSTER: He wanted me to specifically bring
3 that up and it has already been handled, so we are good
4 there.

5 Regarding (b), item 8 of the same section, if the
6 fill is made through the tight elbow system, why is a spill-
7 catchment basin required or an alarm needed? In the event
8 of an overflow condition, the product automatically ceases
9 to flow with tight connections.

10 Any comment, or shall I go on? Sorry, Harold. I
11 will go ahead and read while he is looking that up.

12 Regarding (b), item 9 of the same section, that
13 is too restrictive. In the case of commercial accounts,
14 the driver is the one who is responsible for determining
15 whether or not the tank will hold all of the product. The
16 customer normally is not even there when we deliver, and
17 I am not talking about service stations now, but commercial
18 accounts only.

19 Section 2641, monitoring alternatives, No. 7, item
20 1, "small," which we discussed earlier, I think probably
21 needs either defining or removing from the text. "Small"
22 is not definitive enough.

23 Section 2641, Table 4.1, monitoring alternatives,
24 item 8.1, why is the time limited to three years?

25 Item 8.3 refers back to item 7, tank description.
26 Once again, the word "small" is not definitive enough. For

1 somebody that has a 10,000-gallon tank, maybe a 5,000-gal-
2 lon tank is small. If he has a 50,000-gallon tank, maybe
3 a 20,000-gallon tank is small.

4 MS. ONORATO: Pardon me just a moment. A question
5 is raised by Mr. Finster. These aren't changes, are they?

6 MR. ANTON: Most of them are not, no.

7 MS. ONORATO: Most of them are not, so really, we
8 are not going to bother answering anything except changes.

9 MR. SHUSTER: Well, I disagree with that because
10 "small" was certainly not in there before, and it certainly
11 is in the new alternative now, so I think that would be
12 considered a change.

13 MR. ANTON: I believe that was in the November ver-
14 sion.

15 MR. SHUSTER: I guess I missed the word "small."
16 It was too small and maybe I didn't see it, but we did
17 notice it this time.

18 In December, 1984, I sent letters, along with tank
19 registration forms to all of my customers urging them to
20 register their tanks prior to January 1, 1985. I committed
21 business suicide. So far, 12 to 15 percent of my customers
22 have already abandoned their tanks and have either pulled
23 them out or slurry filled them. It's protecting the water
24 because they are not going to use them anymore.

25 I don't know how many tank owners have finally
26 registered their tanks. I do know that I have been deluged

1 with telephone calls from confused and concerned business-
2 men.

3 The entire program requires excessive reporting
4 which the small business owner will not do. Instead, he
5 will cease to use his underground storage and resort to
6 purchasing product from the corner service station.

7 The regulations, as presented, force the small job-
8 ber out of business by destroying his customer base. Score--
9 small business, zero; big business, one; government, ten.

10 Section 2644(c), inventory reconciliation -- unat-
11 tended cardlocks or keylocks open on weekends for with-
12 drawals will require an inventory for each day that there
13 are withdrawals from the tank. This is not practical. The
14 locations are unattended on weekends, although customers
15 are able to draw fuel.

16 Why not allow inventory reconciliation to take place
17 on the next normal working day? No loss will be so great
18 that it cannot be checked through normal inventory control
19 on the next working day.

20 MS. ONORATO: Mr. Shuster, your time is up. Thank
21 you.

22 Does staff have any comment?

23 MR. SINGER: No.

24 MS. ONORATO: Thank you.

25 Mr. Bert McCormack, of McCormix Corporation, Santa
26 Barbara, California.

1 MR. McCORMACK: Good morning. I am going to be very
2 brief this morning.

3 I did a little thinking on -- it looks like
4 alternative 5 is the only one a small bulk plant can use.
5 The .0015 error factor is a little too stringent, so I
6 started reviewing how can we get a little more closer on
7 our tank stickings, so the last six loads we brought into
8 our plant, I took the temperature at the loading rack or
9 the refinery, and I also took that temperature when it was
10 delivered into my tanks, and I have got sheets here and
11 I would like to show them to you of the results.

12 MS. ONORATO: Thank you.

13 MR. McCORMACK: Granted, this isn't a very sophis-
14 ticated survey and I don't have a lot of data because we
15 didn't have much time to work on it, but you can see the
16 first load was loaded at 60, got to our plant at 59 and
17 we lost three gallons that would never be accounted for.

18 On the next load we gained eight gallons and the
19 next load we gained three, but the next load was loaded
20 at 61 degrees, got to my plant at 54 and there is a minus
21 51 gallons that would never be accounted for in bookwork.

22 And then it went to plus 9, plus 20, and then the
23 next load was minus 23 again. So, what I am saying is,
24 this works itself out over a period of a year, and we don't
25 have any problems with keeping it the way we do it with
26 it being temperature corrected at the refinery, but to get

1 accurate readings that go into our inventory books, I think
2 the temperature should be corrected at the time it goes
3 into the tank and this would eliminate this kind of devia-
4 tion.

5 Now, I also have some figures here I would like
6 to give staff. I understand they didn't have temperature
7 correction charts, so I brought some. I also brought --
8 when we were commission agents, how the major oil companies
9 adjusted their inventory at the end of the month by the
10 mean temperature and the factors they used. And their fac-
11 tor here under 40 degrees, there is a filling factor of
12 .2 percent, a reading factor of .1, for a combined factor
13 of .3, and it went up as high as -- if it was over 93 de-
14 grees, to .6 percent. And I brought this so your staff
15 can review it, and I think it is quite possible we can get
16 our inventory controls more accurate if we do the tempera-
17 ture at the time of delivery.

18 MS. ONORATO: Please, would you give that to Mr.
19 Singer.

20 I thank you for what is obviously an attempt to
21 assist.

22 MR. ANTON: We are glad to hear this. We had anti-
23 cipated and hoped people would go to temperature correc-
24 tion.

25 MR. McCORMACK: So that's really all I had to say,
26 and I think if you review that, I think it will solve some

1 of our problems and we can use it in the field and stay
2 with inventory control.

3 MS. ONORATO: Thank you very much, Mr. McCormack.

4 MR. McCORMACK: You are welcome.

5 MS. ONORATO: I would like to call Mr. Tom Robin-
6 son from the California Independent Oil Marketers Associa-
7 tion. Good morning, Mr. Robinson.

8 MR. ROBINSON: Good morning. My name is Tom Robin-
9 son of Robinson Oil Company and I am representing the
10 California Independent Oil Marketers Association.

11 As you can see, we have a number of pages of com-
12 ment. I won't attempt to go through them. I won't even
13 attempt to summarize them. A lot of them are changes that
14 were not made and so I guess that testimony is disallowed
15 today.

16 I did want to make one or two comments and I hope
17 they are not too redundant.

18 First, what we did is we looked at the alternatives
19 to see what we really had as a marketer, what could we do
20 and what would it cost us.

21 Obviously, we start with alternative 5 because
22 that's the one that seems to be made for petroleum marketers.
23 No. 5 requires the inventory and leak detectors and tank-
24 tightness testing.

25 In the stuff I gave you, I gave you one highway
26 transportation receipt and Bert made the comment about the

1 temperature correction. If you look down at the bottom
2 where it is highlighted, you will note that this particular
3 July 3rd mode of unleaded fuel, a full load of unloaded,
4 we picked up 79 degrees. We picked up 8400 gallons, and
5 if we got that to a station and didn't cool it down and
6 we sold it, we would have picked up 107 gallons, not three
7 or nine; and if it was a cold situation, it would go in
8 the opposite direction, so that's some of the problems you
9 are going to have with the strict inventory variation.

10 With that, we believe that no marketers, or almost
11 no marketers are going to be able to live within No. 5.

12 You look at No. 6 and it requires three plus the
13 monitoring wells and the soils testing. At that point,
14 you say, why do this when I can look at 2, 3 or 4 and it
15 is much simpler? And when we looked at 2, 3 or 4, we were
16 concerned with No. 4 which allows for groundwater monitor-
17 ing under 30 feet as long as it doesn't have actual poten-
18 tial uses, and we were concerned about that definition be-
19 cause it appears to us that every water could be conceived
20 to have actual potential uses, in which case, we wouldn't
21 have alternative 4 to use.

22 Using the same arguments for No. 3, where you could
23 use it if it is more than 100 feet and had no actual poten-
24 tial uses. Again, we wouldn't be able to use it under 100
25 feet, and for over 100 feet, again, it doesn't allow for
26 very often that you can use it, so you basically are into

1 alternative No. 2, discounting No. 1 and No. 7 because
2 that's really for a small percentage of the tanks.

3 So, the only real choice you have is alternative
4 No. 2, which we don't think in the regulations or in the
5 law that was the intent. The intent indicated that there
6 were going to be inventory variation numbers supplied by
7 the staff. We assumed that implicit in that, that those
8 numbers would be reasonable.

9 I think, in fact, I guess I can probably end at that
10 point because all the other points are going to be comments
11 where we feel that either the regulations do not follow
12 the law, and I guess the point that we wanted to make more
13 than any other is the fact that really with all these al-
14 ternatives, there is a single alternative.

15 I did want to make a comment about No. 8. Somebody
16 did ask for more time. We think we provided a proposal
17 in here that would increase the stringency of No. 8, but
18 would allow you more time, because unfortunately, No. 8
19 really only works for companies that have an awful lot of
20 money, and I think it is a good alternative and it would
21 benefit the environment, and I think people would pick al-
22 ternative 8 if you had a little more time.

23 I think I had one other point. At this time, I
24 can't remember, so if I can answer any questions, I would
25 to.

26 MS. ONORATO: Are there any questions of Mr.

1 Robinson? Does staff wish to say anything?

2 Thank you very much, Mr. Robinson.

3 I would now like to call Mike Bonkowski, geologist
4 for the California Independent Oil Marketers Association.

5 MR. BONKOWSKI: Good morning. I have a few com-
6 ments to make and I refer you to the handout that Tom gave
7 you.

8 On the top of page 8 in our handout and on the top
9 of page 9, it refers to monitoring alternative Nos. 3 and
10 4. We don't find that alternative Nos. 3 and 4 the way they
11 are worded can be used. And the problem we have is the
12 definition of groundwater, or potential groundwater.

13 It seems to me that you could argue that any
14 groundwater in the state has potential use. As a matter
15 of fact, the Department of Water Resources' publication
16 of September 1975, Bulletin No. 118, summarizes every
17 groundwater basin in the State of California. In this bul-
18 letin, the groundwater use in every basin is defined
19 whether the groundwater resources have been determined or
20 not, and the Department of Water Resources implies that
21 every groundwater basin in the state has one of these uses,
22 and I would welcome you to this bulletin.

23 So, by definition, alternative No. 3 negates the
24 use of monitoring, and; 4, if the groundwater has a poten-
25 tial beneficial use as defined by the regulations. So,
26 I have a problem with that.

1 In our comments on page 23, we refer to Section
2 2646(f)(1). This refers to vapor monitoring. The require-
3 ment is that if you intend to do vapor monitoring, that
4 you determine the grain-size distribution, the range of
5 moisture content of the backfill and native soils, and the
6 homogeneity.

7 The problem we have is that there is no reportable
8 correlation between vapor levels and any of these factors.
9 These grain-size distribution and moisture content are ex-
10 pensive geotechnical tests. They have very little to do
11 with vapor monitoring, so we would like to see those de-
12 leted. We think they are an unnecessary expense.

13 At the top of page 24, Section 2647(d), which refers
14 to groundwater monitoring and groundwater well construction,
15 this section requires a well casing be factory perforated
16 from a point five feet above the bottom cap to a point ten
17 feet above the highest anticipated groundwater level. This
18 provides for a mechanism for the movement of contaminants
19 across impermeable barriers.

20 We would like to see that be changed so that the
21 casing can be factory perforated from a point five feet
22 above the bottom cap to a point ten feet above the high-
23 est anticipated unconfined groundwater level. Monitoring
24 wells penetrating into a locally-confined aquifer should
25 be perforated in the confined zone and the confining layer
26 should be sealed with an appropriate material.

1 If you perforate a confined groundwater layer,
2 groundwater zone, the water may flow up into an unsaturated
3 groundwater zone. If the well is slotted into the unsatu-
4 rated zone, the water will migrate into the unsaturated
5 zone and make a saturated zone. If you have any contami-
6 nants in that zone, then they will migrate with the ground-
7 water and move off site.

8 So, you are allowing for cross contamination.

9 And then, on page 25 of our comments, Section
10 2648(p) requires that you review water-level measurement
11 records for wells within one mile of the site. We find
12 that to be unnecessarily restrictive, because you can
13 imagine if your station is adjacent to a mountain range,
14 there's no point in looking for water-level measurements
15 on top of a mountain if you are down in the basin. It
16 doesn't make any sense.

17 In addition, in a great portion of the state, the
18 well records are confidential. The Department of Water
19 Resources or the county will not release these records,
20 and the way it is worded, should records be denied or not
21 available, then the owner would be required to drill ex-
22 ploratory borings down to 100 feet.

23 So, we suggest that you change the requirement to
24 allow us to check well records within a reasonable distance
25 of the site and eliminate the exploratory borings to deter-
26 mine where water is at that location.

1 MS. ONORATO: Your time is up and we do have this
2 to refer to, and staff will be evaluating your comments.

3 MR. BONKOWSKI: Thank you very much. Are there
4 any questions at all?

5 MS. ONORATO: Any questions?

6 MR. ANTON: I do have one comment. There was a
7 reference that alternative No. 3 would not be usable at
8 all. I would point out that even if the first groundwater
9 is usable and has beneficial uses, that alternative is still
10 available when the groundwater is deeper than 100 feet.
11 This is important because we have been criticized for re-
12 quiring wells to be drilled deep.

13 MR. BONKOWSKI: Well, anyway, I think there is some
14 confusion about the term "groundwater resource" there and
15 we have to make sure.

16 Thank you.

17 MS. ONORATO: Thank you very much.

18 I would like to call Margaret Allender represent-
19 ing the California Rental Association. Good morning, Ms.
20 Allender.

21 MS. ALLENDER: Good morning.

22 As I have told you before, I do represent the 800
23 members of the California Rental Association.

24 We would ask that the Board not adopt these regula-
25 tions until you consider designating a little bit more
26 specifically for the small tank owners, small business

1 person with low through-put.

2 I realize that I have mentioned this to you before,
3 but I think in the parameters of the discussion that you
4 are having today over not adopting the regulations, that
5 this needs to be brought up again.

6 The options as they are written offer alternatives
7 and we appreciate that. I would like to use as an example
8 option No. 2. That groundwater monitoring option calls
9 for an additional well to be added for any tank greater
10 than or equal to 1,000 gallons.

11 The next section of that option calls for three
12 wells to be placed for two or more tanks.

13 In the California Rental Association, at least half
14 of the members have tanks that are a thousand gallons. That
15 means that they would be required to put in another well
16 if they were, for some reason, to use this option for one
17 gallon because they are small tank owners.

18 If they happen to have multi-tanks on their site,
19 typically one is 500 gallons and one is 1,000, so they would
20 be required to put in three wells to monitor 1500 gallons'
21 worth of tanks.

22 But more important than that, is that there's a
23 very small through-put on these tanks. I'm sure that proba-
24 bly our people would use option 5. I don't own a tank so
25 I don't know, but I want to use this as an example to il-
26 lustrate to you that, really, that small tanks with a small

1 through-put has not been addressed.

2 If local government were, for some reason, to re-
3 quire the small tank person to use one of these other op-
4 tions, they would not have any alternative but to do so
5 and would add greatly to their overhead.

6 We would ask then that before you adopt these
7 regulations that you consider a category of tanks up to
8 2,000 gallons with less than 20,000 gallons a year through-
9 put for requirements which would center on the inventory
10 reconciliation standards in option 5, which are very strin-
11 gent, and an initial tank test rather than annually, with
12 no regard to geological groundwater conditions.

13 We have suggested this and we do not find it in
14 the current outline of options.

15 We feel that with the hazard posed that this is
16 sufficient to meet the requirements and the stated reasons
17 of the regulations.

18 We also feel that the Board has the latitude within
19 the legislation to do this.

20 We have another concern about compliance and this
21 is something that I read as new in the draft of the regula-
22 tionss. Compliance is as to statutory deadline. As this
23 is written, it may or it does put businesses, especially
24 in my situation, small business, on line with their pro-
25 cedures prior to local government possibly being able to
26 implement or ratify, adopt an ordinance or whatever they

1 must do to implement these regulations.

2 We are presuming that the statutory deadline that
3 is referred to in the bill that I guess is now in effect,
4 would be July 1, and whether practically speaking or not,
5 it seems unlikely that local government --

6 MS. ONORATO: Ms. Allender, that's a very cogent
7 comment and the Board is aware of this, but may I respect-
8 fully suggest that you contact the author of the bill, Mr.
9 Sher, regarding this problem. It's out of the purview of
10 this Board to change that deadline and it will have to be
11 done statutorily.

12 MS. ALLENDER: I understand --

13 MS. ONORATO: We have already expressed the concerns
14 that you have just put into the record.

15 MS. ALLENDER: Maybe I didn't make myself clear.
16 I understand that is not within your purview. What we are
17 suggesting is that the interim monitoring standards be al-
18 lowed to be extended and tied into local government adop-
19 tion of these regulations. I suppose that's kind of a back-
20 ward kind of way to deal with it.

21 MS. ONORATO: Thank you for clarifying that point.

22 MS. ALLENDER: And so that the interim monitoring
23 provisions would tie onto when local governments do imple-
24 ment the standards rather than referring to the statutorily
25 deadline.

26 We also feel that the interim monitoring standards

1 must be extended for small business until the State can
2 come up with a certified list of tests and procedures which
3 local government and the small business can refer to.

4 I did try to rush my comments. We do recognize that
5 we have a responsibility. Our people face substantial over-
6 head costs, additional staff and funding for implementing
7 the inventory reconciliation standards that are in option
8 5.

9 We are not suggesting that we not do anything. We
10 are very able to do that, but we feel that there are levels
11 that should be recognized for monitoring small tanks with
12 small through-put.

13 MS. ONORATO: Thank you, Ms. Allender. Your time
14 is up and I did allow you another minute because of my in-
15 terrupting you.

16 MS. ALLENDER: May I answer any questions?

17 MS. ONORATO: Are there any questions? Does staff
18 have any questions?

19 MR. ANTON: I have a comment and that is that the
20 alternative that was asked for appears to be identical with
21 alternative 5 before, with the exception that alternative
22 5 in the proposal does require annual testing rather than
23 only initially.

24 MS. ALLENDER: That is correct, and pipeline gaging.

25 MR. ANTON: And also requires pipeline leak de-
26 tectors which comes out of the provisions of the law.

1 MS. ALLENDER: It does go, we feel, perhaps inven-
2 tory reconciliation could be expanded.

3 MS. ONORATO: Thank you very much.

4 I would now like to call Mr. Bob Short of Goodrich
5 Oil Company from Modesto, California. Good morning, Mr.
6 Short.

7 MR. SHORT: Thank you very much.

8 In reviewing your alternatives, I feel that my
9 people will use 1, 5 and 8. I have some specific comments
10 I would like to address to some of those.

11 In complying with No. 5, I find it extremely impor-
12 tant that we take the temperature of the product as it comes
13 in and as it goes out, and make the temperature corrections.
14 .0015 is very precise, but I find we are able to do it if
15 we use the volume-correction chart based on temperature
16 of the product.

17 The chart that I gave Mr. Willis a sample of is
18 a chart that's over 20 years old, prepared by a major oil
19 company, and we found that we have used that chart and a
20 similar chart for over 50 years, and it has been pretty
21 accurate for us.

22 That's my comment on No. 5.

23 I would like to comment on alternative No. 7. It
24 says that alternative is limited to the use of samll tanks
25 that normally do not have input or withdrawal. I would
26 like to have that word "normally" changed, if possible,

1 so that a local agency, as long as the tank is hooked up
2 so it can be used, such as an emergency-generator system
3 or wind machine for frost conditions in some situations,
4 so that they couldn't tell us, well, this is set up so it
5 can be used, so you can't say it is normally not used. I
6 just don't like the word "normally," because if the tank
7 has product in it, it's in there so it can be used, although
8 it is not frequently used.

9 The other thing I would like to address is a couple
10 of lines lower, it says:

11 "Liquid level in the tanks can be measured
12 to the accuracy of plus or minus five gal-
13 lons."

14 Well, that's fine. A small tank can be measured
15 to plus or minus five gallons. Then, it says:

16 "A liquid difference of one percent of the
17 tank volume or fifty gallons, whichever is
18 less, shall be cause for further investiga-
19 tion."

20 I would like to have that one percent of fifty gal-
21 lons changed so that the minimum we need to be able to
22 measure in that tank is five gallons. I think five gallons
23 is a pretty accurate measurement and I think as long as
24 you can detect the measurement of five gallons, I don't
25 think you are going to have a spill, and in a hundred-gallon
26 tank, which a lot of my customers have for these auxiliary-

1 generation systems, they can't measure one percent. That's
2 one gallon. They can measure three gallons or five gallons,
3 the sticks or the other measuring devices are not set up
4 to detect one percent of one hundred gallons.

5 So, I would like to have it changed so it is down
6 to five gallons.

7 The only other comment I have is on tank testing
8 and it makes reference to the certification for the tank-
9 testing procedure within one year. I think technology is
10 moving ahead very rapidly. I would like to -- we feel that
11 we have a very effective tank-test procedure. I won't go
12 into it. I have gone into it previously.

13 Diablo Petroleum has tried it on some tanks they
14 found that leaked in the bay area and they found it detected
15 the leak. They also tested it on some tanks that didn't
16 leak and found it accurate in that case, but I am concerned
17 with the cost of the certification process.

18 The regulation does not address that and I would
19 hate to see costs be installed at a later date which pre-
20 vents the certification of small inexpensive accurate tests.

21 If you want a better mouse trap, don't run the cost
22 up so high that we can't get them approved when we have
23 it.

24 Thank you.

25 MS. ONORATO: Thank you very much, Mr. Short.

26 Any questions?

1 MR. WILLIS: I would be curious as to staff's re-
2 sponse to the recommendation Mr. Short made.

3 MR. SINGER: Two comments: One is that the 50 gal-
4 longs in the chart is incorrect. The text says five gal-
5 longs and the errata sheet did indicate the table should
6 be changed to five gallons.

7 MR. SHORT: Thank you.

8 MR. SINGER: I think Mr. Short has a good point
9 on the one percent and I am just talking with Mr. Richards
10 now to see if there's something we can do to resolve that.
11 I don't have a comment for you at this point.

12 MR. WILLIS: You will have a comment by the end
13 of the hearing?

14 MR. SINGER: Yes.

15 MS. ONORATO: Thank you very much.

16 Mr. Don McEdwards from Berkeley, representing Terra
17 Corporation.

18 MR. McEDWARDS: I am Don McEdwards from Terra Cor-
19 poration in Berkeley. We do a lot of regulatory compliance
20 studies for clients. I am an engineer and geologist so
21 I can speak from both sides of my mouth.

22 My ~~comments~~ have to do with alternatives 3 and 4 of
23 the existing tank strategies.

24 I just realized from the discussion previously that
25 alternative 3 is available for groundwater deeper than 100
26 feet. You don't have to have potential beneficial use if

1 you are deeper than that, but if you have groundwater shall-
2 lower than that, you can monitor that with this technology
3 if the groundwater has no potential beneficial use, and
4 in that light and regarding alternative 4, also, which has
5 the same restriction of potential beneficial use, if you
6 can use the water, you can't use this alternative. If you
7 can't use the water, you can use this alternative, which
8 doesn't make sense to me. Why monitor water you have to
9 show has no potential beneficial use or is not connected
10 to any water that has any potential beneficial use.

11 That seems to be the intent of articles 3 and 4.
12 And they really don't belong on the list, in my view. It
13 falsely links them to the list of alternatives and makes
14 them appear larger than it is.

15 This point was brought up previously. I will let
16 that rest for the comments later. I have two more small
17 points to make.

18 On the groundwater monitoring description, what
19 you do in groundwater monitoring, and I believe it is al-
20 ternatives 2, 4 and 6. On page 4.9 and page 4.13 wording
21 is to the effect regarding laboratory checking of -- let
22 me read this to you. I am on page 4.9, paragraph c, the
23 last sentence:

24 "The local agency shall require verification
25 at periodic intervals if visual or field
26 analysis cannot achieve levels of detection

1 equivalent to laboratory analysis."

2 I have no problem with that. I agree with that.

3 That similar wording is on page 4.13, which says:

4 "If visual observation or field analysis
5 is used, the local agency shall require
6 periodic laboratory analysis if the visual
7 observation or field analysis do not provide
8 a degree of detection equal to that of
9 laboratory analysis."

10 I think it is inherent that field detection is not
11 as accurate as laboratory analysis.

12 However, there seems to be a typo on page 4.2, the
13 bottom of the page to the top of page 4.21, which says:

14 "If samples are analyzed by visual observa-
15 tion or field analysis, the local agency
16 shall require laboratory analysis if the
17 results of the visual or field analysis are
18 less accurate than laboratory methods."

19 The word "periodic" is missing from the text and
20 I don't believe that was intended.

21 MS. ONORATO: Do you agree with that, Mr. Singer?

22 MR. SINGER: No, I don't agree with that. The rea-
23 son behind that, I believe in very short discussion here,
24 alternative 6 that we are looking at on page 4.20, the
25 groundwater analysis is only being done semiannually as
26 a check for other forms of monitoring, and since that is

1 a very infrequent type of monitoring as opposed to the other
2 methods of monitoring which are more frequent for ground-
3 water, we felt that the expense of doing more accurate
4 laboratory work during that semiannual check is appropriate,
5 but it is not appropriate when you are doing groundwater
6 analysis on a frequent basis.

7 MR. McEDWARDS: Well then, let's clear up the con-
8 fusion then if we strike "If the results of the visual or
9 field analysis are less accurate than laboratory methods,"
10 because they are going to be less accurate than laboratory
11 analysis.

12 MR. SINGER: I think that can be determined in
13 specific instances and we didn't want to limit it in the
14 regulations that said you had to use laboratory analysis
15 if, in fact, you could demonstrate field analyses were as
16 accurate.

17 MR. McEDWARDS: So you can't in a gasoline tank
18 go out and smell the sample?

19 MR. SINGER: That's correct.

20 MR. McEDWARDS: One more small point and I will
21 get off. On page 4.15, this is very very miniscule,
22 I think, but there is an incorrect reference on the top
23 of the page, in II and III. It refers to a subsection V
24 of this subsection, and I believe that should be subsection
25 IV. And that's the only correction.

26 MR. SINGER: That's correct.

1 MS. ONORATO: Are you sure you don't teach school?

2 MR. McEDWARDS: Any comments?

3 MS. ONORATO: Is that correct, Mr. Singer?

4 MR. SINGER: That is correct.

5 MS. ONORATO: Thank you very much.

6 MR. FINSTER: How about the next paragraph, para-
7 graph IV on page 4.16 which refers to subsection V?

8 MR. SINGER: That is correct.

9 MR. FINSTER: So it is subsection V.

10 MR. SINGER: On page 17 underneath the table.

11 MR. FINSTER: Okay, thank you.

12 MS. ONORATO: Thank you, Mr. McEdwards.

13 Mr. E. D. Yates, Vice President of the California
14 League of Food Processors from Sacramento, California. Good
15 morning.

16 MR. YATES: Good morning. This will be brief. Our
17 interests in those portions of alternative 7 which begin
18 on page 4.21 and conclude on page 4.23.

19 By the way, we did submit a letter in writing this
20 morning and hopefully you have it.

21 MS. ONORATO: Yes, we do.

22 MR. YATES: It goes to the central part of our con-
23 cern.

24 On page 4.21 there are some changes at the bottom,
25 paragraph A. We feel that's a good change. It should be
26 done.

1 On page 4.22 in the paragraph identified as B(II),
2 there is also a change in the next to the last sentence.
3 The words "if possible" have been added. We would support
4 that.

5 Further on down beginning on page 4.22 and ending
6 up on page 4.23, there is an entire new paragraph added
7 as compared to the previous version. That, in part, refers
8 back to the steps that have to be taken in the event that
9 there is some difference in measurements due to gaging.
10 Part one would envision that it refers back to 4.22, the
11 paragraph requiring tank testing.

12 The point we outlined in our letter is that we don't
13 see why tank testing should be required on an annual basis
14 if following an initial test of the integrity of the tank
15 subsequent gaging reveals that there is absolutely no change
16 in the level of the product in the tank.

17 Again, to remind Members of the Board, our inter-
18 ests are those tanks using a standby mode as required by
19 the California Public Utilities Commission. With the supply
20 of gasoline and the price of gasoline, we don't envision
21 that those tanks will be used very much.

22 Those who are actively using fuel oils, of course,
23 will have to take the necessary steps.

24 However, our primary concern is those standby tanks
25 as well as the concern about what "small" means. If you
26 address that, we would prefer that you use a through-put

1 definition rather than size of tank because it doesn't mat-
2 ter whether you have a 50,000-gallon tank or a 1,000-gal-
3 long tank if you have no through-put. It is inconsequen-
4 tial. You can have 50,000 gallons through a 1,000-gallon
5 tank and it would be more significant than nothing going
6 through a 50,000-gallon tank.

7 So, in an attempt to be brief, that is the essence
8 of our comments and we urge the Board to -- if you don't
9 define "small" tank, to give some direction to the local
10 agency in terms of through-put, and that's the basis that
11 we would prefer.

12 MS. ONORATO: Thank you very much, Mr. Yates.

13 Are there any questions of Mr. Yates?

14 MR. NOTEWARE: I have a question for staff. At the
15 bottom of page 4.22 talking about liquid-level variation,
16 it would seem that here again we have the same problem that
17 was brought up before about a very small tank, a hundred-
18 gallon tank, where we say five gallons or one percent,
19 whichever is less, I am wondering if we take a fresh look
20 at that in the other section, if maybe we should do the
21 same here because it would seem the same reasoning would
22 apply.

23 MR. SINGER: These are actually the same sections.
24 One is in the table and one is in the text, so they are
25 the same alternative and that's what we are looking at right
26 now.

1 MR. NOTEWARE: Okay.

2 MS. ONORATO: Thank you very much, Mr. Yates.

3 Do you have any comments, staff?

4 MR. SINGER: That's all.

5 MS. ONORATO: Mr. Bob Meacham, Southwest Tank
6 Liners, Inc.

7 MR. MEACHAM: I am Bob Meacham with Southwest Tank
8 Liners, and I would like to just very briefly read this
9 letter for the record, if I may, and then make a couple
10 of very brief comments following.

11 MS. ONORATO: In the interest of time, why don't
12 you submit the letter for the record? We are sure the Board
13 Members will read it and then make your comment. I respect-
14 fully suggest that.

15 MR. MEACHAM: I would like to comment on what Mr.
16 Naglestad said earlier in regard to the vacuum tests. The
17 vacuum test was removed by the Legislature effective January
18 1 of 1985. The reason it was removed was because it accom-
19 plishes nothing. It doesn't do anything.

20 We submitted data to the staff indicating that the
21 Legislature knew that if the technology was not available,
22 it would not be required.

23 That technology is available. We have since found
24 somebody who has come up with a way to test tanks. However,
25 the vacuum test does not accomplish anything and it is still
26 approaching the marginal safety areas regarding collapse.

1 We don't think it is a good idea to go around col-
2 lapsing tanks. Further, the handout we received today in-
3 dicates that API is an organization that provides specifi-
4 cations applicable to regulatory requirements.

5 My question then is why was API 1631 removed which
6 was specified in the Legislature as a method of repairing
7 tanks? If, indeed, the API, the American Petroleum Insti-
8 tute, is a recognized body that produces things that are
9 legitimate for regulatory requirements, then why have a
10 certification by an independent nationally recognized test-
11 ing laboratory when they are a handful of engineers when
12 API has taken over three years to develop a guideline for
13 repairing tanks with a staff of over 50 engineers?

14 MS. ONORATO: Does staff wish to comment on this?

15 MR. SINGER: I just talked with John Richards and
16 this is sort of a legal and sort of a technical basis.

17 First of all, according to OAL, we cannot specify
18 another set of regulations in our regulations. In other
19 words, we can't reference somebody else.

20 MR. RICHARDS: Without jumping through a large num-
21 ber of hoops.

22 MR. SINGER: Secondly, if it is in the statute,
23 there's no need for us to repeat it in the regulations.
24 Again, those statutes go into effect January 1, so there
25 was no need for us to repeat it in the regulation if, in
26 fact, it is in the statute.

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MS. ONORATO: Does that satisfy you?

MR. MEACHAM: No, it doesn't. What it does is require us to go out and pay somebody to certify a process that has been in effect and been used successfully for over 30 years and it requires a certification of an API standard, and I think it is redundant and unnecessary and costly, and I would appreciate removing that section.

I think that the certification by a nationally independent laboratory would do nothing except provide us with another piece of paper saying that if a tank is repaired, it needs to be repaired in this manner and that is the piece of paper we would take to the local agency who is going to ensure that things are done and say, here, we are going to do this according to this certification process, rather than what we are now doing, saying we are doing this according to API 1631. It is redundant and unnecessary.

The vacuum test was taken out by the Legislature. Clearly, putting it back in is contrary to the intent of the Legislature, and I personally think it's an attempt to rewrite the law.

Those are my comments. I appreciate the opportunity to come and speak to you.

MS. ONORATO: Thank you very much, Mr. Meacham.

Are there any questions of Mr. Meacham?

Thank you, Mr. Meacham.

1 I would like the audience to know I am going to
2 take a ten-minute break, and there are five more speakers
3 that are signed up to speak, so we will be continuing this
4 meeting and we will not be breaking for lunch, because I
5 do feel we can accommodate everyone this morning.

6 (Recess)

7 MS. ONORATO: Would everyone take your seats,
8 please.

9 Staff would like to make a statement for the
10 record.

11 MR. SINGER: I would like to just clarify two
12 points:

13 One is the gentleman that came up before regarding
14 alternative No. 7, and we think we have resolved the issue
15 there, and let me explain it and see if everybody is satis-
16 fied with that.

17 The level of accuracy that's required for measure-
18 ment is plus or minus five gallons, which in practicality
19 could be anywhere up through ten gallons, plus or minus,
20 so that's the minimum level of accuracy that is required.

21 Therefore, if somebody is only measuring to plus
22 or minus four gallons, which is eight gallons, they will
23 not see a one-gallon change in a hundred-gallon tank. So,
24 therefore, what we are looking at, what we are asking for,
25 therefore, is that any amount of change that is less than
26 one percent or five gallons that can be seen should be an

1 indication of a leak. Therefore, in a hundred-gallon tank,
2 if you are only measuring to plus or minus five gallons,
3 you will not see a one-gallon change and, therefore, that
4 concern, even though it is a good concern, probably would
5 not occur in real life.

6 MS. ONORATO: Does that satisfy the Board Members?

7 MR. FINSTER: It does me.

8 MR. SINGER: One other point that has come to life
9 apparently in the errata sheet, and this is the second item
10 in the errata sheet, the page 3.40. The errata sheet was
11 typed incorrectly. Single-wall primary containers of steel
12 and the outer surface of double-walled underground storage
13 tanks," so the original version was not repeated correctly
14 in the errata sheet, so that should be changed to say that
15 it does include the outer surface of double-walled tanks.

16 MS. ONORATO: Thank you very much.

17 All right, now, Gerald Hagy of Western Oil and Gas
18 Association.

19 MR. HAGY: Good morning. AS I have said before,
20 I am Gerald Hagy, I work for Shell Oil Company and I am
21 representing WOGA this morning.

22 WOGA has submitted written comments to the staff
23 and I believe the Board Members have those written comments.

24 Again, WOGA wishes to thank the Board for the op-
25 portunity to make comments on the proposed regulations for
26 underground storage of hazardous substances, and we also

1 appreciate the Board and the staff's efforts to address
2 those prior comments and make certain changes.

3 Nevertheless, we ask that the Board give further
4 consideration to those written comments that we have sub-
5 mitted today. We do not intend to go into any of the de-
6 tails in accordance with your request, and so, we thank
7 you for the opportunity to comment again.

8 MS. ONORATO: Thank you, Mr. Hagy. The Board has
9 been appreciative of the efforts of your organization to
10 participate in all these things and to also give us the
11 benefit of your expertise.

12 Mr. Richard Gray, Wickland Oil Company. Good morn-
13 ing, Mr. Gray.

14 MR. GRAY: Good morning. Madam Chairman and Board
15 Members, I would like to briefly address our concerns with
16 alternative 8 for existing motor vehicle fuel tanks, which
17 is the three-year phase-in period.

18 First, I would like to tell you why we are so con-
19 cerned about alternative 8, and that is that alternatives
20 5 and 6, the inventory-control alternatives simply won't
21 work for us.

22 In early December, right after the November 27
23 hearing, we invited Mr. Singer and several members of the
24 staff out to one of our gas stations here in Sacramento
25 to demonstrate the traditional method of tank sticking.
26 I think that Mr. Singer and the staff would agree that tank

1 sticking does have its inherent mechanical accuracy limita-
2 tions.

3 We also showed them some computer printouts which
4 had the results of our inventory-control program showing
5 the variances on a day-by-day basis, and I think they would
6 also agree that we would repeatedly trigger the required
7 evaluation procedures under the proposed performance stand-
8 ards for alternatives 5 and 6, even though we know that
9 some of those gas stations for certain do not have leaking
10 tanks. Some of the stations which exceeded the inventory-
11 control limits had double-contained tanks, brand new tanks.

12 The point is, we have this false positive problem
13 with the inventory-control standards the way they are now.
14 We have basically given up on inventory control at Wickland.
15 We are looking at alternative 8.

16 Now, the alternative 8 concept makes very good
17 sense, I think. It gives the station operator an incentive
18 to replace existing tanks with double-walled tanks. This
19 is really the ultimate solution to this tank-leak problem,
20 but there's two key problems with alternative 8 the way
21 it is right now.

22 Number one, the phase-in period is too short. Three
23 years is simply not enough time. It takes between 75 and
24 100,000 dollars per gas station to replace the tanks with
25 the double-walled tanks.

26 We have approximately 80 gas stations, so we are

1 talking about as much as \$8 million. An independent oil
2 company the size of Wickland in today's extremely competi-
3 tive price environment simply cannot raise that kind of
4 capital in a three-year period.

5 The second problem with the existing alternative
6 is that it requires tank owners to comply with what we per-
7 ceive as costly and burdensome interim protective measures,
8 namely, the alternative six inventory standards are incor-
9 porated into alternative 8, again, triggering that false
10 positive problem.

11 There are other layers of protection in alternative
12 8 which we don't object to, the tank testing, the pipeline
13 leak detectors -- we submit that those are sufficient.

14 Again, on an interim basis, the point is don't
15 force us to spend capital on interim measures when we
16 should be conserving that capital for the ultimate solution
17 and that is secondary containment; in other words, replacing
18 those existing tanks.

19 In our written comments we have spelled out a pro-
20 posed amendment to alternative 8. I am not going to go
21 into it. I think it speaks for itself. Basically, it's
22 a seven-year period. It is not a do-nothing situation,
23 though, during that seven-year period.

24 I think the real advantage of it is that it gives
25 us an incentive, the maximum incentive to install secondary
26 containment, clearly the best long-term solution, and it

1 conserves scarce capital resources for that optimum solu-
2 tion.

3 MS. ONORATO: Your time is up. Pardon me for inter-
4 rupting.

5 MR. GRAY: One final comment, and that is this,
6 there is room for disagreement, obviously, with the speci-
7 fics of our proposal. We think the concept is good. People
8 whom we have run it by have said, we agree with you in con-
9 cept. If the concept is good, we think it should be im-
10 plemented in the initial set of regulations and not at some
11 later date.

12 Thank you.

13 MS. ONORATO: Thank you very much, Mr. Gray.

14 Mr. Byron Taylor, owner of Mosier Brothers of Wood-
15 lake.

16 MR. TAYLOR: Good morning. I am Byron Taylor from
17 Woodlake, Tulare County.

18 We are still fabricators and have been for a number
19 of years. Before that I did corrosion control, cathodic
20 protection for a pipeline company, and I would like to
21 touch briefly on the cathodic-protection points at page
22 3.4 and 3.41.

23 In the course of modification and errata change
24 here, I have read the paragraph and I may be out of order,
25 but I will try to be very brief.

26 The cathodic protection of underground storage

1 tanks was developed very largely by the Steel Tank Institute
2 and they provided the STIP 3 program which has provided
3 a standardized cathodic protection system over a wide range
4 of different soil conditions.

5 Now, there's a difference of opinion among cor-
6 rosion people in this matter. Some feel that every job
7 site should have a complete detailed soil examination. This
8 feeling is pretty prominent among consultants.

9 The thrust of paragraph 4 here is that UL approval
10 should be obtained for the standardized kind of thing. UL
11 has a long backlog of programs that they are being asked
12 to do, and I would suggest that the State of California
13 has many corrosion engineers who are capable of developing
14 a standardized cathodic protection program and it would
15 be very usable in the field.

16 My second item is very much along the same line
17 on the semiannual testing to be done under the supervision
18 of a registered corrosion engineer or a NAC corrosion
19 specialist.

20 The steel-to-voltage test is very simple. It only
21 takes minutes. The equipment is inexpensive. The cutoff
22 point is very defined and I would suggest that this semi-
23 annual test could be done by an individual following a
24 specification outlined by a registered corrosion engineer.

25 Thank you.

26 MS. ONORATO: Thank you very much, Mr. Taylor.

1 Mr. Richard Reisz, the Assistant Manager of Modern
2 Welding, from Fresno County. Mr. Reisz is going to be re-
3 ferring to page 3.13 and 3.40.

4 MR. REISZ: Yes, I am Richard Reisz with Modern
5 Welding Company. We are steel fabricators located -- one
6 of our offices is located in Fresno, California.

7 I will address my first question to Mr. Singer.
8 2632(c)(1)(A), pages 3.12 and 3.13. I just have a problem
9 of clarification on it. It is right at the very bottom
10 of 3.12, Harold, and 3.13. I have a problem of clarifica-
11 tion on that. I don't understand it, I guess, and this
12 has to do with double-walled tanks.

13 My question would have to do with double-walled
14 tanks. and then, the other thing I have Mr. Singer already
15 has stated to the Board right after your recess on the outer
16 surfaces of the double-walled tank. I heard him make that
17 statement, and that has to do with the errata sheet.

18 MS. ONORATO: And you are satisfied with --

19 MR. REISZ: I am very satisfied with that. I would
20 just sort of like a clarification. I'm not disagreeing
21 with it. I need clarification on it. I would like to
22 definitely ask the Board to consider passing Article 3 of
23 these specifications.

24 MS. ONORATO: Thank you.

25 MS. RUIE: I am curious, what specifically in that
26 provision are you seeking clarification on?

1 MR. REISZ: Well, we have a double-walled tank.
2 The wording says:

3 "A program which relies on the visual moni-
4 toring of the primary container shall incor-
5 porate all of the following."

6 And paragraph A says:

7 "Provisions that all exterior surfaces of
8 the underground storage tank and the surface
9 of the floor directly beneath the under-
10 ground storage tank shall be monitored by
11 direct viewing."

12 And I don't see how we can do this. That's why I
13 am asking.

14 MR. SINGER: I think I understand the question now.
15 Under (c), subsection (1), on page 3.12 is for visual moni-
16 toring, that is where you can get into the space between
17 the primary and secondary container.

18 In subsection (c), on page 3.12, you either have
19 to do the requirements of subsection (1) or subsection (2).

20 Subsection (2), which starts in the middle of page
21 3.15, it talks about mechanical method of monitoring be-
22 tween the primary and secondary container which would be
23 applicable to a double-walled-type tank Mr. Reisz is talk-
24 ing about.

25 MR. ANTON: In other words, this doesn't apply to
26 a double-walled container. It applies to a container in

1 a vault or a basement.

2 MR. REISZ: I thought I understood it, but I just
3 wanted clarification.

4 As I stated, I would like to see you adopt Article
5 3. I think everybody is in favor of it with the errata
6 and the changes that have been made to the errata.

7 MS. ONORATO: Mr. Reisz, you do know that if we
8 adopt anything, though, it will be the whole?

9 MR. REISZ: Yes. At least people can start new
10 construction this year. Right now they are held up, and
11 I know the big problem is the existing.

12 MS. ONORATO: Jim Campbell representing the Cali-
13 fornia Service Station Council from Concord. Good morning,
14 Mr. Campbell.

15 MR. CAMPBELL: Good morning. Thank you for bearing
16 with us.

17 Just a couple of comments: At the last hearing
18 we asked that alternative 5, for that matter, all of them,
19 that we not be required to report overages; shortages only.
20 The Board asked the staff to agree to that and staff agreed
21 they would, but I don't see the changes made.

22 MR. SINGER: Yes, we agreed with you at the time.
23 We are asking you to report overages, but we are not asking
24 you to go through the entire procedure to determine what
25 caused the overages beyond just checking your inventory
26 reconciliation, so we are not asking you to do tank testing

1 and other forms of determining what caused the overages,
2 but we feel overages are an indication of a problem with
3 an inventory reconciliation procedure. It could be an in-
4 dication of water entering the tank and, therefore, we would
5 like it reported, but we are not asking you to go through
6 a whole laundry list of analysis to determine what caused
7 it beyond checking the inventory reconciliation again.

8 MR. CAMPBELL: What I do, Harold, I am just a dealer
9 and I am a hundred gallons over. I report it at that time.
10 That means I don't have to -- let's say I am 200 gallons
11 over, I don't have to pressure check my tanks? Do I call
12 the local officials and say I am 200 gallons over?

13 MR. SINGER: You would have to make the reporting
14 as required, and you would have to start going through the
15 procedure as listed for whether you have an overage or un-
16 der. However, we stop short of asking you to do those pro-
17 cedures that would require you to inspect your facilities,
18 do a pressure check of your tank and those types of things,
19 but we would ask you to look for water in your tanks. We
20 would ask you to check what caused that. Was it caused
21 because of temperature changes, was it caused because you
22 got an inaccurate delivery?

23 We want that verified because that is an indication
24 of a problem with inventory reconciliation.

25 MR. CAMPBELL: And that's spelled out in the regu-
26 lations just that way now?

1 MR. SINGER: Yes, it is.

2 MR. CAMPBELL: Okay, I will accept that. Can you
3 tell me where it is and I will look at it later and see?

4 While he is looking for that, could I also make
5 just two other points?

6 We brought up at the last hearing as well that I
7 represent some large dealers, but we represent some very
8 small dealers, mom and pop stores, 10,000 gallons a month,
9 the Ft. Jones and so forth, and we asked if we do every-
10 thing else, if, at the end of the year, we have no loss
11 of gasoline, and if the inspector, whoever he happens to
12 be for the state or city or county, comes in and says they
13 don't have any loss, their records are correct, that we
14 don't have to spend \$1500 a year to test the tanks.

15 That was presented. No one has done anything and
16 I know you don't have to do what Sher did, but I would like
17 to point this out. In Sher's bill, and let's see, that
18 is AB 1362, that went into effect January 1, 1984, in Sec-
19 tion 5283.4 -- this is the only reason that we went neutral
20 on the bill: "The local agency shall inspect every under-
21 ground storage tank within its jurisdiction at least once
22 every three years."

23 Now, when Byron says, all right, I give up if you
24 will accept the three years, you drop off the bill, and
25 we did.

26 I honestly didn't expect and I understand that this

1 Board can do what they want, but when we had an agreement,
2 or when it is written in the law, I don't understand why
3 the Board staff comes along and says, thou shalt do it any-
4 way. It doesn't make any sense.

5 MS. ONORATO: Mr. Singer, did you find that sec-
6 tion?

7 MR. CAMPBELL: By the way, Harold was there when
8 we agreed to the three years.

9 MS. ONORATO: That's hearsay, Mr. Campbell.

10 MR. CAMPBELL: I don't think Mr. Singer would deny
11 he was there at the hearing. He argued against it, but
12 he was there.

13 MR. SINGER: Which hearing?

14 MR. CAMPBELL: With Byron -- you weren't there,
15 okay.

16 MR. SINGER: I was not there.

17 MR. CAMPBELL: Could we deal with the first one
18 first?

19 MR. SINGER: The first issue that we are discussing
20 is on page 4.45, and the second sentence in subsection (f),
21 and I will give everybody a second to get to that point --

22 MR. CAMPBELL: You are saying, though, Harold, this
23 covers everything? We make no reports -- I will read it
24 later.

25 MR. SINGER: You do report it, but you don't have
26 to go through the procedures of tank testing and other

1 forms of determining what the cause is.

2 MR. CAMPBELL: All right. Can we deal with the
3 second part, Sher's language that actually says every three
4 years, and the Board and staff recommend that we must test
5 annually? That's what is going to put the little guy out.

6 MR. SINGER: The inspection to be performed by the
7 local agency, I do not think was intended to be a tank test.
8 It is not the local agency's responsibility to test every-
9 body's tank. I think there's a difference in interpretation
10 of what the inspection requires by the local agency is and
11 leak-detection methods that may be employed to determine
12 if leaks occur, but I don't think there is any correlation
13 between the two issues at all.

14 MR. CAMPBELL: Madam Chair, that is absolutely not
15 correct. As a matter of fact, we do not expect the local
16 agency to inspect the tanks. That's not what the bill calls
17 for.

18 It says we have to inspect the tanks. The local
19 agency demands or can demand that we inspect it every three
20 years, but we are the ones that have to pay for it and the
21 reason three years was in here, and the only reason we drop-
22 ped off this bill, was because \$1500 for the little guys
23 is \$4500 in three years. They can live with \$500 a year.
24 But \$1500, it's not conscionable. It's not even right.
25 It's not even in the legislation.

26 MS. ONORATO: Thank you, Mr. Campbell.

1 MS. RUIZ: Perhaps you could reread the language
2 you just read to us again.

3 MR. CAMPBELL: Sure.

4 "The local agency shall inspect every under-
5 ground storage tank within its jurisdiction
6 at least once every three years. The purpose
7 of inspection is to determine whether the
8 tank complies with design construction stand-
9 ards" --

10 MS. RUIZ: I think you have covered that. It says
11 the local entity shall inspect. The burden and duty is
12 on the local entity and it compels them to inspect during
13 that period of time every three years.

14 As Mr. Singer indicates, this is not a burden being
15 placed upon or a duty being placed upon the entity. They
16 will not have anything to do with your testing once a year.

17 Do you see the difference?

18 MR. CAMPBELL: I understand that. What I am saying
19 is if we have to do it annually, no matter who does it,
20 whether it is local, what your new regulation calls for
21 is annual inspection, or roughly \$1500 a year.

22 MS. RUIZ: No, I am clear on that. I am suggesting
23 to you that there is not a conflict in the logic between
24 what is proposed in the regulations and it states in that
25 statute.

26 MR. CAMPBELL: Okay.

1 MS. ONORATO: Thank you very much, Mr. Campbell.

2 MR. CAMPBELL: All right, the last issue is, if
3 it is at all possible, we would like to consider inventory
4 control being raised from point, as Wickland Oil brought
5 out. as Tom Robinson brought out, from .15 to to .50 before
6 we trigger the inspection and the testing and so forth,
7 because it really is going to be very difficult to work
8 with.

9 MS. ONORATO: Thank you very much, Mr. Campbell.

10 I would now like to call Mr. Larry Minet represent-
11 ing the Santa Clara Fire Chiefs' Association, who I might
12 add, has been closely monitoring the progress of these
13 regulations and regularly submitting your opinions to staff
14 and to the Board Members. We are aware of that, Mr. Minet.
15 We are grateful for this expertise.

16 MR. MINET: I have some brief comments here.

17 In reviewing the alternatives listed, we find that
18 there's a problem in relation to non-volatile, non-motor
19 fuel products, corrosives or waste motor oil, PCB oil, some-
20 that is non-volatile, it is not a motor fuel.

21 Our interpretation of that table implies that
22 alternative 1 is the only method for meeting the intent
23 of this. I can go through that and explain it.

24 Alternative No. 2 requires vadose monitoring. You
25 cannot vadose monitor a non-volatile or corrosive material.
26 So, alternative 2 does not apply.

1 Alternative 7 is restrictive to a water table that
2 is greater than 100 feet. Most of Santa Clara County and
3 San Francisco Bay area has a water table shallower and as
4 such, alternative 3 would not apply.

5 Alternative 4 specifies that the groundwater have
6 no potential beneficial use. We feel that all groundwater
7 has a potential beneficial use and as such, alternative
8 4 would not apply.

9 Alternative 5 and alternative 6 all apply to motor
10 fuel only.

11 Alternative 7 is standby diesel and this kind of
12 situation.

13 And alternative 8 is an interim monitoring method.

14 Therefore, the only method on this list for moni-
15 toring that has chemicals underground that are corrosive
16 or non-volatile is alternative 1. We feel that's not an
17 acceptable method.

18 MS. ONORATO: What does Santa Clara do about this
19 specifically?

20 MR. MINET: We have guidelines. We have Santa Clara
21 Water District guidelines that we have been using for a
22 year and a half and they require groundwater monitoring
23 wells for situations like this. That's what we have been
24 going with.

25 Waste oil tanks is the problem where it is not
26 volatile and they are small tanks, and if the Board could

1 come up with an answer for that, we would appreciate it,
2 but we have a problem monitoring --

3 MS. ONORATO: Mr. Singer will respond to that.

4 MR. SINGER: Alternatives 2 and 3 require vadose
5 zone monitoring. Vapor monitoring is only one form of
6 vadose zone monitoring. So there are other forms of vadose
7 monitoring that could detect non-volatile materials. So,
8 those alternatives are not excluded in that case.

9 MR. MINET: Are those methods on the market?

10 MR. SINGER: Yes, they are.

11 MR. MINET: Is there a list of companies that sell
12 vadose sampling?

13 MS. ONORATO: We don't provide such lists. However,
14 there are people scattered among the audience who will grab
15 onto you before you leave.

16 MR. MINET: We have been unable to find anyone that
17 can sample non-volatile vadose.

18 MR. SINGER: I can discuss this with you after,
19 but we believe there are.

20 The other point is that alternative 7 is still ap-
21 plicable to non-volatile material, especially in a small
22 tank, tank gaging where you can measure the liquid levels.

23 MR. MINET: Yes, when you are having inputs and
24 outputs.

25 MR. SINGER: If they can be controlled, though,
26 I think that can be a positive alternative to be used.

1 MR. MINET: Okay. So tank gaging, as you describe
2 it, doesn't necessarily have to follow the written language
3 in the regulations then?

4 MR. SINGER: I think the written language allows
5 inputs and withdrawals providing there is a time period
6 between those that you can do the gaging. Obviously, some-
7 thing like a field station which has constant inputs and
8 withdrawals would not be applicable, but a waste oil tank
9 where there might be inputs once a day, you could probably
10 do a gaging mechanism on that type of tank because you would
11 have 24 hours between inputs in which to monitor the liquid
12 level.

13 MR. MINET: The second comment has to do with al-
14 ternative No. 2. It seems overly restrictive in that we
15 would like to accept a continuous vadose vapor monitoring
16 system such as Genelco to monitor underground tanks as
17 opposed to the combination of the Genelco system and
18 groundwater monitoring wells. We feel the vadose itself
19 is sufficient and there is no need to put more holes in
20 the ground to check the tank, that these vapor detection
21 systems are adequate and we would like to see an alterna-
22 tive in here strictly for vadose vapor monitoring without
23 having to also have monitoring wells.

24 MS. ONORATO: We discussed this before, Mr. Minet.

25 MR. MINET: The third comment I have has to do with
26 alternative No. 7. It seems like alternative 7 is trying

1 to cover too many different types of situations. We find
2 we have almost every facility in our city or, our county
3 for that matter, that has standby diesel capability and
4 these tanks are used monthly, and it seems if you do a
5 monthly or weekly gaging of this and you can measure with-
6 in the accuracy stated here, that there's no need to do
7 an annual tank testing, that the tank testing is less accu-
8 rate than the inventory and it doesn't seem appropriate
9 to do tank testing annually when the method you are doing
10 more frequently is more accurate.

11 It may be appropriate to do tank testing initially,
12 but not on an annual basis.

13 And the last comment, which is probably not uni-
14 formly agreed to within our group, is the number of moni-
15 toring wells. In alternative No, 2 it calls for a number
16 of wells, three wells for two tanks, for example. Somehow
17 we want to get some flexibility in this as to the location
18 of the tanks, the configuration of the tanks.

19 We don't feel that three wells are necessary. That
20 seems overkill, so to speak. If you have two 10,000-gallon
21 tanks, then maybe three wells are appropriate, but if the
22 two tanks are side by side, two wells would probably cover
23 that, and so, specifying the number of wells seems like -

24 MS. ONORATO: Mr. Minet, we have gone over this
25 in earlier meetings, and I don't think that's a change.

26 Thank you very much for those comments, and again,

1 it should be noted that Mr. Minet made it clear that that
2 critique or criticism was not group action. There was disa-
3 greement.

4 Thank you, Mr. Minet, very much.

5 Mr. Fletcher, the Manager for the Legislative En-
6 vironmental Affairs for Arco Petroleum Products Company.
7 He left.

8 Arco has participated earlier and submitted for
9 the record various comments.

10 That is the end of the speakers. Is there anyone
11 else that wishes to address the Board at this time who did
12 not sign up? Apparently there is not.

13 What is the Board's pleasure?

14 MR. NOTEWARE: Madam Chair, this morning we re-
15 ceived a communique from the Department of Food and Agri-
16 culture about making more accurate reference to who would
17 be testing, who would be responsible for the accuracy of
18 the gaging that his required. I wonder if staff concurs
19 with their recommendation? Did you have a chance to look
20 that over?

21 MR. ANTON: While we are looking up that comment,
22 could I add another addition that should have been in the
23 errata sheet, recognizing an error we made in either
24 typing or editing. That is on page 4.23, the second line
25 from the top. It says:

26 "An authorized release shall be assumed to

1 have occurred."

2 That should have said "unauthorized release."

3 MS. ONORATO: It is quite evident that Mr. Singer
4 has expertise on underground tanks, but will never make
5 it as a secretary.

6 MR. ANTON: I don't know, I think he knows how to
7 run the word processor better than most of the people in
8 the building.

9 MS. ONORATO: Mr. Singer is referring to a copy
10 of the letter we just had hand delivered from the Depart-
11 ment of Food and Agriculture this morning that Mr. Noteware
12 asked a question about.

13 Mr. Singer, I do think that addresses substantially
14 the same issue before, that you can't reference -- what
15 do you call it, another -- they are referring there to
16 tolerances set forth in the California Administrative Code,
17 Title 4, Chapter 9. I think that's exactly what OAL usually
18 says is, you can't reference that way.

19 I am second-guessing, but it sounds very much like
20 the same point raised by several people today in testimony
21 regarding the UL certification and so forth.

22 MR. FINSTER: Harold, aren't you going to have two
23 instances of input meters, you are going to have one at
24 the bulk plant where they take a whole complete load to
25 a station, and then you have got the situation where you
26 have an independent distributor who may distribute to two

1 or three locations with one truckload, so the meters require
2 a certain accuracy in the State Code; isn't that correct?

3 MR. SINGER: That appears to be the comment. I am
4 still trying to go through it.

5 Okay, I think I understand the comment they are
6 making. I think they are looking at bulk plants and they
7 are asking that the wholesale meters used at the bulk plant
8 to take product out of a tank and put it into a tanker
9 truck, and I think they are looking at the inventory recon-
10 ciliation that could be used at the bulk plant as a means
11 of determining whether or not that tank has a loss or gain.

12 And I think we would look at this and probably in-
13 dicate that the product being put into that tank is not
14 being metered at all, or the meter is there and is not be-
15 ing calibrated, so, therefore, that probably wouldn't be
16 applicable in this case.

17 And I guess the second point they are making is on
18 the repair persons that are not licensed, county weights
19 and measures people, but are other people who can go out
20 and seal the meter, and I think it is strictly the
21 language that they are talking about rather than any sub-
22 stance issues. They are talking about the language of
23 whether or not we can require those people to be certified
24 by weights and measures, and I think they are talking about
25 that they don't really certify, that they just approve those
26 people according to certain Business and Professional

1 Code requirements.

2 MS. ONORATO: You are saying, in other words, that
3 these concerns raised by the Department of Food and Agri-
4 culture can be met without a substantive change?

5 MR. SINGER: Let me talk to John for one second
6 on this, if I could.

7 MR. RICHARDS: Madam Chairwoman, after having re-
8 viewed the suggestions of the Department of Food and Agri-
9 culture, it appears that the changes they suggest could
10 be made, and we would argue that these do not constitute
11 significant substantive changes to the regulations.

12 MR. NOTEWARE: That's all of their suggested changes,
13 John?

14 MR. RICHARDS: They have provided us with two sug-
15 gested revisions to these regulations, and both of these
16 are acceptable.

17 Let me explain that the change suggested at the
18 bottom of the first page of the letter, which would be a
19 reference to tolerances and specifications for commercial
20 weighing and measuring devices in the Administrative Code,
21 would be a permissible cross reference to another part of
22 the Administrative Code for the following reason:

23 The Office of Administrative Law does not like us
24 to require compliance with other people's rules and regula-
25 tions if the other people's rules and regulations independ-
26 ently require such compliance. However, many of the metering

1 devices which we are requiring to comply with these toler-
2 ances would not necessarily be required to comply with those
3 tolerances under the Department of Food and Agriculture's
4 independent regulations. Therefore, we are requiring some-
5 thing in addition to the requirements in that provision.
6 Therefore, we can cross reference it without falling afoul
7 of the necessity standards in the Administrative Procedures
8 Act.

9 As to the other suggestion, that simply resolves
10 an incorrect reference. We designated the appropriate kind
11 of repairman in a manner which is not consistent with the
12 way it is actually done, and this is a more correct refer-
13 ence.

14 MS. ONORATO: Thank you very much.

15 MR. NOTEWARE: Thank you.

16 MS. ONORATO: I have always wondered what I would
17 do in my declining years and I have now determined that
18 I will spend them studying OAL's regulations.

19 Are there any other Board Members that have con-
20 cerns that they would like to address to staff? Any further
21 discussion?

22 If not, the Chair would entertain a motion at this
23 time for Board action.

24 MR. WILLIS: We don't want the regulations to die
25 for lack of a motion. Mr. Singer has something.

26 MR. SINGER: Could we make one further suggestion

1 before you decide on what you plan on doing here? Under
2 alternative No. 7, for a clarification, I think it would
3 be helpful in interpreting these regulations: We have used
4 the word "normally," "normally not having inputs or with-
5 drawals." I think for clarification what we probably should
6 say is that do not have frequent inputs or withdrawals,
7 and I think that would help in clarifying the interpreta-
8 tion of these regulations.

9 MS. ONORATO: Again, Mr. Richard, this is not a
10 substantive change?

11 MR. RICHARDS: That would not be regarded as a sub-
12 stantive change.

13 MR. WILLIS: Madam Chair, I would like to ask be-
14 fore the motion is made, could Mr. Richards or Mr. Singer
15 give us just a list for us of the changes that would be
16 made as a result of decisions today?

17 MR. SINGER: Okay. The changes would be everything
18 that's in the errata sheet with the discussion that I gave
19 you on page 3.40 on the second item on the errata sheet,
20 that we left out that one part of that sentence.

21 In the table and the text for alternative 7, we
22 would change the word "normally" to "frequently."

23 Also, in Article 4 the discussion on inventory
24 reconciliation regarding meters and licensed sealers, we
25 would make the change as recommended by the Department of
26 Food and Agriculture.

1 On page 4.15, we would change the reference, the
2 two incorrect references, and this relates to inventory
3 reconciliation under one of the alternatives where we listed
4 subsection (b), and it should be section V.

5 And on page 4.23, change the word from "authorized"
6 to "unauthorized" release, on the top of that page.

7 MS. ONORATO: Is that it?

8 MR. SINGER: I believe that's all of them.

9 MS. ONORATO: Thank you, Mr. Singer.

10 MR. WILLIS: Madam Chair, with the changes as indi-
11 cated by Mr. Singer, I would make the motion for adoption
12 of the proposed regulations of underground storage tanks.

13 MR. NOTEWARE: I will second it.

14 MS. ONORATO: Moved and seconded, is there any
15 further discussion among the Board Members? If not, all
16 those in favor signify by saying aye.

17 (The motion was voted on.)

18 It has been unanimously adopted.

19 Ladies and gentlemen, before I close the meeting,
20 I would like to make the comment that I consider this pro-
21 cess that we have been through has been lengthy and time
22 consuming and agonizing for everyone concerned. The Board
23 Members have worked very hard, our staff has worked very
24 hard, the participating audience, and I think that it's
25 an exemplary exercise in participatory politics, and the
26 Board is very appreciative, and particularly I want to say

1 thank you to our staff, and Mr. Hal Singer, those of you
2 who have worked with him, can't help but know the enormous
3 amount of work that this has been to him, and we want to
4 pay public tribute to what I think is a very fine find.

5 The State of California is very lucky that you are
6 working for them, Harold, and I am very proud to have you
7 on our staff.

8 Thank you very much, ladies and gentlemen. The
9 meeting is adjourned.

10 (Proceedings concluded)

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REPORTER'S CERTIFICATE

THIS IS TO CERTIFY that I, ALICE BOOK, a Certified Shorthand Reporter, was present during the proceedings of the STATE WATER RESOURCES CONTROL BOARD, STATE OF CALIFORNIA, held in Sacramento, California, on January 18, 1984; that as such I took down in shorthand writing the proceedings therein held in the matter of: ADOPTION OF REGULATIONS GOVERNING UNDERGROUND STORAGE OF HAZARDOUS SUBSTANCES; that I thereafter caused my shorthand writing to be transcribed into longhand typewriting and that the preceding 81 pages constitute said transcript; that the same is a true and correct transcription of my shorthand writing for the date herein specified.

Dated: January 22, 1985



ALICE BOOK

5. June 6, 1985 Board Meeting
regarding amending regulations
adopted on 1/18/1985

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER QUALITY

Hearing in re: Underground)
tanks and Surface)
impoundments)
Item 22 and 23)

--o0o--

WORKSHOP

1416 9th Street
Sacramento, California

--o0o--

Thursday, June 6, 1985

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Reported By:

PEGGY LALLY, CSR NO. 4867

CAPITOL REPORTERS

DEPOSITION & GENERAL COURT REPORTERS

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(916) 446-2757

APPEARANCES

--oOo--

FOR THE BOARD

Raymond Stone, Chairman
Kenneth W. Willis, Vice-Chairman
E. H. Finster, Member
Darlene Ruiz, Member

FOR THE STAFF

Michael A. Campos, Executive Director
William R. Attwater, Deputy Executive Director
Ed Anton, Chief Director of Water Quality
John Richards, Office of the Chief Counsel
Walt Pettit, Deputy Executive Director
Harry M. Schueller, Deputy Executive Director
Bob Ford

ALSO PRESENT

Bob Shuster, Petroleum Jobbers
Patty Cook
Ralph Edwards, WOGA
Tom Robinson
David Bauer, IT Corporation
Steven Steed, WACA
Albert Troglin
Ernest Valis
George Donaldson

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1 SACRAMENTO, CALIFORNIA, THURSDAY, JUNE 6, 1985, 10:00 A.M.

2 --oOo--

3 MR. STONE: There'll be presentation by Ed Anton,
4 Chief Director of Water Quality.

5 MR. JOHNSON: He's on his way over here so I'll go
6 ahead and start this.

7 MR. WILLIS: Roger, would you identify yourself for
8 the Reporter, please?

9 MR. JOHNSON: Yeah. My name is Roger Johnson. This
10 is an Item for consideration of amendment of the regulations
11 governing storage of hazardous substances in underground
12 tanks.

13 As you may recall, the Board adopted underground
14 tank regulations on January 18th, 1985, and, subsequently,
15 the regulations and rulemaking file were disapproved by
16 OAL and returned to the staff for additional work.

17 In reviewing the OAL rejection letter, it became
18 apparent that there was a need for some amendment to the
19 regulations, and there were a couple of reasons for those
20 amendments.

21 One, OAL had identified some areas where they felt
22 regulations just were not clear and had asked for some
23 changes, and there was some other instances wherein
24 responding to comments from the public, we felt that
25 there was a need to provide some additional clarity in

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1 the regulations themselves. So we went ahead and made
2 those changes, and they were made available on May 14
3 of this year.

4 The proposed changes in the regulations are
5 sufficiently related to the original notice for the
6 regulations and that a new notice was not necessary, and
7 the law only requires changes to the regulation be made
8 available to the public for 15 days, and that was done
9 on May 14.

10 We have gotten some comments on the proposed changes,
11 and I'll just take a minute to run over some of those.

12 We had a request from two agencies to be designated
13 as nationally recognized independent testing organizations.

14 We had already identified some in the amendment to
15 the regulations after request of OAL, and we got the two
16 requests from some other organizations and the way we
17 proposed to handle that is once the regulations are in
18 effect, we'll ask these organizations to submit additional
19 information that we could use to judge their qualifications
20 as nationally recognized independent testing organizations.

21 We have a few commenters who said that the proposed
22 amendment did not satisfy all of the concerns raised by
23 OAL, and they're correct in that not all of OAL concerns
24 require a change in the regulations.

25 Some of them require additional responses or other

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2 those changes, and they were made available on May 14
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20 as nationally recognized independent testing organizations.

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22 amendment did not satisfy all of the concerns raised by
23 OAL, and they're correct in that not all of OAL concerns
24 require a change in the regulations.

25 Some of them require additional responses or other

1 changes in the statement of reasons and those are being
2 done separately and will be used in a rulemaking file
3 and be returned to OAL.

4 None of the other comments were significant enough
5 to resolve any changes to the regulations with the
6 exception in the first page of the changes in regs
7 which you have in your agenda package.

8 We listed the National Testing Organization.

9 We had a suggestion that we add to that the initials
10 of each of those organizations that we commonly use and the
11 attorney has assured us that we can add those this time
12 without any additional public review.

13 Are there any questions?

14 MR. WILLIS: I have a question of Counsel in the
15 hearing process which will be opened in a minute.

16 The testimony should be directed to those items that
17 are in the agenda here as changes and modifications and
18 not to the ones that were adopted for modification.

19 MR. CAMPOS: We're only here to discuss changes to
20 the regulations.

21 MR. WILLIS: I've asked the staff to monitor the
22 testimony and either speak up or signal to me to keep it
23 in the context of the testimony.

24 MR. CAMPOS: Yes.

25 MR. WILLIS: Any further staff comments? Any Board

1 comments? If not, I have some cards here from people who
2 wish to be heard.

3 Bob Shuster of Petroleum Jobbers.

4 MR. SHUSTER: I'm Bob Shuster, Modesto, California.
5 They'll probably call me out of order. We're concerned
6 now that the OAL had made some comments about the effect
7 on small business owners and is there any response to that
8 or is that something that can be properly responded to.

9 MR. ANTON: That doesn't change the regulations.
10 That will be addressed in the rulemaking file and in the
11 statement of reasons as to the necessary response and
12 effect of these regulations on small businesses.

13 MR. SHUSTER: Thank you.

14 MR. WILLIS: For the benefit of Mr. Shuster, Mr.
15 Attwater, is it my understanding or our understanding
16 that some legislation was introduced at this particular
17 item which Mr. Shuster might want to follow up on?

18 MR. SHUSTER: But I don't have the fill-in number
19 with me.

20 MR. ATTWATER: We can get that information for Mr.
21 Shuster.

22 MR. STONE: There are bills pending and the number
23 of bills I can give it to you in your organization by
24 Friday.

25 MR. SHUSTER: Very good.

1 MR. STONE: Patty Cook.

2 MS. COOK: I have no comment.

3 MR. STONE: Ralph Edwards. Environmentalist of the
4 year, Wesson Oil, Mobile.

5 MR. EDWARDS: Good morning. My name is Ralph Edwards.
6 I'm the Manager for Fortal Corporation. This morning I'm
7 speaking for the Wesson Oil Gas Association. We previously
8 submitted a written comment, so I'm going to briefly go
9 over two main issues or two main concerns that were
10 addressed in those comments.

11 First of all, OAL noted that the Board failed to
12 summarize in response to comments as required by Government
13 Code based on the modification to the regulations. There
14 was no evidence that all three of the comments -- there
15 have been comments made to all the comments submitted.
16 However, I noted that Roger Johnson indicated that that
17 would be included in that package.

18 Going back to OAL, we were just wondering, one, if
19 that's going to be made available to the general public
20 to review those comments.

21 The second item --

22 MR. STONE: Would you like a response to the
23 questions?

24 MR. EDWARDS: Sure.

25 MR. STONE: Staff please?

1 MR. ANTON: The rulemaking file would be available
2 by whatever aspects that you'd like to see. We can
3 address that question in a more specific method, if you
4 like, in terms of the comments that were left out.

5 MR. EDWARDS: I think, basically, we're concerned
6 about having an opportunity to see the comments.

7 MR. STONE: I suggest you contact our office. It
8 will be furnished to you upon request.

9 MR. EDWARDS: Fine. The second item, OAL disapproved
10 the proposed regulation based on basically there was no
11 demonstration of substantial evidence from the necessity
12 of the number of sections.

13 However, we identified a number of sections we had
14 concern with. We felt there was no substantial evidence
15 to require them based on the proposed regulation changes
16 and a number of those issues were not even addressed.
17 Therefore, we are assuming that they're going to remain
18 the same. Therefore, again, we have to assume there must
19 exist substantial evidence substantiating why certain things
20 were done.

21 The question remained will that evidence be made
22 available to the general public for review and is that
23 evidence being submitted to OAL at this time?

24 MR. ANTON: Again, that gets back to the portions
25 of the file that was not made available to the Office of

1 Administrative Law. The portion of that or statement of
2 reasons that list the necessity for each individual section
3 in the regulation; certain pages were admitted from the
4 response to OAL. They did not have before them the reasons
5 why the Board adopted the regulations.

6 MR. STONE: You do have it now?

7 MR. ANTON: They will as soon as they submit the
8 package back to them.

9 MR. STONE: Again, that will be made available upon
10 request?

11 MR. EDWARDS: That's all I have. Thank you.

12 MR. WILLIS: Mr. Chairman, would it be possible for
13 Mr. Edwards or any other member in the audience to come
14 to our office following this hearing to see that material?

15 MR. ANTON: Some of that material will not be in
16 final form until we have a chance to finish this proceeding
17 and get the package together.

18 MR. STONE: Why don't you give your business card
19 to the staff and it will be sent to you?

20 MR. ANTON: Fine. Under normal circumstances we
21 will not send the entire rule -- not the rulemaking file,
22 but the statement of reasons since that runs into well
23 over 600 pages. We would like them to specify what section
24 they're specifically interested in, or they could come into
25 our office and review it.

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1 MR. EDWARDS: Fine. We have no problem with that.

2 MR. STONE: Thank you for your testimony.

3 MR. FINSTER: I'd like to clarify. The rulemaking
4 file will be made available not only at our office, but
5 at the Administrative Law Office. The Administrative Law
6 Office is good about responding to requests of the public
7 for the rulemaking file.

8 MR. STONE: Mr. Edwards, did you hear that?

9 MR. EDWARDS: Yes, I did.

10 MR. ROBINSON: Tom Robinson, California Independent
11 Oil Marketers Association.

12 Good Morning. My name is Tom Robinson. I'm with
13 Robinson Oil Company located in San Jose. We own and
14 operate service stations in the Santa Clara Valley. We
15 are Chairman of the Oil Marketers Association ad hoc
16 community independent tank regulations.

17 Gillman had no comments on the proposed modification,
18 and I was going to ask for a couple of minutes since we
19 did have new members on the Board to make a couple of
20 comments about the regulations. I won't break the rules.
21 I do want you to realize we do have major concerns about
22 alternative marginal returns that are existing in that we
23 don't think they're not only effective here, not cost
24 effective, and we are very concerned about the possible
25 damage to the environment that could be done due to the

1 new marketing rules that could be installed.

2 We think that staff has not adequately researched
3 the thing to find out if possibly put in new monitoring
4 rules will cause more of a problem in the future than it
5 will solve. Thank you.

6 MR. STONE: Thank you very much. Is there anyone
7 else that would like to address the Board that was not
8 given a card? Any comments from the Board?

9 Then I believe that calls for a motion.

10 MR. FINSTER: I move that Regulation 85- --

11 MR. RICHARDS: We don't number until after.

12 MR. FINSTER: All right. The amendment be adopted.

13 MR. WILLIS: Second the motion.

14 MR. STONE: All in favor say "aye."

15 (Whereupon all Board members present say aye.)

16 MR. STONE: Now we'll call the Board Meeting to a
17 close.

18 Now I'd like to open the workshop and discuss Item
19 23. We will speak to the Board on Item 23.

20 (Whereupon proceedings were concluded for Item 22.)

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