EXHIBIT 5

In The Matter Of:

Union Oil Company of California
Docket No. 9305

Peter D. Venturini
Vol. 1, May 13, 2003

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
Union Oil Company of California, Docket No. 9305
a corporation.

DEPOSITION OF PETER D. VENTURINI
VOLUME I, PAGES 1 - 284
May 13, 2003

(The following is the deposition of PETER D. VENTURINI, taken pursuant to Notice of Taking Deposition, via videotape, at the Hyatt Regency Hotel, Sacramento, California, commencing at approximately 9:07 o'clock a.m., May 13, 2003.)

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[1] PROCEEDINGS
[2] (Witness sworn.)
[3] PETER D. VENTURINI
[4] called as a witness, being first duly
[5] sworn, was examined and testified
[6] as follows:
[7] ADVERSE EXAMINATION
[8] BY MR. BEEHLER:
[9] Q: Would you please state your name.
[10] A: Peter D. Venturini.
[11] Q: Mr. Venturini, where do you live?
[12] A: In Woodland, California.
[13] Q: Would you please tell me what your job
[14] description and title is.
[15] A: Certainly. I'm the chief of the Stationary
[16] Source Division for the California Air Resources
[17] Board.
[18] Q: How long have you held that position?
[19] A: Since 1985, so that's 15 — about 17, 18
[20] years.
[21] MR. BEEHLER: Let me ask our court reporter
[22] to mark the first deposition exhibit.
[23] (Respondent's Exhibit 1 was
[24] marked for identification.)
[25] BY MR. BEEHLER:

[1] Q: Before I talk to you about that exhibit,
[2] Mr. Venturini, let me just make sure that we go
[3] around and have everybody identified in the room.
[4] You know me, of course, we met before, David Beehler.
[5] I represent Union Oil Company of California, and with
[6] me today is my paralegal, Tony Hoppa. And I take it
[7] you are represented today by Matt Goldman?
[8] A: That's correct.
[9] Q: From the California Attorney General's
[10] office?
[11] A: That's correct.
[12] MR. GOLDMAN: That's correct.
[13] MR. BEEHLER: And with us also today from
[14] the Federal Trade Commission is Complaint Counsel
[15] Robert Robertson.
[16] MR. ROBERTSON: Yeah, Robbie Robertson, and
[17] with me is Lisa Fialco and Chong Park.
[18] MR. BEEHLER. Thank you.
[19] BY MR. BEEHLER:
[20] Q: Mr. Venturini, looking at Respondent's
[21] Exhibit 1 in front of you, have you seen this before?
[22] A: Yes. I have. Well let — let me just
[23] correct — I have a —
[24] I have seen — I think it's the same
[25] document.

[1] Q: Do you understand that I asked the
[2] California Air Resource Board and its staff to
[3] produce a witness or witnesses to testify as to the
[4] various topics outlined on Respondent's Exhibit 1?
[5] A: Yes. I've seen these topics.
[6] Q: And are you prepared to testify today to
[7] some of them?
[8] A: Yes.
[9] Q: Okay. Would you please identify for me
[10] which topics you are appearing on behalf of the
[11] California Air Resource Board or its staff.
[12] A: Topic number one, topic number three and
[13] topic number four.
[14] Q: Are there any particular portions of those
[15] topics that you are not prepared to talk about, or
[16] are you pretty much prepared to talk about those
[17] three individual topics?
[18] A: I'm prepared to discuss these three topics,
[19] yes.
[20] Q: Would you describe for me, sir, how it is
[21] that you got picked to be the designee?
[22] MR. GOLDMAN: Answer to the extent you can
[23] without revealing any discussions you had with me,
[24] because that would, of course, call for
[25] attorney-client communication and that's privileged.

[1] But to the extent that you have an understanding
[2] beyond relating anything that I said to you, —
[3] THE WITNESS: Right.
[4] MR. GOLDMAN: — you may answer.
[5] A: Would you mind repeating the question?
[6] Q: Would you describe for me, sir, how it is
[7] that you got picked to be the designee for these
[8] three topics.
[9] MR. GOLDMAN: Same objection. Answer to
[10] the extent you can.
[11] A: Well I — I think it's fairly
[12] straightforward. I'm probably one of the — probably
[13] the unique individual within the Air Resources Board
[14] that has the degree of background and experience in
[15] dealing with — with fuels, fuels issues at — at the
[16] board, being at a policy level as well. I've been at
[17] the board for over 30 years. I've been involved with
[18] fuels issues almost since the beginning of my career
[19] at the Air Resources Board.
[20] Q: Is it fair to say, then, that you really
[21] feel that you are the best one positioned to testify
[22] as to these topics on behalf of the staff and the
[23] board?
[24] A: Yeah, I feel I'm very well qualified to
[25] represent the board in this matter.

[1] Q: Would you describe what you did for me to
[2] prepare for this deposition.
[3] MR. GOLDMAN: Feel free to answer, but
[4] again, do not reveal any attorney-client
[5] communications.
[6] THE WITNESS: Okay.
[7] A: Well in recognition of the items that were
[8] mentioned here on this — this exhibit, I did review
[9] basically some of the documents to refresh my memory.
[10] I received some documents from Mr. Goldman, and
[11] basically these are here some of the things I — I
[12] looked at and — and reviewed.
[13] Q: You brought with you today, oh, six, eight
[14] inches of documents; is that right?
[15] A: Whatever that dimension is.
[16] Q: And —
[17] MR. GOLDMAN: Looks bigger to me.
[18] Q: And did you select those documents?
[19] A: Some of these I selected, some of these
[20] documents were provided by Mr. Goldman.
[21] Q: Other than reviewing documents and talking
[22] with your counsel, did you do anything else to
[23] prepare for this deposition?
[24] A: I'm not sure. I — I — I reviewed
[25] documents, had some discussions with Mr. Goldman, I

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[1] met with the representatives of FTC.
[2] Q: Who did you meet from the Federal Trade
[3] Commission?
[4] A: Mr. Robertson, Ms. Fialco and Mr. Park.
[5] Q: Did you meet with them yesterday?
[6] A: Yes, we did.
[7] Q: How long?
[8] A: Three hours.
[9] Q: Had you met with any of them prior to that
[10] time?
[11] A: Yes.
[12] Q: How many times?
[13] A: Twice in terms of depo discussion.
[14] Q: In terms of discussion about this
[15] deposition?
[16] A: Yes.
[17] Q: Did they provide you with any documents?
[18] A: No.
[19] Q: Okay. Other than talking with your lawyer
[20] and —
[21] MR. ROBERTSON: I'm sorry, was there an
[22] answer to that? I didn't hear.
[23] MR. GOLDMAN: Yes, the answer is "no."
[24] Q: Other than talking with your lawyer, sir,
[25] and the Federal Trade Commission and reviewing your

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[1] documents, did you do anything else to prepare for
[2] this deposition?
[3] A: Not sure I fully understand the question.
[4] I think I explained what I did is I reviewed
[5] documents as I wanted to kind of refresh my memory on
[6] the timing of events and the pattern of events, had
[7] the discussions and talks with counsel, and there
[8] were the meetings I mentioned with Federal Trade —
[9] Trade Commission. You know, basically I've been
[10] preparing for this for the last 30 years. Over the
[11] last 10 years or so I've had ongoing discussions on
[12] fuels issues with, you know, my staff, board members
[13] and — and others, so in some respect I've been
[14] preparing for this for 30 years.
[15] Q: Let me be more specific.
[16] A: Certainly.
[17] Q: In preparing for this deposition, did you
[18] talk with any of your staff?
[19] A: I had a couple short discussions just to —
[20] Q: With who? With who?
[21] A: I spoke very briefly with Dean, Dean
[22] Simeroth.
[23] Q: Anyone else?
[24] A: Other than just general discussions
[25] about — you know, having to do with the deposition

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[1] and so forth and preparing myself.
[2] Q: No. I'm talking about specifically in
[3] preparation —
[4] A: Yeah.
[5] MR. GOLDMAN: I'm sorry. Could both of you
[6] let each other finish your respective comments —
[7] THE WITNESS: Yes. I'm sorry.
[8] MR. GOLDMAN: — before you interrupt each
[9] other? Or don't interrupt each other.
[10] Q: In preparing for this deposition, sir, did
[11] you meet with members of your staff and talk with
[12] them?
[13] A: I spoke to Dean briefly.
[14] Q: Okay. Other than Dean Simeroth, did you
[15] talk with anyone else from your staff?
[16] A: In preparing for this deposition, in the
[17] last, say, couple of weeks, that's true, but like
[18] I — I said, for the last 30 years or so I feel I've
[19] been preparing myself for this and had extensive
[20] discussions with, you know, my staff over the years.
[21] Q: What did you discuss with Dean Simeroth?
[22] A: I had a technical question —
[23] Q: What was it?
[24] A: — of — with respect to him. I had a
[25] question regarding an issue with a Talbert. I just

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[1] asked him if he remembered anything on that.
[2] Q: Tell me the nature of that discussion to
[3] the best of your memory.
[4] A: Basically I just asked Dean if he
[5] remembered anything about a Talbert patent, anything
[6] to that effect, and he basically indicated that he
[7] had some recollection but he wasn't very clear.
[8] Q: Okay.
[9] A: So I said thanks.
[10] Q: In preparing for your deposition, did you
[11] talk with any former or present board members?
[12] A: Could I just clarify? When you mean in
[13] preparing for the deposition, in just like the last
[14] few weeks, or do you mean at any time?
[15] Q: I mean in preparing for your deposition,
[16] sir.
[17] A: Okay.
[18] MR. ROBERTSON: So objection, vague.
[19] MR. GOLDMAN: Join in the objection.
[20] A: Well let — let me answer it this way: Of
[21] course over, you know, the last 30 years, the time
[22] I've been at the Air Resources Board, I have had
[23] discussions with board members on fuel issues, had
[24] mult — many discussions with staff on fuel issues
[25] and so forth, so that's one element of discussion.

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[1] In terms of preparing myself just for today, say the
[2] last few weeks since I was notified I was going to be
[3] deposed, I haven't had discussions with board
[4] members.
[5] Q: Do you distinguish between actions of the
[6] board and actions of the staff at the California Air
[7] Resource Board?
[8] MR. GOLDMAN: Objection, vague and
[9] ambiguous.
[10] A: Do you mind restating the question? It's
[11] really not too clear to me.
[12] Q: Sure. Let's look at the first topic on
[13] Respondent's Exhibit 1. Perhaps we can bring some
[14] clarity to it. In this I asked for a witness to
[15] testify on all facts and documents which evidence or
[16] reflect that Unocal committed fraud upon the
[17] California Air Resources Board and/or the California
[18] Air Resources Board staff before, during, or after
[19] the adoption of CARB Phase 2 rulemaking on
[20] reformulated gasoline in 1991.
[21] A: Uh-huh.
[22] Q: Do you see that, sir?
[23] A: Yes.
[24] Q: Okay. You see that I have distinguished
[25] there between the board and the staff in that topic.

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[1] And you'll need a verbal response.
[2] A: Okay. I'm sorry, could you please —
[3] Q: Do you see that I've distinguished there —
[4] A: Oh.
[5] Q: — between the California Air Resource
[6] Board and its staff?
[7] A: Yes.
[8] Q: Okay. I'm asking: In preparing for this
[9] deposition, did you distinguish between the staff and
[10] the board?
[11] A: No, because I recognized that I would be
[12] here speaking on behalf of the board, the
[13] organization.
[14] Q: And as well as the staff.
[15] A: And as well as myself, right.
[16] Q: And in —
[17] Are you prepared to discuss the facts and
[18] the — and the documents which show that Unocal
[19] committed fraud upon the staff and/or the board?
[20] A: Yes.
[21] Q: And is it the same fraud as the staff and
[22] on the board — let me withdraw that.
[23] Do you consider staff upon one to be staff
[24] upon both?
[25] MR. GOLDMAN: Do you mean fraud?

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[1] MR. BEEHLER: I'm sorry.
[2] MR. ROBERTSON: I object to the form.
[3] MR. BEEHLER: Let me rephrase that.
[4] Q: Do you distinguish fraud upon the staff as
[5] different from fraud upon the board?
[6] A: No. It's the organization.
[7] Q: Okay. In preparing for this deposition.
[8] what did you do to decide what fraud means for
[9] purposes of this topic?
[10] MR. GOLDMAN: Answer, but again do not
[11] relate any communications you had with counsel.
[12] A: Well actually one of the things is — I did
[13] is I looked up the definition of fraud in the
[14] dictionary, and I — you know, in looking at these
[15] documents that I had, went through and looked at
[16] areas I thought represented instances of fraudulent
[17] activity.
[18] Q: And I'm trying to understand now what you
[19] did to prepare yourself to determine what fraud
[20] means. I understand you looked it up in the
[21] dictionary. Did you come to a determination as to
[22] what you think fraud is?
[23] A: Yes, and basically my — my view is it's
[24] engaging in deception for personal gain.
[25] Q: And in preparing for this deposition, is it

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[1] fair to say that is the definition that you used?
[2] A: Basically.
[3] Q: Do you believe that that has to be
[4] intentional on — on the part of the person who is
[5] defrauding?
[6] A: I think that that bears into it.
[7] Q: Okay. And when you say "engaging in
[8] deception," do you mean something different there
[9] than lying or misrepresenting?
[10] A: What I mean by deception is
[11] misrepresentation, deceiving, hood-winking, pulling
[12] the wool over the eyes, telling half of the story,
[13] part of the story, not giving the full picture.
[14] Q: Do you think that it is misrepresentation,
[15] then, if someone doesn't tell all facts?
[16] A: Yes.
[17] Q: And so in terms of the misrepresentation
[18] that — that you're here to discuss, it's all of
[19] those various matters that you described, deceiving,
[20] hood-winking, pulling the wool over the eyes, telling
[21] half of the story or part of the story, not giving
[22] the full picture.
[23] A: Correct.
[24] Q: Using that understanding, then, sir, would
[25] you tell me what are the facts which evidence or

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[1] reflect that Unocal committed fraud upon the
[2] California Air Resources Board or its staff before
[3] the adoption of the CARB Phase 2 rulemaking.
[4] MR. GOLDMAN: Calls for a narrative, but
[5] answer.
[6] A: Okay. Well I — I think I can answer
[7] initially fairly briefly. I think the core of the —
[8] the deception, the — the fraud, if you will, was
[9] Unocal's failure to inform us in mid-1991 that they
[10] had a patent pending on — on gasoline, and provided
[11] us with — with information and data, encouraged us
[12] to use this information. They subsequently made this
[13] information — represented to us that it was in the
[14] public domain, it was available, there were no
[15] springs attached to this information. We relied upon
[16] that information. We subsequently adopted
[17] regulations, and for three and a half years engaged
[18] in numerous activities to make Phase 2 gasoline
[19] happen in California, numerous meetings, numerous
[20] discussions with all the — all the parties,
[21] particularly Unocal, which was extremely active.
[22] Throughout all of this period they never once
[23] mentioned to us about the patent, and then in early
[24] 1995 we find out that they have a — a patent. And,
[25] you know, the fact that — learning of the patent was

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[1] extremely disruptive in our — in our organization.
[2] we were all just shocked, panicked. It — you know,
[3] it's very hard to describe the — the emotions
[4] that — that went on, there was hurt, there was
[5] anger. You know, why didn't they tell us this? This
[6] had a material effect on our action, and quite
[7] frankly we as an organization felt we had been used,
[8] our regulatory process had been used, and it was not
[9] pleasant.
[10] Q: Now my question asked for the fraud that
[11] would have occurred before the regulations, and given
[12] your answer, I just want to make sure: Is the
[13] description that you just provided, is that the fraud
[14] as you understand it that occurred on — on CARB or
[15] its staff before, during, or after the passage of the
[16] regulations?
[17] A: Yeah. As I — as I said, the basic fraud
[18] occurred by not disclosing to us the fact that they
[19] had sought a patent and that they were going to
[20] basically require licensing for anyone that made
[21] fuels that infringed on that patent, and that had
[22] a — and that fact would have had a material effect
[23] on what the ARB had done in terms of its Phase 2
[24] regulations. So by not disclosing that, we feel
[25] that, yeah, was deceitful, was misrepresentation and

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[1] was fraudulent.
[2] THE REPORTER: Can we go off the record a
[3] moment, please.
[4] (Recess taken.)
[5] A: Mr. Beehler, before — could I just
[6] clarify? At the beginning of the deposition you
[7] asked me about this exhibit, Respondent's Exhibit 1,
[8] and I hesitated somewhat because it didn't look the
[9] same as what I had seen. This is what I had seen
[10] (displaying a document) and it's slightly different
[11] in terms of the wording, but the topics are the same.
[12] I just wanted to clarify that for the record.
[13] Q: As long as you put that in, the
[14] clarification — and your counsel I'm sure will agree
[15] with me — was that once I learned who would be
[16] testifying I also sent out a revised notice that
[17] indicated that the personal depositions of you and
[18] the other deponent could — could also be taken
[19] during this timeframe. Thank you for that
[20] clarification though.
[21] A: Thank you.
[22] Q: You mentioned, sir, in your testimony that
[23] Unocal represented to you that their information was
[24] in the public domain. Did I — did I hear that
[25] correctly?

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[1] A: Yes.
[2] Q: Okay.
[3] A: Right.
[4] Q: Are you referring to a letter that was sent
[5] in August of 1991?
[6] A: Yes, I am.
[7] Q: Okay. What's your recollection of that
[8] letter?
[9] A: Let me back up and give you a little —
[10] probably help us set the stage of why that — we
[11] asked for that letter and why the letter was sent to
[12] us. Unocal met with us in June of 1991. They asked
[13] for the meeting to present to us the results of what
[14] they characterized as an innovative approach to
[15] formulating gasoline, which was based on results of a
[16] fairly comprehensive test program that they had
[17] undertaken. We met with Unocal. They shared with us
[18] the — the results of their work, the basis for their
[19] work, basically the details, and one of the
[20] interesting things that came out of that
[21] presentation — actually there were two things — the
[22] first was they showed us that T50 was a very
[23] important parameter in terms of gasoline properties
[24] and emissions. Quite simply, their data showed that
[25] if you reduce the T50 specification of gasoline,

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[1] which is the temperature at which about 50 percent of
[2] the gasoline evaporates, that you could get
[3] significant reductions in emissions. That was a very
[4] important point to us. Secondly, they also expressed
[5] to us the importance of us developing a predictive
[6] model which was allow refiners to — rather than meet
[7] a set specification, to use basically a set of
[8] mathematical equations to come up with different
[9] formulations than are set in specifications but would
[10] achieve the same air-quality benefits, and they felt
[11] that such a model would be practical, cost-effective
[12] and enforceable.
[13] Well we were very interested in the —
[14] particularly the T50, because up until then when we
[15] had been workshopping proposals with various
[16] individuals we did not have, prior to June, a T50
[17] spec proposed in our regulation. So, you know, we
[18] discussed this with Unocal, and basically our
[19] interest — when we saw this information, you know,
[20] our initial reaction and subsequent was we ought to
[21] include a T50 specification into our regulation
[22] because we — looks like we can get some additional
[23] emission reductions and it looks to be very cost
[24] effective to include a T50. So we basically told
[25] Unocal, because they had asked us to keep this

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[1] confidential, we asked them basically if they wanted
[2] us to use this information, if they wanted us to use
[3] the data to — in terms of our setting of the
[4] regulations, they wanted us to use their information
[5] in developing the predictive model, they basically
[6] had to put this information, I'll call it, in the
[7] daylight.
[8] You know, as — as a technical organization
[9] everything we do we have to defend and we have to
[10] defend through facts and information and be
[11] technically correct as we can, technically
[12] defensible, and as an organization we take our
[13] technical credibility quite — quite seriously. And
[14] I think that's one of the reasons why the Air
[15] Resources Board has such a good reputation
[16] internationally is that we are very respected for our
[17] technical credibility. But anyway, it's important
[18] that this information had to be put into the
[19] daylight, had to be put out there so anyone could
[20] take a look at it. We thought from our look at it
[21] that it was a very robust test program. We knew the
[22] people that had done the work, we respected their
[23] expertise and technical credibility, but we had to
[24] put it out there. We wanted to let other oil
[25] companies review the information, auto manufacturers

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[1] review the information to see if they, too, felt that
[2] this was a credible study and we can rely upon the
[3] results and people could rely upon this information
[4] to basically make gasoline.
[5] So to make a long story short, in some
[6] discussions that occurred with Unocal, they were very
[7] interested in the predictive model and we had
[8] committed — we saw the benefits of preparing a
[9] predictive model. So basically what that letter
[10] indicated, because of our commitment to developing a
[11] predictive model, we received a letter in August, I
[12] believe it was August 27th of 1991, in which Unocal
[13] basically told us that this information is now
[14] publicly available, it's in the sunshine and we could
[15] share it with anybody, and from our perspective
[16] looking at the letter, it's ours to do with that as
[17] we wished and there were basically no strings
[18] attached to this information. And as a result we did
[19] share it. We incorporated a T50 specification in our
[20] regulation. We used their information to help
[21] develop the predictive model. In fact, you know, we
[22] referenced the — the presentation material in our
[23] staff report; it's part of the record of the hearing.
[24] We used some of the charts in our staff report and
[25] technical support document to support the T50

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[1] specification.
[2] Q: All right. Let's go back and follow up on
[3] some of the things —
[4] A: Sure.
[5] Q: — that you testified about.
[6] First of all, who was at this meeting
[7] between Unocal and the CARB staff in — I believe you
[8] said June of 1991?
[9] A: June of 1991.
[10] Q: Okay. Who was there?
[11] A: I'm not sure I remember everybody. Let
[12] me — I —
[13] I was there. I'm sure Dean Simeroth was
[14] there. Bob Fletcher. There may — there were
[15] probably others from the staff I'm just not
[16] remembering.
[17] Q: I just need what you can do —
[18] A: Okay.
[19] Q: — under oath, the very best, sir.
[20] A: Okay. That's what I'm doing.
[21] Q: I don't want you to speculate. I just want
[22] you to tell me —
[23] A: Okay.
[24] Q: — who was there.
[25] A: Okay. Dean, myself, Bob Fletcher. I'll

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[1] say there probably were other staff. I just can't —
[2] can't remember them. From Unocal I recall Denny Lamb
[3] and Peter Jessup. And those are the two that I — I
[4] think there were others from Unocal there, but those
[5] are the two that come to mind immediately.
[6] Q: How long did that meeting last?
[7] A: Oh, I — I don't recall.
[8] Q: Were you there for the entire meeting?
[9] A: Yes.
[10] Q: Did it last all day or closer to an hour,
[11] just to give me an idea, sir?
[12] A: I would guess that a meeting of that nature
[13] would probably have been several hours.
[14] Q: Okay. No one took any notes at that
[15] meeting; did they?
[16] A: I took some notes on the handouts they gave
[17] us.
[18] Q: Other than on the handouts.
[19] A: I don't know if others took — took notes.
[20] Q: You haven't determined that as part of your
[21] investigation or preparation?
[22] A: I have my notes.
[23] Q: Okay. Now you made the statement that a
[24] request was made from the staff to Unocal to — to
[25] use the information; correct?

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[1] A: Their request was that if Unocal wanted us
[2] to use the information, either for — to help us in
[3] setting the specifications for Phase 2 gasoline or to
[4] help us in creating the predictive model, they had to
[5] basically release that information and put it in the
[6] public domain.
[7] Q: Who made that request?
[8] A: That I don't — I don't recall. It could
[9] have been me, it could have — it could have occurred
[10] at the meeting, it could have occurred subsequent to
[11] the meeting, a meeting or a discussion that I could
[12] have had or one of my staff could have had with
[13] Unocal. I don't recall the specifics of that, but I
[14] do know that's the process because that's our
[15] standard process. We do not, you know, use
[16] information that we're asked to keep confidential in
[17] our — as a basis unless people are willing to put it
[18] out there. —
[19] Q: I want to be very specific with you, sir.
[20] Do you know who made any request to Unocal for the
[21] release of any information?
[22] A: I can't recall the specific individual.
[23] Q: Okay. Do you know when that request was
[24] made?
[25] A: Not specifically, but it had to have

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[1] been — okay. Not specifically.
[2] Q: Okay. Do you know the words that were used
[3] in making that request?
[4] A: No. I do not recall.
[5] Q: Do you know whether it was in written form
[6] or oral?
[7] A: I would have to say, since I'm not aware of
[8] any document, that it was an oral request.
[9] Q: Is it fair to say, sir — in listening to
[10] your testimony this is what I'm hearing, so I want
[11] you to clarify if I'm wrong. Okay? Is it fair to
[12] say that you do not know what was actually
[13] communicated to Unocal, but that you have typical
[14] procedures in dealing with confidential information
[15] and so you are concluding that that would have been
[16] done in this case?
[17] MR. ROBERTSON: Objection to form.
[18] A: I can only state because it's 12 years
[19] later, very difficult to recall the actual
[20] conversation, but I'm very confident in knowing that
[21] if Unocal wanted us to use that information they
[22] would have had to make it publicly available, put it
[23] in the public domain. Now how that was communicated
[24] and the specific words, I cannot recall.
[25] Q: And that's what I'm getting at here, sir.

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[1] because I want to make sure whether you're making
[2] conclusions or whether you actually have knowledge as
[3] to what was communicated, so let's be clear again.
[4] You believe a request was made of Unocal to
[5] release the confidentiality of certain information;
[6] true?
[7] A: Yes.
[8] Q: You don't know who made that request.
[9] A: I do not recall.
[10] Q: And you don't know what was said precisely
[11] to Unocal.
[12] A: That's correct. I do not recall.
[13] Can I add one —
[14] Q: Go ahead, sir.
[15] A: Yeah. If you take a look at that August
[16] letter, it does state that in response to our
[17] commitment to conduct a pre — to develop a
[18] predictive model, they're now putting this
[19] information out there, so that from my perspective
[20] indicates that there was a communication to Unocal
[21] that, yes, we confirm we're going to do the
[22] predictive model.
[23] Q: Okay. We'll get to that letter.
[24] A: Okay.
[25] Q: Do you consider equations to be the same

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[1] thing as data?
[2] A: Technically, no.
[3] Q: You have a mechanical engineering
[4] background if I recall.
[5] A: That's correct.
[6] Q: What is your degree?
[7] A: Mechanical engineer. I have a bachelor's,
[8] a master's degree in mechanical engineering from U.C.
[9] Berkeley.
[10] Q: The other people who were there from your
[11] staff at this June 1991 meeting, you mentioned
[12] specifically Dean Simeroth and Bob Fletcher, do they
[13] have science backgrounds?
[14] A: They're both engineers.
[15] Q: Do you know what type?
[16] A: Dean is — I believe Dean's a chemical and
[17] I believe Bob is a chemical.
[18] Q: You said th. . technically you do not
[19] consider equations to be the same thing as data.
[20] What did you mean technically no?
[21] A: Well it's kind of a —
[22] Data are the actual results from testing
[23] and so forth, and equations may be relationships that
[24] you derive from analysis of the data.
[25] (Respondent's Exhibit 2 was

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[1] marked for identification.)
[2] BY MR. BEEHLER:
[3] Q: Sir, looking at Respondent's Exhibit 2,
[4] would you identify that document for me.
[5] A: Yes. This is a July 1, 1991 letter
[6] addressed to me from —
[7] Q: Does that appear to be Mike Kulakowski's
[8] signature on behalf of DWL, Denny Lamb?
[9] A: Yeah, it looks like J though. Yeah, looks
[10] like Mike's signature. I assume it's Denny Lamb.
[11] Q: Do you even recall receiving this letter?
[12] A: Yes.
[13] Q: You have a specific recollection of
[14] receiving it?
[15] A: I don't know what you mean by "specific
[16] recollection." I know I received this letter in
[17] reviewing the documents and so forth.
[18] Q: Okay. Do you recall specifically receiving
[19] this letter in July of 1991?
[20] A: Yes.
[21] Q: What did you do with it?
[22] A: Well my normal reaction would be to read
[23] the letter and then pass it on to my staff for
[24] their — for their use.
[25] Q: Okay. I understand you're saying that that

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[1] would be your normal reaction. Again, I am trying to
[2] distinguish between what might be your ordinary
[3] process and what you actually recall, sir, this many
[4] years past. So let's go back and — and —
[5] A: Okay.
[6] Q: Just with that clarification again, sir. —
[7] A: Sure.
[8] Q: — do you actually recall receiving this
[9] letter in July of 1991 and reading it?
[10] A: Yes.
[11] Q: Okay.
[12] A: I know I read the letter.
[13] Q: And did you give it to anyone?
[14] A: I gave it to the staff.
[15] Q: Did you discuss it with anyone?
[16] A: I don't recall if I discussed it with the
[17] staff.
[18] MR. ROBERTSON: Just a moment. David, what
[19] is this being marked as?
[20] MR. BEEHLER: It's already been marked as
[21] Respondent's Exhibit 2.
[22] MR. ROBERTSON: Oh, I'm sorry, mine is his
[23] PX 665.
[24] MR. GOLDMAN: That was at a previous
[25] proceeding. This has been marked now.

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[1] MR. ROBERTSON: Okay.
[2] Q: Now let's set the context for this letter
[3] here a little bit.
[4] A: Uh-huh.
[5] Q: You met with Unocal, as you said, in a
[6] confidential meeting in June of 1991 and so this
[7] letter would be following that meeting; correct?
[8] A: Correct.
[9] Q: Had there been any other communication that
[10] you can recall between the meeting and the date of
[11] this letter between the staff and Unocal?
[12] A: Not that I recall.
[13] Q: Now this letter begins by saying, "The
[14] attached page shows the equations developed in
[15] Unocal's research program which we presented to you
[16] and your staff on June 20, 1991;" correct?
[17] A: Uh-huh. Correct.
[18] Q: And if you turn to the second page of
[19] Respondent's Exhibit 2, in fact there are equations
[20] there; is that right?
[21] A: Yes.
[22] Q: And that page is indicated as being
[23] confidential; isn't it?
[24] A: Yes.
[25] Q: Okay. Let's turn back to the first page

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[1] now. In the second paragraph Unocal requests that
[2] CARB hold these equations confidential. Do you see
[3] that?
[4] A: Yes.
[5] Q: Now they had not actually presented to you
[6] the precise form of the equations during the June
[7] meeting; isn't that right?
[8] A: I'd have to review the — the presentation,
[9] but I'll accept that you are correct on that.
[10] Q: Right now you don't recall?
[11] A: This —
[12] Every chart in that presentation? No.
[13] Q: The third paragraph then states, "If CARB
[14] pursues a meaningful dialogue on a predictive model
[15] approach to Phase 2 gasoline, Unocal will consider
[16] making the equations and underlying data public as
[17] required to assist in the development of a predictive
[18] model." Do you see that, sir?
[19] A: Yes.
[20] Q: So at least in this letter Mr. Kulakowski
[21] was distinguishing, using different words for
[22] "equations" and "underlying data;" wasn't he?
[23] A: Yes. I interpret this is the equations and
[24] the data used to develop the equations.
[25] Q: He was using different words to describe

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[1] equations as distinct from data.
[2] A: Yes.
[3] Q: What did CARB or you understand "making
[4] them public" to mean? Do you see in that third
[5] paragraph?
[6] A: Yes.
[7] Q: What — what did you understand that to
[8] mean,-"making them public?"
[9] A: They put them in the public domain.
[10] Anybody could use — use this information. They
[11] could use it to make gasoline, they can evaluate it.
[12] There were basically no strings attached to — to the
[13] information.
[14] Q: Is that the analysis that you used
[15] typically in terms of what "public domain" means,
[16] there are no strings attached?
[17] A: Yes.
[18] Q: Now did you have any letter with Unocal —
[19] I'm sorry. Let me withdraw that.
[20] Did you have any communication with Unocal
[21] that you recall following this July 1, 1991 letter?
[22] A: Well I don't personally recall, but I'm
[23] certain that there were on —
[24] What you have to understand, Mr. Beehler,
[25] is this was — this period in 1991 when we were

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[1] developing the regulations, and I'm trying to be very
[2] factual here — here for you, it was a very intense
[3] period for us. I mean we had — as an organization
[4] we had numerous meetings, discussions, phone calls
[5] on — on a regular basis, some included me, some were
[6] staff in doing their technical work and so forth, so
[7] while I don't recall anything specific, I do know
[8] there is an awful lot activity that was going on, a
[9] lot of dialogue, a lot of discussions, a lot of phone
[10] calls and so forth.
[11] Q: But based on preparing for this deposition
[12] and all of your personal knowledge as well, you don't
[13] know the substance of any communications that could
[14] have occurred or did occur between your staff and
[15] Unocal following this July 1 letter but before August
[16] 2?
[17] A: I don't recall —
[18] Q: Okay.
[19] A: — at this point in time.
[20] Q: Well you say you don't recall at this point
[21] in time.
[22] A: I don't recall.
[23] Q: Is there anyplace that you can think of to
[24] look that would even refresh your recollection?
[25] A: Okay, I don't recall.

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[1] Q: Okay.
[2] (Respondent's Exhibit 3 was
[3] marked for identification.)
[4] BY MR. BEEHLER:
[5] Q: Mr. Venturini, I'm showing you what's been
[6] marked as Respondent's Exhibit 3, and as you can see,
[7] it's been — as with some of these documents, they've
[8] been previously marked because of prior litigation.
[9] A: Uh-huh.
[10] Q: But looking at Respondent's Exhibit 3, you
[11] see that it is a fact sheet to Dean Simeroth from D.
[12] W. Lamb dated August 2?, 1991; correct?
[13] A: Correct.
[14] Q: With the actual enclosure being directed to
[15] Mr. Boyd from Denny Lamb; right?
[16] A: Correct.
[17] Q: Couple of questions about this. First of
[18] all, in your previous testimony you mentioned the
[19] August '91 letter. Is this the letter you were
[20] talking about?
[21] A: It is.
[22] Q: Okay. Ask you a couple of things. First
[23] of all, this letter went to Dean Simeroth. Have you
[24] ever talked with Mr. Simeroth about this letter?
[25] A: Oh, yes.

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[1] Q: Okay. Does he have an understanding of why
[2] he received it?
[3] A: I assume he does.
[4] Q: Okay. Did you discuss with him why he
[5] received it?
[6] A: I don't recall such a discussion.
[7] Q: It's directed, the insert, to Mr. Boyd.
[8] Would you please describe who Mr. Boyd is or was in
[9] 1991?
[10] A: Certainly. Jim Boyd was the executive
[11] officer of the Air Resources Board.
[12] Q: What is an executive officer's
[13] responsibilities?
[14] A: Executive officer, I guess the best
[15] characterization would be like the CEO of a
[16] corporation. He reported directly to the — to the
[17] board, he was the head of the organization, oversaw
[18] the — all the activities of the Air Resources Board
[19] at that time.
[20] Q: As an executive director, does he actually
[21] sit on the board?
[22] A: No, he does not.
[23] Q: And this is why I'm trying to — to follow
[24] up to get a better idea of what his responsibilities
[25] were. Is he in charge of staff as the executive

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[1] director?
[2] A: He basically directs all the work of the
[3] organization.
[4] Q: But doesn't actually vote.
[5] A: No. He doesn't sit on the board. He is
[6] basically appointed by the board and he serves at the
[7] board —
[8] Q: Serves at the board's pleasure?
[9] A: Serves at the board's pleasure.
[10] Q: Looking at this August 2? letter, sir, it
[11] starts off by saying — let me withdraw that.
[12] You don't recall seeing this letter back in
[13] 1991; do you?
[14] A: Oh, I do.
[15] Q: You do.
[16] A: Yes, I do recall seeing it. I have — I
[17] can share with you the copy of the letter that —
[18] that I saw.
[19] Q: Do you recall discussing this letter with
[20] anyone?
[21] A: I know I discussed it, yes. I had to have
[22] discussed it with people, yes.
[23] Q: Do you have any recollection of what was
[24] discussed?
[25] A: Yeah. We discussed that, okay. Unocal has

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now put this in — made this information available so we can use it to support our regulation and use it for the predictive model.
Q: Did you have any discussions with Unocal about this letter?
A: That I don't recall.
Q: I'll take out your deposition if you like, but prior to doing that, just let me ask you: Do you recall saying that — you've taken —
You've had your deposition taken before in this case.
A: Yes.
Q: And in fact I was part of that process. Do you remember that?
A: Yes.
MR. GOLDMAN: For clarification, you mean the patent case?
MR. BEEHLER: Yeah, the underlying — the underlying litigation.
MR. GOLDMAN: Okay. But you said "this case." It wasn't in these pending proceedings.
MR. BEEHLER: I'm sorry.
Q: You've had your deposition taken in the previous patent case.
A: Correct, yes.

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Q: Okay. Do you recall being asked if you had seen a copy of this letter and answering that you don't recall seeing it but that you assumed you had?
A: Yeah, that — could have said that.
Q: Have you had a refreshed recollection since 1996?
A: Well in — in preparing — preparing things I spend considerable time going through things to basically refresh my own memory and thought — thought process of what happened some, you know, 12, 13 years ago, and I did come across the copy of this letter that I actually received, routed — it was routed to me — you know, I can share that with you and what I did with it — and that I kind of "Oh, yeah, I remember all of that now." So kind of triggered my own memory.
Q: Let me make sure then. You know that you received a copy of this letter.
A: Yes.
Q: Who sent it to you?
A: Jim Boyd.
Q: Okay. Did you have any discussions with Mr. Boyd about this letter?
A: That I don't — that I don't recall.
Q: Did you take any actions based upon

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receiving this letter?
A: Yes, I did.
Q: What did you do?
A: I sent it to my staff. I sent it to Dean and to Ron Friesen.
Q: Okay. Dean had already received it, though; hadn't he?
A: Yes, but I — matter of course, I send things down to the staff.
Q: Okay. The second individual, Ron —
A: Friesen.
Q: Would you spell that for our —
A: F-r-i-e-s-e-n.
Q: Who is Ron Friesen?
A: At that time he was an assistant division chief. And if I may, Mr. Beehler, let me — let me just refresh — I've got it here. I want to make sure I'm — I'm correct on — on this.
Yes, here it is. Yes, to Ron Friesen and to Dean.
Q: May I see?
A: Certainly.
(Document handed to Mr. Beehler.)
Q: Do you recall discussing it at all with Ron Friesen or Dean Simeroth?

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A: No, no specific recollection of a discussion.
Q: Okay.
A: But I can say I'm pretty certain I did, but no specific recollections.
Q: Do you have any understanding of any action they took based on that letter?
A: Yeah.
Q: What did they do?
A: Oh, we basically used this letter as basis to go ahead and propose a T50 specification which ultimately went into our regulation, was adopted, and to use the information in our predictive model, and we shared all of that with everybody.
Q: Looking at this letter, sir, Respondent's Exhibit 3, it first says in the re line there, "Public Availability of Unocal Research Data;" correct?
A: Correct.
Q: In fact, sir, does this document use the word "equations" anywhere?
A: Well let me take a minute to —
MR. ROBERTSON: Just objection, form, misleading.
A: And the question again was?

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Q: Does this document use the word "equations?"
A: No.
Q: Now you had earlier testified that the letter of July 1 showed that Mr. Kulakowski was using separate words for "data" and "equations," do you remember that?
A: Yes.
Q: Respondent's Exhibit 3, the August letter, simply uses the word "data;" correct?
A: Yes.
Q: Did anyone from CARB contact Unocal and ask them to clarify what they meant by this letter marked as Exhibit 3 in just using the word "data?"
A: I don't recall.
Q: But you assumed, is it fair to say, sir, that in this letter "data" referred to equations?
A: What we assumed — and not assumed, what we took this as, and we took it on the — on the face of it, that Unocal was releasing their — all of their information that they shared with us at the June 20 meeting, and all the data, these equations, the information, and were making that — putting that basically in the public domain so we could use it in our regulatory process, we could use it to develop

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the predictive model, that we could share it with whomever we wanted to — well, we could share it with environmental groups, other members of the industry, the public. It was — was in the sunshine and there were no — no conditions, no strings attached to it. That's how we took this.
Q: That's — that's how you understood it.
A: Yes.
Q: This letter doesn't say that all of the information is released; does it? Doesn't use those words.
A: Well it says this information — these data are available.
Q: I'm sorry, where does it say "information?"
A: Well it says these — these data are available.
Q: Okay. This is what I'm asking you. I'm just looking at your testimony right now, what you just said, and I'm trying to make it clear for the record. This letter doesn't say — use the words "We're releasing all of our information that we shared with you at the June 20 meeting;" does it?
A: It doesn't use those specific words.
Q: Doesn't say "We're releasing the equations;" does it?

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[1] A: It doesn't.
[2] Q: Doesn't say "We're putting it into the
[3] public domain:" does it?
[4] A: Well I think it does indirectly by saying
[5] the data to be non-proprietary and available to ARB,
[6] environmental interest groups, other members of the
[7] petroleum industry and the general public upon
[8] request.
[9] Q: Didn't use those words: did it?
[10] A: Not those specific words you mentioned.
[11] Q: And this letter, does it say that you can
[12] use the data for your 1991 rulemaking?
[13] A: It doesn't say what we can or cannot use it
[14] for, it's just available to do with as we wish.
[15] Q: Looking at the first paragraph, is there a
[16] reference there to making the data public if
[17] necessary in the development of a predictive model?
[18] A: Yes, they reiterated that they made the
[19] data available and agreed to make it public, if
[20] necessary, in the development of a predictive model.
[21] Q: Does this letter infer that CARB could use
[22] data or equations to promulgate regulations that
[23] include a T50 specification?
[24] MR. GOLDMAN: I think you mean imply.
[25] MR. BEEHLER: I mean the words I used.

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[1] A: Could — could you restate that, please?
[2] Q: Does this letter infer that CARB can use
[3] the data or the equations to promulgate regulations
[4] that include a T50 specification?
[5] A: I think this letter gave us permission to
[6] use all the information they shared with us in June,
[7] the data, the equations, all of that, as we saw fit.
[8] Q: I understand that testimony, but let me ask
[9] you this again: Does this letter infer that CARB can
[10] use the data or equations to promulgate regulations
[11] that include the T50 specification?
[12] MR. GOLDMAN: Objection, vague.
[13] A: I — I don't mean to be difficult, Mr.
[14] Beehler, I'm having trouble distinguishing your
[15] questions. I think I answered your — your question
[16] previously of how we took — took this letter and how
[17] we acted upon it.
[18] (Discussion off the stenographic record.)
[19] MR. BEEHLER: We don't have to mark this.
[20] BY MR. BEEHLER:
[21] Q: Mr. Venturini, your deposition was
[22] previously taken on June 18th of 1996 in this matter
[23] and I would ask you to turn to page 138 — actually
[24] 137 to 138 of that deposition.
[25] A: Is that 138?

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[1] Q: 137 to 138.
[2] A: Uh-huh.
[3] Q: And I'll read the particular portion. If
[4] you look at the beginning part there of page 137, do
[5] you see that you're being asked about the August 27
[6] letter?
[7] A: Yes.
[8] Q: And at the bottom of page 137 you are asked
[9] the question:
[10] "And did you understand that CARB could use
[11] the information to promulgate regulations that
[12] included a T50 specification?"
[13] And after my objection —
[14] A: Oh, I'm sorry.
[15] Q: — there's an answer:
[16] "That's — I can't infer that from reading
[17] the letter and I don't have a recollection of that
[18] specifically."
[19] Do you see that, sir?
[20] A: Let me just catch up with you.
[21] MR. ROBERTSON: Just objection, improper
[22] impeachment.
[23] A: Yes, that's absolutely what I said.
[24] Q: Was that true, sir?
[25] A: At the time that — that was my

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[1] recollection, but in preparing for today I recognized
[2] and refreshed my memory that, you know, what I m
[3] telling you today is further clarification.
[4] Q: Okay. You said you've refreshed your
[5] recollection, sir. I don't understand you to be
[6] saying that you recall any other conversation with
[7] Unocal that you didn't recall in 1996, and in 1996
[8] you testified truthfully that —
[9] A: Yes.
[10] Q: — you could not infer from reading that
[11] August 27 letter that CARB could use the information
[12] to promulgate regulations that included the T50 spec:
[13] right?
[14] MR. ROBERTSON: Objection, form.
[15] Objection, argumentative.
[16] MR. GOLDMAN: Join in the objections.
[17] Q: That's what you testified to.
[18] A: That's what I testified to, but it — but
[19] also, the other side, it doesn't infer we can't,
[20] so —
[21] I mean I have to look at this on the face
[22] of it. It doesn't say what we can or cannot do. The
[23] one thing it does say is that since we proposed to
[24] develop a predictive model, they're making it
[25] available, and that was very, very clear that they

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[1] wanted us to use this information to develop a
[2] predictive model.
[3] Q: So in a letter dated August 27 that uses
[4] the word "data," did you conclude that you could use
[5] the equations as well?
[6] MR. GOLDMAN: Just objection. Are you
[7] referring to Mr. Venturini?
[8] MR. BEEHLER: I'm referring to him in his
[9] capacity of this deposition.
[10] MR. ROBERTSON: Well that's the problem
[11] here. I have an objection because you — you noticed
[12] up what was a deposition of the entity and you're now
[13] asking Mr. Venturini about his personal recollection,
[14] which is fine, and I — I said that was fine that you
[15] do that, but I want to make sure your record is
[16] clear. That's why I wanted to do this as two
[17] depositions.
[18] A: Okay. So you're asking me as Air Resources
[19] Board, as a person?
[20] Q: I'll restate the question.
[21] A: Okay.
[22] Q: I'll restate the question. In August 20 —
[23] In August of 1991 the staff received this
[24] letter from Unocal that's been marked as Respondent's
[25] Exhibit 3.

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[1] A: Uh-huh.
[2] Q: Correct?
[3] A: Correct.
[4] Q: Is it your testimony that this letter was
[5] the basis for using Unocal's equations?
[6] A: Yes. I mean —
[7] Q: For using presentation slides of Unocal's?
[8] A: Yes.
[9] Q: And for using Unocal data?
[10] A: Yes.
[11] Q: And this letter only refers to the word —
[12] it only uses the word "data:" is that correct?
[13] MR. ROBERTSON: Objection, argumentative,
[14] form.
[15] A: It may use — only use the word "data," but
[16] let me point out that we used and shared all of that
[17] other information in our technical support document
[18] report to the board on the regulation, we used
[19] information — slides right out of the presentation
[20] which referenced sourcing Unocal, we referenced that,
[21] we used all of this. If Unocal had a problem with us
[22] using something, I would assume they would have told
[23] us. And they never objected to us using all of that.
[24] Q: When did you tell Unocal that you were
[25] going to use that information and put it in your

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[1] publication? Did you have such a conversation?
[2] A: I don't recall such specific conversation,
[3] but at our next workshop we had a proposal to do a
[4] T50 specification, and all of this was — was put out
[5] there for everybody to see.
[6] Q: All of what was put out there?
[7] A: The information and the data.
[8] Q: Are you referring to the October 1991 staff
[9] proposal for regulations?
[10] A: Right. And at our — at our workshops, I
[11] mean we — we shared all of it. We wanted other
[12] people to tell us if they felt that this study was
[13] robust and a competent study.
[14] Q: Are you saying that in a workshop you
[15] published Unocal's equations?
[16] A: That I don't — I don't recall.
[17] Q: Are you saying in a workshop you published
[18] the presentation slides that Unocal gave you?
[19] A: The — the equations are in our report. At
[20] what point —
[21] We would not have made anything available
[22] prior to getting this — this release because we're
[23] very careful about confidential information. Now I
[24] can't be totally specific what happened with those
[25] documents after August 27, but they did show up as

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[1] references in our staff report. Some of the figures
[2] that were in the presentation were in our staff
[3] report. It's a reference, it's part of the hearing
[4] record, and I have to assume if Unocal had a problem
[5] with any of this, we'd have heard about it right
[6] away.
[7] Q: I understand. I'm trying to —
[8] A: Okay.
[9] Q: I'm trying to clarify your previous
[10] testimony. You used presentation slides that Unocal
[11] had given you during a June meeting in your October
[12] report: correct?
[13] A: Correct.
[14] Q: And you also put the equations —
[15] A: I believe they're in there as well.
[16] Q: Okay. All I'm trying to figure out:
[17] Between the date of this letter, August 27, and the
[18] time of that report, did you show those at some
[19] workshop?
[20] A: That I can't recall.
[21] Q: Okay. Prior to your report coming out in
[22] October of 1991 where you did use the equations
[23] and —
[24] A: Yes.
[25] Q: — presentation slides, was there any other

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[1] notice to Unocal that you were going to do so, or was
[2] that it?
[3] A: I don't recall any specific notice.
[4] Q: What did you understand was the permission
[5] that Unocal was giving you through this August 27,
[6] 1991 letter?
[7] A: I think I've answered, but I'll be happy to
[8] answer that again. Basically that everything they
[9] had shared with us was now in the — in the public
[10] domain. We could use it as we saw fit and with no
[11] strings attached.
[12] Q: Have you previously testified that you
[13] understood it to be a release of data to be publicly
[14] available because you had proposed to develop a
[15] predictive model?
[16] A: Well it's — as I say, it's release of
[17] data, it's release of all the information they'd
[18] shared with us.
[19] Q: You're required to keep a formal record
[20] file of rulemaking at — at CARB: is that right?
[21] A: Yes.
[22] Q: Can you tell me, is there an identification
[23] of documents made anywhere of that record file?
[24] MR. ROBERTSON: Objection, vague.
[25] A: I don't follow your question.

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[1] Q: I understand that there is a formal record
[2] file of the 1991 rulemaking: —
[3] A: Uh-huh.
[4] Q: — correct?
[5] A: (Nodding.)
[6] THE REPORTER: Your answer?
[7] THE WITNESS: Yes. I'm sorry.
[8] Q: Does someone write down the names of all
[9] the documents that are in that file so that they know
[10] what's in there, or is — or do you have to actually
[11] physically go through it to determine what's in it?
[12] A: Oh. I'm not sure what — the process that
[13] the legal office uses to keep the record, but they
[14] are responsible for maintaining the record of all the
[15] hearings.
[16] Q: Who is responsible for that?
[17] A: It's our legal office basically.
[18] Q: Was this August 27, 1991 letter part of the
[19] record file?
[20] A: That I don't recall.
[21] Q: Was the July 1, 1991 letter from Mike
[22] Kulakowski part of the record file?
[23] A: Don't recall that one either.
[24] Q: Do you have an understanding as to why that
[25] record file is kept and maintained?

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[1] A: Well my perception, you'd want to keep
[2] everything that was used and relied on at the hearing
[3] in case there was some question later on, and so
[4] there's a complete record of the — of the reports,
[5] the — the comments that were submitted and the
[6] transcripts and everything that pertains to that
[7] public hearing.
[8] Q: Did any member of the board, to your
[9] knowledge, see the August 1991 letter from Unocal
[10] prior to its rulemaking in 1991?
[11] A: I assume at least Jan Sharpless has seen
[12] this, but I can't recall specifically.
[13] Q: Why would you assume Jan Sharpless would
[14] have seen the August 27, 1991 letter?
[15] A: I just — you know, based on how we operate
[16] at the ARB, my thinking is that Jim would have shared
[17] this information with her.
[18] Q: You don't know if he did or not, you think
[19] Mr. Boyd would have.
[20] A: Yes.
[21] Q: What's the basis for thinking he would have
[22] done that?
[23] A: Because this was some important information
[24] to us because it did provide us the — basically the
[25] rationale and the technical basis to incorporate the

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[1] T50 specification into our regulation, and I would
[2] have thought, you know, if I were the executive
[3] officer I would have shared this, said, you know,
[4] "They've released this information, so staff's
[5] proceeding ahead with the T50."
[6] Q: Am I understanding you to say that the
[7] board should have seen that August 27, 1991 letter?
[8] A: No. What I'm just saying is my — my
[9] inclination is that Jim would have shared this with
[10] Jan. I can't say that for a fact, but that's —
[11] based on my knowledge of how we operate at the Air
[12] Resources Board, that that's very likely, very highly
[13] probable that that happened.
[14] Q: But you don't know if it's part of the
[15] record-making file.
[16] A: I don't know specifically without going
[17] back through the whole file.
[18] Q: Do you have any process other than the
[19] integrity of the staff for making certain what is
[20] included and not included in the record file?
[21] A: We are very careful as staff to make sure
[22] that any data that's given to us is confidential,
[23] that it's protected and we — we take — take care of
[24] it: we have locked files for confidential information
[25] and — and so forth. And it's usually my nature, if

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[1] I get something that's confidential. I'm very careful
[2] and I typically give it to the appropriate branch so
[3] they can appropriately manage it in their — in their
[4] files.
[5] Q: Confidentiality is something that you take
[6] very seriously and you respect.
[7] A: Very seriously.
[8] Q: Uh-huh. All I'm trying to understand is
[9] what keeps someone, for instance, from being able to
[10] take this letter and put it into the record-making
[11] file now? Is there some process that says, look,
[12] this is the record-making file and I have it all
[13] written up and I know what's in it? Do you have a
[14] process like that, sir, to make sure that the record
[15] file is kept intact?
[16] A: Yeah, I — I have to admit I'm not
[17] completely clear on your question, Mr. Beehler. It's
[18] not surprising to me that this letter didn't show up
[19] as part of, you know, one of the references on our —
[20] in our report because this is basically an
[21] informational letter to us saying hey, you're free to
[22] use this information, and so I'm not surprised if it
[23] didn't show up in — in — in the record.
[24] Q: Now you — you've used that term again,
[25] you're free to use this information. If you look at

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[1] Exhibit 3, it actually says, "Please be advised that
[2] Unocal now considers this data to be non-proprietary
[3] and available to CARB, environmental interest groups,
[4] other members of the petroleum industry and the
[5] general public upon request." Those are the words
[6] used; right?
[7] A: Correct.
[8] Q: Do you agree that people sometimes use the
[9] word "proprietary" to mean different things?
[10] A: Some may.
[11] Q: Well do you have experience with people
[12] using the word "proprietary" as a synonym for
[13] "confidential?"
[14] A: Well, you know, to — from our perspective,
[15] you know, the term "proprietary" is very different
[16] from "confidential." "Proprietary" means rights,
[17] property rights.
[18] Q: Do you have experience with people using
[19] the word "proprietary" as a synonym for
[20] "confidential?"
[21] MR. GOLDMAN: Asked and answered.
[22] A: I believe I answered the question.
[23] Q: With all due respect, sir, I don't believe
[24] you have. Let me try it again.
[25] A: Okay.

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[1] Q: Do you have experience with people using
[2] the word "proprietary" as a synonym for
[3] "confidential?"
[4] MR. GOLDMAN: Same objection.
[5] A: I'll have to say I — I don't — I don't
[6] recall specifically.
[7] Q: Is there any context that you are aware of
[8] where it would be appropriate to use the word
[9] "proprietary" as a synonym for "confidential?"
[10] A: Now are you asking as the ARB or are you
[11] asking me as an individual?
[12] Q: Either.
[13] A: Either.
[14] MR. GOLDMAN: Objection, vague then.
[15] A: Well let — let me answer it as an
[16] individual. Basically I understand there's a
[17] distinction and it means different — different to
[18] me. And I think as an organization, too, as I'm
[19] thinking about this a little more, too, it — the
[20] majority of things that we see, people use the word
[21] "confidential" and "non-confidential," and that's
[22] what we see the majority of the time.
[23] Q: You have seen people use the word
[24] "proprietary" to mean "confidential" in your job;
[25] haven't you, sir?

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[1] A: I don't specifically recall that.
[2] Q: You said you understood that there's a
[3] distinction and it means — you used the words
[4] "...different to me. And I think as an organization,
[5] too..." I'm trying to understand your testimony
[6] here.
[7] A: Well —
[8] Q: Does the word "proprietary" mean different
[9] things at different times?
[10] MR. ROBERTSON: Objection, form, vague.
[11] A: The word "proprietary" means a property, a
[12] property right.
[13] Q: Always?
[14] A: Well that's the definition basically. And
[15] the word "confidential" means something different.
[16] Q: And I understand, —
[17] A: Okay.
[18] Q: — and what I'm trying to — to determine
[19] is whether you have experience with people using the
[20] word "proprietary" simply as a synonym for
[21] "confidential."
[22] A: I don't recall any specific instances.
[23] As — as I said, predominantly people use the word
[24] "confidential" with us.
[25] Q: Has your staff ever used the word

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[1] "proprietary" to simply mean "confidential?"
[2] A: I don't know.
[3] Q: Can you imagine any context where it would
[4] be appropriate for your staff to use the word in that
[5] fashion?
[6] A: If it were done, it would be a misuse of
[7] the word in terms of the definition. It's hard to
[8] say someone's not going to do something, but that's
[9] no reason to indicate that it's correct or not
[10] correct.
[11] Q: Are you saying that, then, that it would
[12] never be reasonable for someone to use the word
[13] "proprietary" as simply meaning "confidential?"
[14] A: Anything is — is possible. But I have to
[15] tell you, when we received this letter, the way we
[16] read this letter — forgetting the words, let's —
[17] you know, we're a technical organization, you know,
[18] we're working trying to get —
[19] When we received this letter, we looked at
[20] it, they basically said to us — and our
[21] interpretation of how we considered this, and we
[22] looked at the words — this is available. When
[23] people tell us — tell us that it's publicly
[24] available, we can share it with anybody, that means
[25] it's free to the world and basically, of necessity,

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[1] there are — there are no strings attached.
[2] Q: Now you said "forgetting the words," but
[3] the words are what I'm concentrating on.
[4] A: Okay.
[5] Q: Okay? For purposes of these questions.
[6] A: Well for us the words here being
[7] "non-proprietary," there's no property right.
[8] Q: Okay. And my question is, and I think — I
[9] think you've answered it, but we've — we've had some
[10] interchanges here. I want to make sure: Have you
[11] ever seen the word "proprietary" simply meaning
[12] "confidential?"
[13] MR. GOLDMAN: Asked and answered.
[14] A: I think I've answered this. I said I don't
[15] recall specific instances.
[16] Q: Would it ever be reasonable to use the word
[17] in that fashion?
[18] MR. GOLDMAN: Same objections.
[19] MR. ROBERTSON: Asked and answered.
[20] A: I think I've answered it.
[21] MR. ROBERTSON: Also asked and answered,
[22] calls for a conclusion.
[23] A: I think I've answered.
[24] MR. GOLDMAN: We've been going about an
[25] hour and a half. Would it be a good time for a

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[1] break?
[2] THE WITNESS: Actually it would. I have a
[3] bad. bad back and I'm going to need to
[4] periodically —
[5] MR. BEEHLER: And we'll accommodate you.
[6] but we have a pending question. And again. with all
[7] due respect —
[8] MR. GOLDMAN: What is the pending question?
[9] Q: I think what you asked — what you
[10] answered. sir. was to go back to the letter in your
[11] response. and what I want to know is just very
[12] clearly —
[13] A: Sure.
[14] Q: — if you have a recollection or not.
[15] Okay? Would it ever be reasonable to use the word
[16] "proprietary" to simply mean "confidential? "
[17] MR. GOLDMAN: Same objections. You can
[18] answer.
[19] A: You know. I can't control how people are
[20] going to use their words. You know. words are
[21] misused. However. you know. I have to step back and
[22] we as an organization look at this and it says
[23] "non-proprietary." and to us that meant there's no —
[24] no rights to it.
[25] Q: Well you've done it again. sir. I'm simply

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[1] asking would it ever be reasonable to do what I
[2] asked. would it ever be reasonable to use the word
[3] "proprietary" to simply mean "confidential?"
[4] MR. GOLDMAN: You're now arguing with the
[5] witness. He's answered several times and at this
[6] point I'm going to instruct him not to answer again.
[7] THE WITNESS: Why don't you —
[8] I think I need a break right now. so why
[9] don't we take a few minutes' break.
[10] MR. BEEHLER: Okay.
[11] THE WITNESS: I need to stretch my back a
[12] little bit. —
[13] MR. BEEHLER: You bet. Any time you need
[14] that —
[15] THE WITNESS: — wash my hands —
[16] MR. BEEHLER: Any time you need that
[17] accommodation. ask for it.
[18] THE WITNESS: — and come back.
[19] THE REPORTER: Off the record, please.
[20] (Recess taken.)
[21] BY MR. BEEHLER:
[22] Q: Welcome back from the break. Mr. Venturini.
[23] Before we broke you testified that CARB staff
[24] understood the word "proprietary" to mean property
[25] rights or simply rights. I just ask you that for —

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[1] for background now to direct my question.
[2] What do you mean when you say "proprietary
[3] rights" in connection with the word "proprietary"
[4] meaning the same thing?
[5] A: Basically what I —
[6] Are you asking me or the — the "we" as
[7] ARB? I want to make sure I understand that
[8] distinction.
[9] Q: Is there a distinction?
[10] A: I don't believe so.
[11] Q: Okay.
[12] A: Sometimes it would help me. too. if you
[13] want to make a distinction. then. if you would just
[14] let me know in terms of the question. That would
[15] just make it easier. easier for me.
[16] Basically it — it means. in terms
[17] proprietary rights. that it's ownership and you
[18] have — have rights to. you know. charge fees. do
[19] whatever you want. because it's like owning property.
[20] In the case of a patent. it's. you know. requiring
[21] license fees.
[22] Q: Is it your testimony that when the letter
[23] of August 2nd. 1991 was received. that anyone at staff
[24] actually had the thought process of saying I guess
[25] this means there's no patent rights?

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[1] MR. ROBERTSON: I'm sorry. I couldn't hear
[2] the last part of your question.
[3] THE WITNESS: Okay. Can you repeat the
[4] question?
[5] MR. ROBERTSON: Can you read it back.
[6] please?
[7] Q: Did the thought of patent rights or
[8] potential patent rights even occur to anyone at CARB
[9] staff prior to the November 1991 rulemaking?
[10] MR. GOLDMAN: Objection to the extent it
[11] may call for speculation. but answer if you can.
[12] A: Basically I don't think that was something
[13] we — we considered at that time, particularly from
[14] the fact that when we received this letter Unocal was
[15] telling us that this was in the public domain. it was
[16] available and it was non-proprietary. and so we felt
[17] we could use it. There were no conditions upon it.
[18] If there were conditions. they should have told us.
[19] Q: Did the thought occur to you personally
[20] when you received this letter in 1991 that this
[21] letter had anything to do with patent rights?
[22] A: No.
[23] (Respondent's Exhibit 4 was
[24] marked for identification.)
[25] BY MR. BEEHLER:

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[1] Q: Mr. Venturini. handing you what's been
[2] marked as Respondent's Exhibit 4. it's a page that I
[3] took off a Stanford website and it's entitled
[4] "Proprietary Research." Have you ever seen this
[5] document before?
[6] A: No.
[7] Q: Just want you to read the first line with
[8] me. Quote. "Proprietary research is defined as that
[9] for which users request confidentiality of proposal.
[10] data and results for a certain period of time." Do
[11] you see that?
[12] A: Yes.
[13] Q: Does that reflect to you that the word can
[14] be used to simply mean confidentiality?
[15] MR. ROBERTSON: Objection. misleading.
[16] MR. GOLDMAN: Join in the objection.
[17] MR. ROBERTSON: I also object to using a
[18] document which the witness has never seen before and
[19] has nothing to do with the case.
[20] THE WITNESS: I — I — I guess I need a
[21] clarification from counsel what my —
[22] Do I continue to respond or —
[23] MR. GOLDMAN: Well you can answer it. It's
[24] just a document he pulled off the Internet.
[25] THE WITNESS: Okay.

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[1] A: Well I just — you know. you just put this
[2] in front of me. and just reading that. I'll tell you
[3] my initial reaction is —
[4] MR. GOLDMAN: Well let me —
[5] What is the question pending? I don't
[6] think it calls for your initial reaction. What was
[7] the question?
[8] MR. BEEHLER: The question is does that
[9] reflect to you that the word can simply be used to
[10] mean confidentiality. the word "proprietary."
[11] MR. ROBERTSON: Same objection. it's
[12] misleading. there's not a good-faith basis for the
[13] question. it's not what the sentence says. And I
[14] object to using a document the witness — has nothing
[15] to do with the case and the witness has never seen
[16] before. It's argumentative.
[17] THE WITNESS: Could you please ask the
[18] question again?
[19] MR. BEEHLER: Yes.
[20] Q: I read you the first sentence from that
[21] document. I'm simply asking if that reflects to you
[22] that the word "proprietary" can be used to mean
[23] confidentiality.
[24] MR. ROBERTSON: Same objections.
[25] A: Well I don't know what the author meant in

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[1] writing this in terms of using those terms. I think
[2] it is ambiguous. I can see both proprietary and
[3] confidentiality. They're not the same. they're two
[4] different things. Something can be confidential and
[5] can also be proprietary. or non-confidential and be
[6] proprietary.
[7] Q: When can something be non-confidential and
[8] proprietary?
[9] MR. GOLDMAN: Objection to the extent that
[10] that may call for a legal conclusion. but if you can
[11] answer in your individual capacity or if you can
[12] answer on behalf of CARB. feel free to do so. But
[13] subject to those objections. I don't want you to play
[14] lawyer.
[15] A: Well the fact that it's —
[16] The fact that Unocal now has a patent is
[17] not confidential but it's certainly proprietary.
[18] (Respondent's Exhibit 5 was
[19] marked for identification.)
[20] THE WITNESS: Am I supposed to keep all of
[21] these in front of me? Is that —
[22] MR. GOLDMAN: You can just put them in a
[23] stack there.
[24] THE WITNESS: Okay.
[25] MR. GOLDMAN: If Mr. Beehler wants to refer

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[1] you to them again. he'll ask. Just why don't you
[2] stack them over there.
[3] BY MR. BEEHLER:
[4] Q: Would you identify Respondent's Exhibit 5.
[5] sir.
[6] A: Yes. This is the technical support
[7] document for the proposed regulations for California
[8] Phase 2 reformulated gasoline. It's — the release
[9] date of the document is October 4. 1991.
[10] Q: Did you review this document before it was
[11] released —
[12] A: Yes.
[13] Q: — in October of 1991?
[14] A: Yes.
[15] Q: Did you approve this document before it was
[16] released in 1991?
[17] A: Yes.
[18] Q: Is there a technical meaning to the words
[19] "reviewed and approved?"
[20] A: What it means is basically that it's been
[21] reviewed for. you know. you know. what's being said.
[22] the — in terms of how it — how it's said. that we
[23] make — that we're sure that we've got our
[24] information correct. that it's technically correct
[25] and accurate. and we've presented it in a way that's.

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[1] you know. as readable as possible with very technical
[2] information.
[3] Q: When staff comes up with a proposal and
[4] with a technical support document in support of that
[5] proposal. is it basically a consensus of staff. or is
[6] there certain individuals vested with the power to
[7] say it will go forward in such and such fashion?
[8] Would you describe that for me?
[9] A: Yeah. Let — let me describe the process
[10] and maybe this — this — this will help. and it's a
[11] pretty common process. Of course the staff will do
[12] the tech — technical work. The staff will — and by
[13] "staff" I mean the managers and the staff. say. below
[14] my level — they'll review things. Many times the
[15] management will sit in. I'll sit in on some of the
[16] technical discussions. and I may have input into —
[17] into that. And will question them because. yes. I'm
[18] a manager. but I'm also engineer — an engineer. so
[19] what I like to characterize is I know enough to keep
[20] my staff honest and to ask the right questions. and I
[21] kind of use the rule that if something — if I don't
[22] necessarily understand something or it's not clear to
[23] me. then I should maybe be asking some more because
[24] it may not be clear to others. That's kind of a tool
[25] that I use in my — in my capacity. But basically

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[1] staff will do their work. will — we'll meet. we'll
[2] have — we'll have discussions. we'll have technical
[3] dialogue back and forth. I'll ask for their opinions
[4] and their views. But when all is said and done. what
[5] gets into the regulation and what we do is basically.
[6] okay. we'll do this. this and that. Let's proceed
[7] with this. Or I'll say well what about this? We'll
[8] have some technical dialogue. They may convince me.
[9] no. that's not what we should do. But ultimately I
[10] say okay. let's — let's do this and let's — let's
[11] go this way.
[12] Q: Are you saying that basically. then. it's a
[13] consensus of — of staff with you having the final
[14] approval before a proposed regulation goes out?
[15] A: Yeah. I — I —
[16] You know. if you're asking me. —
[17] Q: Yes.
[18] A: — okay. me personally. yeah. I try to
[19] operate on consensus on the tech — technical
[20] things —
[21] Q: Uh-huh.
[22] A: — as much as possible. but I will make —
[23] The final decision is up — is up to me.
[24] Q: So you reviewed and approved Respondent's
[25] Exhibit 5 before it went out.

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[1] A: Yes. that's what it says here.
[2] Q: And it does state on the second page here
[3] that this report does not necessarily reflect the
[4] views and policies of the Air Resources Board:
[5] correct?
[6] A: Uh-huh.
[7] THE REPORTER: Your answer?
[8] A: Yes. That's standard language that's been
[9] going on all our reports for years.
[10] Q: What's the point of putting that in there?
[11] A: Oh. let's see. I guess. you know. this is
[12] something that our legal office. you really need to
[13] ask them. but I think it just basically recognizes
[14] that the staff does it work — does its work and
[15] presents its findings. recommendation. reports to the
[16] board. and people shouldn't construe this as this is
[17] the board's work and they totally agree with this.
[18] Because in our process the regulations go to the
[19] board. we present our information and so forth. they
[20] hear testimony. and they may make some adjustments.
[21] Q: They often do: don't they?
[22] A: They do.
[23] Q: But the board —
[24] A: And they often do not.
[25] Q: The board is supposed to exercise its

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[1] independent decisions?
[2] A: Yes.
[3] Q: Would you turn to page 149 of this document
[4] you approved.
[5] A: But I will say the board relies very
[6] heavily on the work of the staff and — in making its
[7] decision-making. That's why we take our work very
[8] responsibly and really sweat the details to be as
[9] technically accurate as we can.
[10] Q: Do you have page 149 in front of you. sir?
[11] A: Yes.
[12] Q: It's entitled "Status of LP Refinery
[13] Models." Do you see that?
[14] A: Yes.
[15] Q: What's an LP refinery model?
[16] A: It's a linear — LP stands for linear
[17] programming refinery. It's basically a set of
[18] equations that are developed to characterize
[19] different types of refineries. whether it's a simple
[20] refinery. a complex refinery or — or mid-type
[21] refinery. It's a way to try to mathematically
[22] characterize all of the activities. processes and so
[23] forth that occur in a refinery. Refineries use those
[24] to basically opti — optimize their — their
[25] processes so they can make whatever the products that

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they do make at least cost considering the type of crude input they have and the type of processes that they utilize and the outputs that they want.
Q: Let's see if I can make sure that I'm understanding. Is a linear program similar to a spreadsheet or is it —
Is it similar to a spreadsheet where all of the available streams are put in and — and then it's determined how you can best utilize all those streams to make gasoline? Is that what you're describing?
A: Let me answer it this way: You could have a very simple linear program model, you could probably do a simple one on a spreadsheet, but they can go from there to very extensive programs that are just designed for a specific refinery. You could have general models, and each refinery may have their own for their own, you know, internal uses and purposes.
Q: The third incomplete paragraph down on page 149. I'll read you a couple of sentences here. It says, "The Tosco model has proven to be the most complex of the five refinery models. The basis for ARB's Tosco model development stems from Tosco's own proprietary PIMS refinery model." Do you see that?
A: Uh-huh.

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Q: I need a verbal answer.
A: Oh, yes. Sorry.
Q: Was the term "proprietary" as used by you and your staff there meant to signify patent rights?
A: I think it's used there to signify Tosco's own model, their proprietary model. They have rights to it. I don't know if it means it's a patented model or not.
Q: No one ever asked Tosco if it had a patent before staff chose to use the word "proprietary," correct?
A: I would doubt staff would have asked that.
Q: And if you simply meant it to mean ownership, you could have said Tosco's own model; correct?
MR. ROBERTSON: Objection, it calls for speculation. It's also argumentative.
MR. GOLDMAN: Join in the objection.
A: It's its own proprietary model.
Q: Sir, is the term "proprietary" there meant to convey the meaning "confidential?"
A: I just have to read what the intent of that word is. To me it means it's their model, they have their rights — rights to it.
Q: Are you saying it's not meant to convey the

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term "confidential?"
MR. ROBERTSON: Objection, asked and answered, it's argumentative.
MR. BEEHLER: No, I — I deserve a question to that. I just want to clarify it.
A: I think I —
Q: Is the term used by staff there meant to convey that it's confidential?
MR. ROBERTSON: Objection, asked and answered, it's argumentative.
MR. GOLDMAN: Join in the objections.
A: I think you have to look at — at — at the word and what it — what it says here. It's proprietary. I have to read that as there's — they have a right to this refinery model.
Q: When the refiners were reconfiguring their refineries in preparation for the 1996 rollout of gasoline, —
A: Uh-huh?
Q: — did they provide you with updates on their reconfiguration plans?
A: Yes.
Q: And the status of those plans?
A: Yes, they did.
Q: Am I using the term correctly,

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"reconfiguration plans," or is there something else that you refer to that as?
A: Well we called them compliance plans.
Q: Did you ever see a refiner refer to their compliance plans as proprietary?
A: I don't recall.
Q: Would you understand that to mean patented —
MR. ROBERTSON: Objection, calls —
Q: — if that occurred?
MR. ROBERTSON: — for speculation.
A: Well "proprietary" and "patented" aren't necessarily the same thing. Something can be proprietary and not necessarily have a patent for it.
Q: You have no reason to believe that compliance plans would be patented.
A: No.
Q: Have you ever received documents from refiners that are simply stamped "proprietary?"
A: I don't recall that. What I do recall is — is "confidential" being used frequently, and that's the predominant thing that I see on documents.
Q: When the words —
Have you ever seen the words used together, "confidential and proprietary," in such documents?

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A: I don't recall any specific —
Q: Do you take a different meaning from the two words when they're used together, "confidential and proprietary?"
A: When someone uses the two words together they're meaning two different things, it's confidential and they have some rights.
Q: Uh-huh.
A: That's just what the words mean.
Q: The August 27, 1991 letter that we've looked at several times, —
A: Uh-huh.
Q: — and you'll recall how I showed you that the word "data" was used in there.
A: Uh-huh.
Q: You understood the word "data" to refer to the raw test data collected during experiments; didn't you?
A: We interpreted this letter, the data was the data they provided us and all the information. Took very broad interpretation of — of this.
Q: Well didn't CARB use the word "data" to simply refer to the emissions data collected?
A: I — I don't — I don't follow. Maybe you could rephrase the question. It's unclear.

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Q: Would you turn back to Respondent's Exhibit 5.
A: Uh-huh.
Q: This has an appendix to it; doesn't it?
A: Yes.
Q: And there's an Appendix 11 on internal page 1024. Are you with me?
A: Yes.
Q: And what does that say?
A: It's Appendix 11 and it says a "UNOCAL REGRESSION EQUATION."
Q: Would you turn to the next page, sir.
A: Uh-huh.
Q: On this next page you see it's entitled "Range of Variables Considered in the Unocal Study;" correct?
A: Correct.
Q: And then you use the phrase, "Based on the data collected, Unocal developed a predictive model which includes different variables than the Auto/Oil regression equations;" didn't you?
A: That's — yes, that's the words.
Q: So you were — you used the word "data" here to refer to the actual emissions data collected, the raw data; is that right?

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[1] A: Yeah. this is the — the data that they
[2] collected through their test program.
[3] (Respondent's Exhibit 6 was
[4] marked for identification.)
[5] BY MR. BEEHLER:
[6] Q: Looking at Respondent's Exhibit 6. sir.
[7] this is a photocopy of a document that complaint
[8] counsel gave me representing that it had been copied
[9] from your files. That's why you see the letters
[10] C-A-R-B with a numerical figure there. Do you see
[11] that on the bottom?
[12] A: Oh. down here. Okay.
[13] Q: It appears to be a photocopy of a floppy
[14] disk. Have you seen such a floppy disk —
[15] A: No. I don't —
[16] Q: — before?
[17] A: I don't recall seeing this actual disk.
[18] Q: This says on it. "Unocal Portion of ARB's
[19] Predictive Model Data Base (created from data Unocal
[20] submitted to ARB)." and then it shows "Unocal - 10
[21] car study. Unocal - 13 car study." Do you see that?
[22] A: Yes.
[23] Q: Is it your understanding that Unocal sent
[24] you a data disk?
[25] A: Yes. I recall that. They — they had to

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[1] somehow transmit the data to us because we needed
[2] this for the predictive model.
[3] Q: Do you know when they did that?
[4] A: I don't recall when. I don't recall
[5] actually. but I assume —
[6] I don't recall the actual date. but I
[7] expect it was sometime after the June — June
[8] meeting.
[9] Q: You think it was before the regulation-
[10] making in 1991?
[11] A: Yes.
[12] Q: Do you still have that original disk?
[13] A: I don't know.
[14] Q: Have you ever searched for it?
[15] A: I personally have not.
[16] Q: Do you recall that in the previous
[17] litigation. the patent litigation. you folks searched
[18] for that?
[19] A: I don't recall that.
[20] Q: Do you know who created Respondent's
[21] Exhibit 6?
[22] A: No.
[23] Q: Do you recognize the handwriting?
[24] A: No.
[25] Q: Do you have any understanding of why a disk

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[1] would have to be created from the data that Unocal
[2] submitted?
[3] MR. ROBERTSON: Just objection, vague and
[4] misleading.
[5] Q: That's a good point. Mr. Venturini. Let me
[6] see if I can clarify. If you still had the disk that
[7] Unocal gave you in the first place. do you have any
[8] understanding as to why someone would have to create
[9] a new disk?
[10] A: Yeah. You know — you know. this would
[11] have had to have been used for the predictive model.
[12] We may have created this disk so we could have given
[13] it to other parties that we were working with.
[14] because everybody was looking at all — all the data.
[15] and so we could share with other companies that were
[16] working on the model and stuff. here's — here's
[17] additional data. the Unocal information so you can
[18] plug it in to the other data as part of the fu
[19] database.
[20] Q: That's a possible explanation?
[21] A: Uh-huh.
[22] MR. ROBERTSON: Pardon me. I just have to
[23] object to foundation —
[24] MR. BEEHLER: I'm sorry.
[25] MR. ROBERTSON: — on this particular disk.

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[1] Q: That's a possible explanation you re
[2] saying?
[3] A: It's — it's possible.
[4] Q: Do you know —
[5] A: But I am speculating.
[6] Q: Okay. That's what I was trying to get at.
[7] A: Yes.
[8] Q: Do you know in fact whether CARB ever sent
[9] to anyone the Unocal data —
[10] A: Oh.
[11] Q: — in — in — in this fashion. in a — in
[12] a disk?
[13] A: I can't —
[14] MR. ROBERTSON: Objection. foundation.
[15] A: I know we had to share the Unocal data with
[16] others. The exact mechanism we used to do that.
[17] whether it was we put it on a disk or we handed them
[18] the data —
[19] Q: I'm just trying to —
[20] A: Sure.
[21] Q: — get your best understanding. sir. of
[22] why. if you still had the original disk from Unocal
[23] on its data. why one would have to be created. Do
[24] you have any understanding as to why Respondent's
[25] Exhibit 6 was created?

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[1] MR. ROBERTSON: Objection. foundation.
[2] A: No. I don't recall why this was created.
[3] Q: You don't know when it was created?
[4] A: No. not specific.
[5] Q: Do you know what's on this disk?
[6] A: I assume what it says. it's the data from
[7] the Unocal test programs.
[8] Q: And that would mean the data collected. the
[9] raw data.
[10] MR. ROBERTSON: Objection. calls for
[11] speculation. lack of foundation.
[12] MR. GOLDMAN: Join in the objection.
[13] A: I can just read what it says here.
[14] "(created from data Unocal submitted to ARB)."
[15] Q: And you said "I assume it's the data from
[16] the Unocal test program." and I'm asking: And that
[17] would mean the raw data: correct?
[18] MR. ROBERTSON: Objection. calls for
[19] speculation. lack of foundation.
[20] MR. GOLDMAN: Join in the objection.
[21] A: I can't say that specific. because it could
[22] be — it could be the raw data but there was some
[23] work done to it. or it could be some additional
[24] information. I don't — without having to see what's
[25] on that disk. it would be just speculation on my

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[1] part.
[2] (Respondent's Exhibit 7 was
[3] marked for identification.)
[4] BY MR. BEEHLER:
[5] Q: Mr. Venturini. in the last litigation
[6] Respondent's Exhibit 7 was marked as Deposition
[7] Exhibit 582. Do you see that's entitled "Unocal
[8] Phase 2 test data?"
[9] A: Uh-huh. yes.
[10] Q: And it says "13 car fleet. See Readme.doc
[11] 7-6-92." Do you see that?
[12] A: Yes.
[13] Q: And then this Exhibit 582 contains. as
[14] represented to me by that time CARB's counsel. the
[15] printout of that document. Do you see that?
[16] A: Yes.
[17] Q: And in looking at this document. it
[18] contains the raw data collected is what it would
[19] appear: is that right?
[20] MR. ROBERTSON: Objection. calls for
[21] speculation. lack of foundation.
[22] A: Contains data files. ASCII files.
[23] Q: It contains the raw data collected:
[24] correct?
[25] A: Well also contains a description of the

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[1] cars involved in the data set.
[2] Q: Uh-huh. Does it contain any equations?
[3] MR. ROBERTSON: Objection. calls for
[4] speculation. lack of foundation.
[5] A: Yeah. Without seeing the actual disk. it's
[6] hard to say what all is in it.
[7] Q: You're looking at Exhibit 582. sir. I'm
[8] simply asking —
[9] A: Look —
[10] Q: — does this document contain any
[11] equations?
[12] MR. ROBERTSON: Same objections. and also
[13] it's argumentative.
[14] A: I'd say based on quick — my review of the
[15] information here. I don't see any equations.
[16] Q: And the presentation slides that you
[17] referred to from the June 1991 meeting. they're not
[18] contained in this Exhibit 582: are they?
[19] MR. ROBERTSON: Objection. argumentative.
[20] THE REPORTER: Are we speaking about
[21] Respondent's Exhibit 7?
[22] MR. BEEHLER: I am sorry. let me rephrase.
[23] BY MR. BEEHLER:
[24] Q: The presentation slides that you referred
[25] to earlier from the June 1991 meeting. they're not

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[1] contained in Exhibit 7. Respondent's Exhibit 7: are
[2] they?
[3] MR. ROBERTSON: Objection. argumentative.
[4] A: Without seeing the — what's on the disk. I
[5] can't answer that affirmatively. What's —
[6] Q: Referring you to Respondent's Exhibit 7 —
[7] A: If this is. everything that's on the disk.
[8] that presentation? Is that what you're asking. is
[9] the presentation on the disk?
[10] Q: That's exactly what I'm asking.
[11] A: It's not shown. If this is a
[12] representation of what's on that disk. it's not
[13] there.
[14] Q: Okay. You notice that this is marked
[15] July — dated — marked July 6. 1992?
[16] A: Yes.
[17] Q: Now that's after your 1991 rulemaking:
[18] isn't it?
[19] A: Yes.
[20] Q: Do you have any understanding of why you
[21] would have received a data disk in July of 1992 after
[22] your 1991 rulemaking?
[23] A: Certainly. We were working on the
[24] predictive model. which the board didn't adopt till
[25] 1994.

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[1] Q: Is it your testimony that the 13-car data
[2] from Unocal. was that received before or after the
[3] 1991 rulemaking. or do you know?
[4] A: I can't recall specifically.
[5] Q: Do you know if the 10-car data was received
[6] before the 1991 rulemaking?
[7] A: We had to receive and take something before
[8] the '91 rulemaking because we initiated discussions
[9] on the predictive model before the rulemaking is my
[10] recollection. So —
[11] Q: Okay. Let's — let's be clear what we're
[12] talking about here though. You don't know whether
[13] the 13-car data. as reflected here in Respondent's
[14] Exhibit 7. came before or after the 1991 rulemaking.
[15] A: Yeah. I don't recall.
[16] Q: Right. And — and I'm just trying to —
[17] A: Sure.
[18] Q: — figure out if you know whether the
[19] 10-car data came before or after the 1991 rulemaking.
[20] A: The actual submission of the data?
[21] Q: Right.
[22] A: I don't recall.
[23] THE REPORTER: We have to change tape. Off
[24] the record. please.
[25] (Discussion off the record.)

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[1] BY MR. BEEHLER:
[2] Q: The staff of the California Air Resource
[3] Board receives confidential documents from time to
[4] time: doesn't it?
[5] A: Yes.
[6] Q: And if something is marked confidential. is
[7] staff and CARB supposed to use that in their
[8] rulemaking?
[9] A: It depends on what that — that information
[10] is. For example — let me give you an example.
[11] We — and I'll use this. this case. We asked
[12] refiners for basically cost information for this
[13] rulemaking.
[14] Q: Uh-huh.
[15] A: That information from the individual
[16] refiners was confidential. but what we do. we combine
[17] it all so it's de-identified and then present
[18] basically what's the result. but you can't trace it
[19] back to any — any refinery.
[20] Q: As long as you brought it up. let's just —
[21] let's go into a little bit of detail at this point.
[22] You received —
[23] You asked for and received actual cost
[24] information from six different refineries prior to
[25] 1991: correct?

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[1] A: Yes.
[2] Q: Unocal was not one of those: was it?
[3] A: That's my recollection.
[4] Q: What I said was true. Unocal did not give
[5] you cost information —
[6] MR. ROBERTSON: Objection. asked and
[7] answered.
[8] Q: — at that time.
[9] A: That's — that's my recollection.
[10] Q: Okay. Are you able to tell me the six
[11] refineries that you did receive cost information
[12] from?
[13] A: It's — it's probably in the staff report.
[14] Q: Do you think it is. —
[15] A: Oh —
[16] Q: — or did you hold that confidential. sir?
[17] A: I have to go back. We may have held that
[18] confidential.
[19] Q: I'm trying to determine if you recall who
[20] were the six refineries that gave you the cost
[21] information that you referred to.
[22] A: I don't recall.
[23] Q: Were there some small refineries and some
[24] larger refineries. do you recall that?
[25] A: I don't recall the specific refineries. I

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[1] would have to go back and review our information.
[2] Q: Do you still have that information that
[3] they gave you?
[4] A: I don't know if staff still has that or
[5] not. I would assume they — they would.
[6] Q: And that specific information from these
[7] refineries. that was marked confidential: correct?
[8] A: I assume it is — it was.
[9] Q: And this represented actual cost
[10] information. or was it output from their individual
[11] linear programs?
[12] A: Yeah. we — we prepared — put a survey
[13] together and asked for specific information. I can't
[14] go into what the specific responses were. what they
[15] were based on and — and so forth.
[16] Q: But you —
[17] A: We did get responses.
[18] Q: Thank you.
[19] You're confident you still have the survey
[20] that was sent and believe that you should have their
[21] responses.
[22] MR. ROBERTSON: Objection. misleading.
[23] Q: Is that true?
[24] MR. ROBERTSON: Calls for speculation.
[25] foundation.

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[1] A: Well what I said is I think we still have
[2] that. I'm not certain without checking.
[3] Q: And what you were describing when we
[4] started off with this line of questions was that here
[5] was a way that you had confidential information. but
[6] apparently in the way that you could group it
[7] together. you were able to describe it in some
[8] fashion: is that right?
[9] A: Correct.
[10] Q: So you didn't use the documents themselves
[11] that were marked confidential: correct? You didn't
[12] put those out to the public.
[13] A: No.
[14] Q: And that's what I'm getting at. If a
[15] document is marked confidential. is CARB supposed to
[16] use that document in its rulemaking?
[17] A: Well we don't release that document.
[18] Q: So you don't use it in the rulemaking:
[19] correct?
[20] A: Well see —
[21] MR. GOLDMAN: Objection. misstates his
[22] testimony.
[23] A: — there's a distinction of using it and
[24] putting it out there. and I gave you an example of
[25] how we use confidential information. So in my view.

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[1] yes. we used the confidential information that the
[2] refiners provided us. but we did not share with
[3] anybody else what each individual refiner told us.
[4] Q: Now before you used the information from
[5] those six refiners in the manner that you did. did
[6] you tell them that you were going to do the
[7] combination — let me withdraw that.
[8] These six refiners. I take it. all told you
[9] that their documents were confidential: correct?
[10] A: Correct.
[11] Q: And you determined that there was a manner
[12] in which this information could be amalgamated and
[13] used by the board: correct?
[14] A: Correct.
[15] Q: Did you tell them that you were going to do
[16] that before you did it?
[17] A: I believe we informed them that the purpose
[18] of this is to try to get an estimate of the costs of
[19] this — of this regulation. and it's fairly common
[20] practice for us to do this type of thing. And. you
[21] know. we've been working so long with the refineries.
[22] they understood this — this process.
[23] Q: And they agreed to let you use their
[24] information in that fashion after you requested it.
[25] MR. ROBERTSON: Objection. foundation.

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[1] A: They didn't object to it. It's like I
[2] said. it's understood how we use the information.
[3] it's understood we treat confidential information as
[4] confidential. and I think it's generally understood
[5] that we will lump things together so it's
[6] de-identified.
[7] Q: I'm just trying to understand if you gave
[8] them the opportunity to object before you put it out.
[9] that's all the nature of my question. Did you tell
[10] them how you were going to use the information before
[11] you put out your reports or proposals?
[12] A: I will say I'm pretty certain we let them
[13] know how we were going to using their information.
[14] Q: Prior to the time it was published.
[15] A: Maybe even at the time we sent the survey
[16] out.
[17] Q: And they all agreed to it.
[18] A: They returned the survey. As far as I know
[19] no one objected.
[20] Q: Was it part of your procedure from 1990 to
[21] 1994 when asking someone to lift confidentiality to
[22] inquire whether it was subject to a patent?
[23] MR. GOLDMAN: Could you repeat the
[24] question. please?
[25] (Record read by the court reporter.)

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[1] A: No. our — routinely —
[2] We don't routinely ask people.
[3] Q: In determining whether a document should be
[4] held confidential by your staff. there are specific
[5] rules for you to follow: aren't there?
[6] A: Correct.
[7] Q: In fact. isn't one of the reasons for
[8] saying a document can be made public the fact that it
[9] is patented?
[10] A: Could you — I —
[11] Question isn't clear. Could you please
[12] restate it?
[13] Q: Sure. You've said that there are rules for
[14] you to follow in determining whether a document
[15] should no longer be confidential.
[16] A: No. I said —
[17] Q: My question is — I'm sorry?
[18] A: I'm sorry. Maybe I misunderstood the prior
[19] question. What I was responding to was. yes. we do
[20] have procedures for handling confidential
[21] information. and I think you just asked something a
[22] little different.
[23] Q: As part of those procedures. sir. isn't one
[24] of the reasons for saying a document can be made
[25] public the fact that it is patented?

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[1] A: The fact that a document can be made public
[2] that it's patented? I'm — I'm sorry. I don't —
[3] Question's not — not clear to me. Maybe
[4] you can rephrase it or restate it.
[5] Q: Sure. Part of the procedure that you
[6] follow in determining whether you should hold the
[7] document or the information contained on that
[8] document to be confidential. one of the reasons that
[9] you can use to declare that it's not confidential is
[10] the fact that the information contained on that
[11] document is patented. Are you aware of that?
[12] A: That could be one reason.
[13] Q: Are you aware that that is in fact a rule
[14] that CARB uses?
[15] A: I'm not aware of that specific rule.
[16] Q: Were you aware of that at any time in 1990
[17] to 1994?
[18] A: No.
[19] (Respondent's Exhibit 8 was
[20] marked for identification.)
[21] BY MR. BEEHLER:
[22] Q: Looking at Respondent's Exhibit 8. sir. do
[23] you see that that's a printout from your own website.
[24] CARB's website there?
[25] A: Uh-huh.

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[1] THE REPORTER: Your answer?
[2] MR. BEEHLER: You need a verbal answer.
[3] sir.
[4] THE WITNESS: Oh. yes.
[5] Q: And this document is entitled "TREATMENT BY
[6] THE ARB INFORMATION DESIGNATED CONFIDENTIAL BY A
[7] SUBMITTING PARTY." Do you see that. sir?
[8] A: Yes.
[9] Q: Have you ever seen this document in any
[10] form before?
[11] A: Oh. I'm sure I have.
[12] Q: Okay. What would be the connection that
[13] you would have seen it?
[14] A: Well my recollection is it goes back quite
[15] a few years when we started. you know. dealing
[16] with — with folks and this issue of confidential
[17] information came up. and internally we decided we
[18] need to have some kind of a process and a procedure
[19] for dealing with confidential information and for
[20] letting other parties know what our process was and
[21] so forth. and. you know. something was — was
[22] prepared and it's been updated and modified.
[23] I note this is dated 5/6. so this one is
[24] fairly — fairly recent.
[25] Q: Actually. sir. although this document shows

[1] a current date. —
[2] A: Uh-huh.
[3] Q: — are you saying that these are not the
[4] rules that were in place from 1990 to 1994, or do you
[5] know?
[6] A: I don't know specifically. We had some
[7] basic rules that had been in — been in effect for a
[8] long time —
[9] Q: You knew —
[10] A: — prior to —
[11] Q: I'm sorry. Finish your answer then.
[12] A: No, I was just going to say, you know,
[13] we've had operating procedures for dealing with
[14] confidentiality and basically it was, you know, that
[15] if someone claimed confidentiality we would grant it
[16] almost without question but with an understanding of
[17] that person that if some outside party requested that
[18] information, then before we released it to that other
[19] party we would go back to the party that claimed
[20] confidentiality and tell them, "Look, we've gotten a
[21] request for this confidential information. Should we
[22] give it to them? If not, tell us why you want it
[23] maintained confidential." And then, you know, the
[24] legal folks will review that and then make a
[25] decision. We'll let the other party know. If they

[1] don't like our decision, then I think they have some
[2] legal avenues they can pursue. So that's the basic
[3] way we — we've operated with this.
[4] Q: And the procedure that you just described,
[5] that procedure was in place from 1991 to 1994, even
[6] prior to —
[7] A: Yes.
[8] Q: — that time; correct?
[9] A: Yes.
[10] Q: Looking at this page one of Respondent's
[11] Exhibit 8, you see there in the second full paragraph
[12] it gives the statutory basis and then it says,
[13] "...written materials that a company provides to the
[14] Air Resources Board may be released (1) to the public
[15] upon request, except trade secrets which are not
[16] emissions data or other information which is exempt
[17] from disclosure..." Do you see that? And then it
[18] goes on. And then the specific procedures are
[19] outlined if you turn the next page to Article 2, and
[20] that's what I want to ask you about.
[21] A: Uh-huh.
[22] Q: See section 91010 there, sir?
[23] A: Yes.
[24] Q: States, "The state board shall give notice
[25] to any person from whom it requests information that

[1] the information provided may be released (1) to the
[2] public upon request, except trade secrets which are
[3] not emission data or other information..." and it
[4] goes on to say "(2) to the federal EPA..." Do you
[5] see that?
[6] A: Yes.
[7] Q: Did you give Unocal notice underneath this
[8] statute when you requested information from them?
[9] A: Notice for which information?
[10] MR. ROBERTSON: Objection, misleading.
[11] Q: When you requested the information from
[12] Unocal that you were talking about earlier in your
[13] testimony, I simply want to ask: Did you give Unocal
[14] notice pursuant to 91010?
[15] MR. ROBERTSON: Objection, misleading.
[16] A: That I don't know, but let me say the
[17] companies are all very familiar with our — with our
[18] processes and so forth. Now when we had the meeting
[19] in June they asked us to keep the information
[20] confidential and — and we followed our — our
[21] standard procedure.
[22] Q: But I'm —
[23] Given that answer, I just want to clarify.
[24] A: Uh-huh.
[25] Q: This 91010 request procedure says the state

[1] board shall give notice, and I want to make sure
[2] Did you give Unocal notice pursuant to this section?
[3] A: I don't know.
[4] Q: Now this Section 91011 that follows —
[5] A: Uh-huh.
[6] Q: — says down here, "Any person submitting
[7] to the state board any records containing data
[8] claimed to be 'trade secret' or otherwise exempt from
[9] disclosure," and it cites two government code
[10] sections there, do you see, 6254 or 6254.7?
[11] A: Uh-huh.
[12] Q: Have you ever looked at those, sir?
[13] A: No.
[14] Q: No reason to?
[15] A: I don't — I don't recall ever looking at
[16] those.
[17] MR. ROBERTSON: Just for the record, you're
[18] asking Mr. Venturini these questions in his personal
[19] capacity as an individual, counsel?
[20] Q: Are you — are you aware of any information
[21] in any capacity on — on the questions that I just
[22] asked you?
[23] A: Well I was answering in my personal
[24] capacity.
[25] Q: That's fine.

[1] MR. ROBERTSON: I just want to make sure
[2] that's clear, this is in the scope of what we have
[3] another witness, I believe, or CARB has another
[4] witness testifying about. Make sure the record's
[5] clear.
[6] (Respondent's Exhibit 9 was
[7] marked for identification.)
[8] BY MR. BEEHLER:
[9] Q: Mr. Venturini, who at CARB was responsible
[10] for complying with — let me withdraw that.
[11] Prior to 1991, Mr. Venturini, who at CARB
[12] was responsible for making the decision as to whether
[13] a document was confidential or not and could be used
[14] in any fashion for proposals?
[15] A: Well the decision of whether or not
[16] something's confidential is up to the party
[17] submitting it to us.
[18] Q: Within CARB itself was the responsibility
[19] for either securing that release or making sure it
[20] was not secured, was that given to any one person, or
[21] was that you?
[22] A: It was just whatever was appropriate in the
[23] normal course of business.
[24] Q: Did anybody at CARB prior to 1991 have the
[25] responsibility for assuring that the documents or

[1] information they were using was not confidential?
[2] A: Oh. If — if we wanted to use something,
[3] and by "not confidential," we wanted to take
[4] something that was confidential and make it
[5] available, then we'd go back to the party.
[6] Q: But no one person within CARB was
[7] responsible for assuring that that was done.
[8] A: No one designee.
[9] Q: You as the manager have the ultimate
[10] responsibility?
[11] A: For my division, yes.
[12] Q: Well your division was in fact the division
[13] in charge of these 1991 proposals; correct?
[14] A: Correct.
[15] Q: Okay. Looking at Respondent's Exhibit 9 —
[16] A: Uh-huh.
[17] Q: — if you see there, it's Section 6254.7,
[18] and if you look under paragraph (d) talking about
[19] information that can be made public or not, and do
[20] you see there it says, "'Trade secrets,' as used in
[21] this section, may include, but are not limited to,
[22] any formula, plan, pattern, process, tool, mechanism,
[23] compound, procedure, production data, or compilation
[24] of information which is not patented..." Do you see
[25] that?

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[1] A: Yes.
[2] Q: Were you aware prior to just now that
[3] statute that's referenced in your CARB rules made any
[4] reference to whether something was patented or not?
[5] MR. ROBERTSON: Objection, misleading.
[6] A: I'm familiar with — with the trade secret,
[7] that trade secrets can be held. I don't recall if
[8] really I remember it tied specifically to patents or
[9] not.
[10] Q: And so —
[11] A: No.
[12] Q: And to confirm, notwithstanding the
[13] language of this Section 6254.7, you weren't aware of
[14] anybody using a procedure where they would ask people
[15] if it was patented.
[16] MR. ROBERTSON: Objection, misleading.
[17] Q: Am I right?
[18] MR. ROBERTSON: Objection, misleading.
[19] A: Well, in our routine course of business we
[20] didn't go about asking people if they had patents, we
[21] relied on people to provide to us and disclose to us
[22] information that had a bearing on our rulemaking
[23] efforts.
[24] Q: And I'm asking in terms of your work as to
[25] whether something was confidential or not, you didn't

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[1] ask whether it was patented for that determination;
[2] did you?
[3] MR. ROBERTSON: Objection, vague,
[4] misleading.
[5] A: I think I — I stated as a routine course
[6] of our business we don't ask people if they have a
[7] patent. We expect people to disclose to us any
[8] information that we need to know that has a material
[9] impact on one of our rulemaking or regulation.
[10] Q: And you recognize that, looking at this
[11] Section 6254.7, a document or information could be
[12] found not confidential and yet very well be patented;
[13] right?
[14] MR. ROBERTSON: Objection, misleading,
[15] argumentative.
[16] A: I don't understand your question. Could
[17] you please repeat it or rephrase it?
[18] Q: Sure. Looking at this Section 6254.7, —
[19] A: Uh-huh?
[20] Q: — you realize, looking at this, that one
[21] of the reasons for finding something is not a trade
[22] secret is the fact that it's patented.
[23] A: It says, "'Trade Secrets' as used in this
[24] section" —
[25] MR. ROBERTSON: Objection, misleading.

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[1] calls for a legal conclusion.
[2] Q: Correct?
[3] A: — "may include, but are not limited to..."
[4] Q: Okay. I want you to read that again.
[5] "...which is not patented," do you see that language?
[6] MR. ROBERTSON: Same objection.
[7] Did you get my previous objection?
[8] THE REPORTER: I did.
[9] A: Let me read this. Can I take a moment?
[10] Q: Of course.
[11] A: Okay, please repeat the question.
[12] Q: Sure. And let me see if I can go back a
[13] couple of steps. If you recall, we looked at your
[14] CARB board printout marked as Respondent's Exhibit 8
[15] and it referenced this Statute 6254.7. That's how we
[16] got here in reference to submissions of confidential
[17] data. And my only question is: In looking at this,
[18] you can see that a reason for holding something not a
[19] trade secret is the fact that it's patented; correct?
[20] MR. ROBERTSON: Objection, misleading,
[21] calls for a legal conclusion.
[22] Q: Do you see that?
[23] A: I see that, and, you know, not being an
[24] attorney, it may not be appropriate for me to
[25] speculate on what — what this really means because

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[1] it's confusing to me. I would probably ask my
[2] attorneys, "What's this mean?"
[3] Q: Do you think that's one of the reasons that
[4] Section 91010 says that the state board should give
[5] notice to people —
[6] MR. GOLDMAN: Objection —
[7] Q: — of this statute?
[8] MR. GOLDMAN: — to the extent it may call
[9] for a legal conclusion. You can answer based on your
[10] understanding as a CARB professional, but don't play
[11] lawyer.
[12] A: Okay. Please repeat that question.
[13] Q: Yeah. You said that this statute is
[14] confusing, and I —
[15] A: Well this — this provision here.
[16] Q: Section 6254.7, paragraph (d).
[17] A: Correct.
[18] Q: Well if it's confusing, then let's look
[19] back at Section 91011 of Respondent's Exhibit 8.
[20] Okay?
[21] A: Uh-huh.
[22] Q: About five or six lines down it says,
[23] "Emission data shall not be identified as
[24] confidential." Do you see that?
[25] A: You're in 91011?

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[1] Q: Yes, sir.
[2] A: "Emission data shall not be identified..."
[3] Yes, I'm there.
[4] Q: Do you know what that refers to?
[5] A: Yes. It basically indicates that emissions
[6] data cannot be treated as confidential, so if someone
[7] gives us emission data, they cannot hold that
[8] confidential.
[9] Q: Do you have an understanding as to whether
[10] what is being referred to there, that emissions data,
[11] would refer to the collected emissions data that
[12] Unocal provided to you?
[13] MR. ROBERTSON: Objection to the extent it
[14] calls for a legal conclusion.
[15] A: My understanding of emission data — and I
[16] think that that is a legal interpretation what your
[17] question is, I'd have to defer to our attorneys on
[18] that — is if you gave us information that said
[19] your — your facility emitted X tons per day or tons
[20] per year of emissions, that would not be con —
[21] confidential. Now data you use to come up with that
[22] number could be confidential.
[23] Q: And in fact that's provided for right in
[24] the —
[25] A: Right.

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[1] Q: — statute, isn't it?
[2] A: I believe so.
[3] Q: It says data used to calculate emissions
[4] data are not public records; are they?
[5] A: That's correct.
[6] Q: Okay. So what — what I'm trying to
[7] understand first of all, this — these procedures
[8] were in place from 1990 to 1994; correct?
[9] A: We had procedures in place to deal with
[10] confidential information, yes.
[11] Q: And to be fair, you don't recall one way or
[12] the other whether you gave Unocal any notice of these
[13] procedures —
[14] MR. ROBERTSON: Objection.
[15] Q: — during that time; right?
[16] MR. ROBERTSON: Objection, misleading.
[17] A: All —
[18] Let me tell you, we'd been working with the
[19] companies for many years. All very familiar with our
[20] processes for confidential information, so I'm
[21] certain they were very aware of our processes and how
[22] we handled confidential information and so forth. It
[23] was just part of our relationship with — with them
[24] in routinely dealing with information.
[25] Q: That's fine. I'm just asking. —

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A: Okay.
Q: — you don't recall one way or the other whether you gave them notice of these procedures.
MR. ROBERTSON: Objection, misleading.
A: At any point in time?
Q: From 1990 to 1994.
A: I don't — I don't recall.
Q: And do you know if you asked your staff to conform their conduct to these procedures during that time period?
A: My staff knows that it's very important the way they treat confidential information. When someone claims confidentiality of information, that they're supposed to treat that, you know, very carefully and protect it.
Q: And the way that the words "emissions data" are used in this rule or regulation here, it would be your understanding that that wouldn't apply to something separate from source emissions data? I'm just trying to understand, sir.
A: Well yeah. It — it's hard to — to try to make any generalizations, you know. The way we usually deal with it is on a case-by-case basis. Some are obvious, some we have to consult with the attorneys to, you know, clarify.

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Q: Have you ever known CARB or its counsel to take a position on what that words "emissions data" referred to in connection with any of the refiners?
A: Oh, I don't specifically recall an instance.
Q: You didn't take the position back in 1990 to 1994 that the emission data that Unocal gave you as a matter of statute could not be confidential; did you?
MR. ROBERTSON: Objection, calls for a legal conclusion.
MR. GOLDMAN: Join in the objection.
A: We accepted on face value their request to hold the information confidential.
Q: And I'm trying to — just to follow up on that.
A: Yeah.
Q: And you didn't try and say that the emissions data that they were giving you could not be confidential because of Section 91011; did you?
A: We didn't go into that exercise. Now I should — should clarify as well that if someone had asked us for that, then we would have gone to Unocal and say, "Hey, we've had a request. Do you still want this confidential? Your reasons."

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And there would have been some dialogue and so forth.
Q: Do you think that might have occurred had notice actually been given under this statute?
MR. ROBERTSON: Objection —
MR. GOLDMAN: Objection to the extent it calls for speculation.
MR. ROBERTSON: It's misleading and calls for a legal conclusion.
A: I think, yeah, we received a letter in August from Unocal saying, you know, they're relinquishing their confidentiality, making this available.
Q: The "data" was the word they used; correct?
MR. ROBERTSON: Objection, asked and answered.
A: Yeah. As I said before, what they indicated and the way we — we took this is that everything they had given to us was publicly available, and they did not object when we put that information and used it in our staff report.
Q: The one that came out in October of 1991.
A: Correct.
Q: Would you describe for me, when that staff report and its technical support document got published in October of 1991, how did that occur?

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Did you send it out to a whole bunch of people back then or did you put it up on a web site? How did that occur?
A: Well let's see. '91. I'm not sure we had — I'm fuzzy on our website. But our basic process, and — and still is today, we would have a mailing list that we would develop people that we were directly working with on this rulemaking, people that we notify of workshops, of meetings, people that would get the report and notification of the report. Then there's a broad list that's maintained by the ARB of people that are interested in just about everything. They get notification. And so we have a pretty extensive process to make sure anybody that has any interest is — can be apprised of all meetings, workshops, and has available and can get the documents, and documents are sent — sent to them.
Q: There was a lot of people on that list back in 1991.
A: It was a pretty good-sized list.
Q: And I'm just trying to understand. Did you send out, then, these documents to all those people or make — make it available to them?
A: Yes, to those people on our list, we

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actually sent the documents.
Q: Uh-huh.
A: In some cases sometimes we'd — to save some money, depending on — we'd have a sublist and say do you want to get this — this document. But the people directly involved, our practice was to send them the documents.
Q: Now a couple of times you mentioned in your testimony that Unocal never objected to the use of that information after it came out in October of 1991. You're not suggesting to me that the way you do your confidentiality procedures is to send something out and see if people object.
A: Not at all.
Q: Okay. You make that — You're supposed to make that determination properly before; correct?
MR. ROBERTSON: Objection, argumentative.
A: Well we interpreted this letter that that information was all available, and I would expect that if for some unforeseen reason we had misinterpreted it, that we would have heard from Unocal.
Q: But it was already out by that time to a lot of people; wasn't it, sir?

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A: Well that —
MR. ROBERTSON: Objection, argumentative.
A: But that still wouldn't have prevented them to say, "You guys made a mistake here. Why did you do that?" And I would have expected that, if — if we had improperly, you know, did something like that. But —
Q: You would have expected, after sending this out to many, many people, you would have expected Unocal to say something?
A: If they felt that — yes, if they felt that we had sent out something that they felt was still confidential, yes, we would have heard from them.
Q: Would it be confidential any more if you put it in the hands of a bunch of different people?
MR. ROBERTSON: Objection, argumentative.
A: That doesn't detract from the fact that they would have let us know.
Q: But to be clear, that's not the sort of procedure that you're supposed to follow at CARB, —
MR. ROBERTSON: Objection, argumentative.
Q: — putting something out and waiting for people to object.
MR. ROBERTSON: Objection, argumentative, and misleading.

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[1] MR. GOLDMAN: Asked and answered.
[2] A: Yeah. I think I answered — I answered our
[3] process.
[4] Q: You mentioned this June 1991 meeting with
[5] Unocal. When in relation to that meeting did CARB
[6] staff decide that they wanted to include anything
[7] Unocal had given them as at least a partial
[8] justification for a T50 specification in 1991? Was
[9] it at that meeting, for instance?
[10] A: It was probably not at that meeting that we
[11] decided to incorporate in our regulation a T50
[12] specification.
[13] Q: Was it shortly thereafter?
[14] A: I can't give you the exact timing, but
[15] since we had to get a report done by October, we
[16] probably worked very quickly because we needed to,
[17] you know, get it out. We needed to let other people
[18] comment and provide input that we were now adding a
[19] T50 spec which hadn't been in our proposals prior to
[20] the meeting with Unocal, it was only after that
[21] meeting that we put it into our process or workshop
[22] process and so forth. So it had to happen — just
[23] because of the timing, it had to happen fairly
[24] quickly.
[25] Q: Staff determined that it was — that it

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[1] wanted to include a T50 specification prior to August
[2] 27, 1991; didn't it?
[3] A: I think it was in our workshop prior to
[4] this letter, but that was — but that was just to put
[5] it out there to get some input.
[6] Q: Let me see if I can —
[7] A: Yes.
[8] Q: — make sure you're answering my question.
[9] A: Okay.
[10] Q: Prior to August 27, 1991, staff intended to
[11] propose a T50 specification as part of its
[12] regulations.
[13] A: We —
[14] My recollection is we included it in an
[15] August workshop as one of the items that we were
[16] considering to obtain input.
[17] Q: Do you know whether CARB ever disclosed
[18] Unocal's test data in the 1991 rulemaking, the
[19] collected data?
[20] A: We wouldn't have disclosed anything prior
[21] to obtaining this — this letter. The specifics, I
[22] can't recall when we started sharing everything, but
[23] we had to share things prior to the board meeting
[24] because we relied on the Unocal work for the T50
[25] specification.

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[1] Q: Now you're homing in — your last sentence,
[2] now you're homing in to my question. In connection
[3] with the 1991 rulemaking, did CARB or its staff —
[4] A: Right.
[5] Q: — disclose Unocal's test data?
[6] MR. ROBERTSON: Objection, vague.
[7] A: What — what do you mean by "test data?"
[8] Q: "The data collected," as CARB staff used
[9] that term in Appendix 11 to the technical support
[10] document, did you disclose the collected test data?
[11] A: You know, I can't re — I can't recall
[12] specifically whether those were disclosed. What I do
[13] know is that we used the information in the
[14] presentation in our staff report.
[15] Q: Let's be clear here. Okay?
[16] A: No, no, I understand.
[17] Q: I know that you used the equations becau
[18] we looked at them —
[19] A: Right.
[20] Q: — in Appendix 11; correct?
[21] A: Correct.
[22] Q: And I know that you put up and included in
[23] your technical support document or staff report a
[24] couple of the slides from the Unocal presentation.
[25] A: Uh-huh.

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[1] Q: Correct?
[2] A: Correct.
[3] Q: Okay. I'm talking about "the test data"
[4] the way that you used that term in Appendix 11. Did
[5] you disclose the Unocal data?
[6] A: I don't recall the specific date we made
[7] that data available to folks.
[8] Q: Do you know if the 1991 data was part of
[9] the rulemaking record?
[10] A: I don't recall specifically.
[11] Q: And Mr. Venturini, I recognize it's getting
[12] up towards noon, but let me see if I can —
[13] A: Okay.
[14] Q: — handle one quick question here and then
[15] I'll let you break for lunch.
[16] (Discussion off the stenographic record.)
[17] (Respondent's Exhibit 10 was
[18] marked for identification.)
[19] BY MR. BEEHLER:
[20] Q: Mr. Venturini, would you describe what
[21] Respondent's Exhibit 10 is.
[22] A: Yes. This is the final statement of
[23] reasons for the proposed regulations for California
[24] Phase 2 reformulated gasoline and it's dated October
[25] 1992.

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[1] (Discussion off the stenographic record.)
[2] Q: Now this document doesn't expressly state
[3] that you reviewed and approved it, but can I ask you
[4] if you in fact did?
[5] A: I'm pretty sure I reviewed this —
[6] Q: And approved —
[7] A: — statement of reasons.
[8] Q: And approved it?
[9] A: I approved it for publication, yes.
[10] Q: And in fact that is your job; isn't it,
[11] sir?
[12] A: Well I don't always review final statement
[13] of reasons.
[14] Q: You don't go back to the CARB board itself,
[15] though, and ask them to approve a final statement of
[16] reasons; do you?
[17] A: No.
[18] Q: Okay.
[19] A: I don't go — you mean to the full board?
[20] Q: That's what I mean.
[21] A: No, that's not the process.
[22] Q: It's staff's job to put together the final
[23] statement of reasons; correct?
[24] A: That's correct.
[25] Q: And it's done under your authority.

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[1] A: Yes.
[2] Q: And you approved it —
[3] A: Yes.
[4] Q: — in the form marked as Respondent's
[5] Exhibit 10.
[6] A: Yes.
[7] Q: Okay. And I got this document out because
[8] you were unable to tell me whether in fact the Unocal
[9] test data was made part of the rulemaking record in
[10] 1991 or not. Would you turn to comment 61 and see if
[11] this provides you with any further information.
[12] Okay? It's on page 40 of your document.
[13] A: Page 40, yes.
[14] Q: Yes, sir. And you see down there it says,
[15] number eight, "T50."
[16] A: Uh-huh.
[17] Q: And there's —
[18] You need a verbal response.
[19] A: Yes.
[20] Q: And there's a comment here from the Western
[21] States Petroleum Association, comment 61; correct?
[22] A: Correct.
[23] Q: And I just note that the — it talks about
[24] the Unocal predictive model, these figures that were
[25] referenced, and it says, "No actual test data were

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[1] shown." Do you see that?
[2] A: Uh-huh.
[3] THE REPORTER: Your answer?
[4] THE WITNESS: Yes.
[5] Q: And in the agency response — you can take
[6] a moment to read that — you don't dispute the fact
[7] that test data were not shown: do you?
[8] MR. ROBERTSON: Objection, argumentative.
[9] A: I don't think this clarifies that one way
[10] or another. I mean our response is —
[11] The question from WSPA is basically on —
[12] on — on T — T50. Now it does say, "No actual test
[13] data were shown." I'm not —
[14] Q: That's the part I'm — I'm —
[15] A: Okay.
[16] Q: — asking about right now.
[17] A: So —
[18] Q: Sir, can you tell me whether the Unocal
[19] test data was in fact used in the 1991 rulemaking,
[20] the test data?
[21] A: You mean the actual emissions test data or
[22] the results from that, that data?
[23] Q: I mean the actual emissions test data, sir,
[24] from 1991. Do you know?
[25] A: Well I'm — I'm trying, because —

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[1] What's confounding me, just — just to be
[2] right up front, is the information we used, the
[3] charts that we used are based on the test data.
[4] Q: Okay.
[5] A: So in —
[6] Q: We —
[7] A: In essence, haven't we used the test data
[8] because we used the charts that were derived from the
[9] test data?
[10] Q: We've — we've clarified a few times what
[11] we're meaning when — and I'll — and I'll try to do
[12] it again just for purposes of this line of
[13] questions. —
[14] A: Uh-huh.
[15] Q: — then we'll break for lunch. The
[16] equations were included in your technical support
[17] document.
[18] A: Correct.
[19] Q: And we said that there were at least a
[20] couple of presentation slides that CARB used from the
[21] Unocal presentations: right?
[22] A: That's correct.
[23] Q: Okay. I'm talking about the term "data" as
[24] you used the term "data," as staff used the term
[25] "data" in that Appendix 11, "the collected data."

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[1] Can you ask — answer for me: Did you actually use
[2] that data for the 1991 rulemaking?
[3] MR. ROBERTSON: Objection, asked and
[4] answered.
[5] A: I have to go back to my other answer,
[6] because even the equations are based on the test
[7] data, so I'd have to say by the virtue of using the
[8] information that was based on the test data, we
[9] indirectly used the test data.
[10] Q: Okay, indirectly. Look, you used the test
[11] data in 1994 for the predictive model: didn't you?
[12] A: Absolutely.
[13] Q: You took the test data and you put it into
[14] a big database with other data.
[15] A: Right.
[16] Q: Okay. So you used the test data in — for
[17] the 1994 amendment for the predictive model: correct?
[18] A: Uh-huh.
[19] THE REPORTER: Your answer?
[20] THE WITNESS: Yes.
[21] Q: Did you make use of the data itself, sir,
[22] in 1991? Can you tell me?
[23] A: I have to say yes, we did, because we had
[24] to determine ourselves whether or not we felt that
[25] the Unocal test program was robust enough and a good

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[1] test program so we could rely on the results of that
[2] test program to do a T50 specification, and in doing
[3] that we had to look at the — at the data, so — so I
[4] have to say —
[5] Q: So you made — go ahead.
[6] A: So from that perspective, I would say yes.
[7] Q: So you made your own analysis prior to 1991
[8] of the Unocal test data.
[9] A: We looked at that data and information,
[10] certainly. —
[11] Q: Should be documented somewhere: shouldn't
[12] it?
[13] A: — there's no question.
[14] MR. ROBERTSON: Objection, lacks
[15] foundation.
[16] A: I don't know.
[17] Q: You don't know if there's any analysis of
[18] the data.
[19] A: I mean we may just —
[20] We have the regression equations. We —
[21] Q: You used the regression equations.
[22] A: We — we could have used the regression
[23] equations, we could have looked — we could have
[24] looked at some of the data to satisfy ourselves of
[25] the — with the regression equations.

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[1] Q: You could have?
[2] A: Yeah.
[3] Q: Okay. I'm simply asking: Other than using
[4] the equations —
[5] A: Uh-huh.
[6] Q: — or the presentation slides that we
[7] talked about, did you use any other Unocal
[8] information? For example, the data itself, do you
[9] know as a matter of fact you used the data?
[10] MR. GOLDMAN: Asked and answered.
[11] MR. ROBERTSON: Objection, asked and
[12] answered. And objection, misleading.
[13] A: I think I — I think I did answer this
[14] question.
[15] Q: Well humor me, then, one more time and
[16] we'll — we'll break, because I —
[17] A: Okay.
[18] Q: What I hear you doing is — is — and I'm
[19] trying to be frank with you here, too.
[20] A: Yes.
[21] Q: I hear you're saying, well, indirectly we
[22] did. I'm asking you now directly —
[23] MR. ROBERTSON: Objection.
[24] Q: — did you use the test data in and of
[25] itself for any purpose that you can recall prior to

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[1] the 1991 rulemaking?
[2] MR. ROBERTSON: Objection, form.
[3] A: Okay. I think —
[4] MR. ROBERTSON: Objection, misleading.
[5] A: I think I have to answer that question yes,
[6] because we had to rely on the test data to satisfy us
[7] that the other information Unocal provided to us
[8] was — was satisfactory.
[9] Q: And you did make your own analysis that the
[10] other information was satisfactory.
[11] A: We would have —
[12] We reviewed that information to satisfy
[13] ourselves that it was satisfactory.
[14] MR. BEEHLER: Thank you. Let's take a —
[15] A: I think that's the best way I can answer
[16] that.
[17] MR. BEEHLER: Let's take a break for lunch.
[18] THE REPORTER: Off the record, please.
[19] (Luncheon recess taken.)
[20]
[21]
[22]
[23]
[24]
[25]

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AFTERNOON SESSION
BY MR. BEEHLER:
Q: Mr. Venturini, we're back from our lunch break and I've placed Respondent's Exhibit 3 in front of you again, the August 1991 letter. And if you would look at the second paragraph — and I recognize the testimony you gave me this morning that you don't recall who made a request to Unocal or the words that were used, but looking at that second paragraph of this exhibit, is it your belief that this letter accurately characterized what your staff requested of Unocal?
A: Yes, with the understanding the data in our view is — is everything that was —
Because you have to understand, even the presentation was data, the June presentation, all that information there is data, so with that understanding, yes.
Q: Do you believe your staff most likely, then, used the word "data" in making the request?
A: I can't speculate on the words that they used.
Q: Certainly if Unocal had not accurately characterized the request, you would have anticipated some feedback to them that that's not what you

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requested; correct?
A: If what we had obtained was —
Maybe you ought to repeat it. It's just after lunch and it's taking me a little while to get the mind — I apologize.
Q: Sure, we'll go back again. Let's read the words. "The staff has now proposed to develop such a predictive model and requested that we make the data public." Those are the words used.
A: Correct.
Q: I'm saying if that is not what your staff had requested, you would expect your staff to have written back and said no, that's not right. You would have expected such a thing.
A: Oh, if we didn't get something that we were expecting, we would have contacted Unocal to say so.
Q: Okay. So based on that, is it your belief that this letter accurately characterized what was requested?
A: Based on my prior response to this on what — what is meant by "data," yes.
(Respondent's Exhibits 11 and 12 were marked for identification.)
(Discussion off the stenographic record.)
BY MR. BEEHLER:

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Q: Mr. Venturini, I've just handed you Respondent's Exhibits 11 and 12. Let's take them one at a time briefly. Looking at Respondent's Exhibit 11, you see that it's entitled "UNOCAL REFORMULATED FUELS TECHNOLOGY: A TRULY INNOVATIVE APPROACH?"
A: Correct.
Q: And do you see that this is a document previously produced by CARB, it has this — what we refer to as a production number on it.
A: Okay.
Q: Do you see that?
A: Yes.
Q: And Respondent's Exhibit 12, —
A: Uh-huh. Yes.
Q: — that's entitled, well this particular chart, "AUTO/OIL PROGRAM FUELS DATA." Do you see that?
A: Yes.
Q: And again do you see it's a document previously from CARB's files there?
A: Yes.
Q: Sir, were — was this the presentation slides which Unocal showed you in June of 1991?
A: Yes.
Q: And looking at Respondent's Exhibit 11,

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written in bright words across the — big words across the top is the word "Confidential," correct?
A: Correct.
Q: And it's the same for Exhibit — Respondent's Exhibit 12; is that right?
A: Correct.
Q: And to be clear, you used portions of these presentation slides that are — that are marked confidential in the technical support document that was put out in October of 1991; correct?
MR. ROBERTSON: Objection, unclear.
Q: Sir, do you understand that?
A: Well why don't you repeat it.
Q: I'll repeat it. You used slides from Respondent's Exhibit 11 and/or 12 in the technical support document that CARB staff put out in October of 1991.
A: Yes, we did.
Q: And the authority that you used for being able to publish them is the letter marked as Exhibit 3; —
A: This letter.
Q: — correct?
A: Correct.
Q: Mr. Venturini, prior to this June 1991

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meeting, did you require Unocal to sign any statement that they were — that the information they were providing you was not the subject of a pending patent application or a patent?
A: Did we ask them? No.
Q: Did you ever tell them that the information that they were providing you, that it had to be disclosed whether it was the subject of a pending patent application or not?
A: There was no discussion of patent. We did, you know, indicate to them, as I said earlier, if they wanted us to use this information in our regulation and for the development of the predictive model, that they had to put all of this information out into the sunshine in the public domain. And that's what this letter did, it allowed us to use all of their information to develop our regulation, to work on the predictive model, to make gasoline. It was out there.
Q: Now I thought we had cleared that up before but you've — you've said it again so I want to make sure.
A: Sure.
Q: You told me that you don't know who made the request to Unocal for the release of the

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information or the words that were used; right?
A: That's correct.
Q: Okay. Did you ever ask any member of the oil industry prior to the 1991 regulations whether they had any patents or pending patents that could impact on the regulations?
A: I don't recall specifically asking a company about patents.
Q: Did you ever do that prior to the 1994 predictive model being put into place?
A: No. It's — it's not our practice as a routine matter of business to ask people whether or not they have a patent. We rely on the people that we deal with, that we regulate, to share with us all the information that's pertinent to a regulation we're considering.
Q: Since 1994 have you ever asked anyone if they have any patents or pending applications — pending patent applications that could impact your regulations?
A: No. Once again, as — as I said, we expect people to advise us.
Q: You expect people to advise you what, to tell them about pending patent applications?
A: If we would —

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We expect people to tell us of anything that would have a significant impact on a regulation that we're considering. And if someone had a patent, and the fact of having that patent — or a patent pending, and that the fact of having a patent pending and, if it were granted, that it was going to be, I guess, enforced or there would be licensing fees associated with that, we would have expected that company to tell us.

Q: Has anyone ever told you about a pending patent application as part of your regulations?

A: Actually I recall Unocal in another regulatory matter informing us of a patent — pending patent application.

Q: Related to diesel?

A: No, it was related to deposit-control additives.

Q: And when was this?

A: Well let's see, the board considered that in 1990, so it would have to have been before then.

Q: And what did they disclose to you?

A: That they had a —

As I recall they basically informed us — gave us their perspective on what we were developing as an additive regulation and I believe some work

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that they were doing or had done, and they informed us at that time that they had a patent pending application.

Q: And who was that?

A: It was Unocal. I don't recall the people that were at the meeting.

Q: Who from staff heard this then?

A: Oh, I'd have to go back to see if I can recall who was at the meeting. I — I may have been at the meeting, I just don't — don't recall at this point.

Q: Was this in some written document —

A: Yes.

Q: — or oral?

A: Yes.

Q: Do you have that document?

A: I can go back and check. I don't have it right here. I can go back and see.

Q: And do you understand — what were — Can you tell me, what were the circumstances of the deposit-control additive regulation, what — what was going on there?

A: Well it was part of our Phase 1 regulation. As part of that proposal we were incorporating specifications for deposit-control additives for

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gasoline to ensure that the gasolines contained sufficient additives to keep fuel injectors clean and — and so forth, that you have a clean engine. And it would even clean up — clean up a — an engine.

Q: And did you have an understanding why they were telling you that they had a pending patent application?

A: My —

No, other than they provided us that as information for, you know —

Q: Did they give you a copy of it?

A: I don't believe so.

Q: Did they describe what it was?

A: I don't recall the details of the meeting. I just — just recall the — you know, they had disclosed this to us.

Q: Did you have an understanding at all as to why it was disclosed to you?

A: No. I think you'd have to ask Unocal that.

Q: You didn't ask for it.

A: Ask for what?

Q: You didn't ask for such a disclosure.

A: No. They offered it.

Q: Prior to 1995 was there anyone then

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[1] responsible within CARB or its staff for determining
[2] whether regulations were impacted by existing or
[3] potential patents?
[4] A: No, because that's not, as I said, not a
[5] normal course of our business. And as I said, we
[6] expect people to let us know, if there's something
[7] that is important to our decision-making, to disclose
[8] that to us.
[9] Q: Where do you communicate to people that
[10] they should let you know, if something's important to
[11] your decision-making, that it should be disclosed?
[12] A: I don't think it's a matter of disclosing
[13] to anybody. I think it's a matter of — of business
[14] practice and being up front with the people that
[15] you're — you're dealing with. You have to
[16] understand, Mr. Beehler, that — that throughout this
[17] whole period of time, even, you know, going back in
[18] the late '80s, we've — we enjoyed a very positive
[19] professional relationship with the folks in — in the
[20] oil and the refineries. We have a great deal of
[21] respect for those people, you know, known Denny Lamb,
[22] Peter Jessup, Mike Kulakowski for years, and we've
[23] had mutual respect for each other, and we operate an
[24] awful lot on trust in those relationships, and as
[25] part of that trust, I mean we are very open. As I

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[1] think if you've seen the extent to — we go to in our
[2] staff reports, we put everything out there, you know,
[3] how we do cost analysis, we put everything out, we
[4] provide an opportunity for people to comment, and
[5] we — we feel we have to operate as a good public
[6] agency in — in the sunshine, so — so to speak. And
[7] we expect that, as good business relationship with
[8] the people we deal with, we expect them to basically
[9] let us know, when we're dealing on a regulation, that
[10] they're disclosing to us everything we need to know,
[11] that they don't tell us a part of a story, they give
[12] us the whole story.
[13] Q: Do you think it's reasonable for the
[14] participants to expect that if you considered
[15] something to be a material factor to your decision,
[16] you would ask?
[17] A: If we think? Maybe you need to rephrase it
[18] or just ask it again. I — I missed it.
[19] Q: You testified that you expect, because of a
[20] good business relationship, you expect people to
[21] basically let you know what you're dealing with on a
[22] regulation, and I'm asking that as part of that
[23] business relationship, then, —
[24] A: Uh-huh?
[25] Q: — do you think it's reasonable for people

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[1] to expect you to ask if something is material to your
[2] consideration?
[3] A: Not necessarily. They know better than we
[4] do what's — what's material. I mean Unocal knew
[5] when they met with us that they had a patent pending.
[6] They also knew that they were going to basically
[7] require people to charge a fee if they made gas —
[8] gasolines. They presented us with information which
[9] led to us putting the T50 specification into our
[10] regulation. It was Unocal's data, this — this —
[11] these data — "data" is plural — these data that
[12] convinced us that we should add a T50 specification
[13] to the regulation.
[14] Q: Just for the record, when you say "these
[15] data," at that moment you were holding up a
[16] presentation slide from — marked as Respondent's
[17] Exhibit —
[18] A: 11.
[19] Q: — 11. Correct. Thanks.
[20] A: Certainly.
[21] And so, you know, at that time they knew
[22] that they had a patent pending, they knew they were
[23] going to charge —
[24] They knew cost was a very important
[25] consideration to us in this rulemaking; they hammered

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[1] us on cost all through this — this process. And for
[2] three and a half years they didn't tell us once that,
[3] "By the way, we've applied for a patent." Now I
[4] think — we think that's inappropriate, that's
[5] inexcusable, and we believe that our process was used
[6] deliberately to deceive us, to mislead us, to
[7] misrepresent us, and as a result we adopted a
[8] regulation without having the full story and put the
[9] citizens of California basically in a position where
[10] they were going to have to pay more money for
[11] gasoline for the benefit of one company, and that's
[12] not right.
[13] Q: Based upon your relationship with Unocal,
[14] you're saying that you believe that Unocal should
[15] have told you about the patents even though you had
[16] not asked about patents.
[17] A: Absolutely.
[18] Q: Because of a potential cost factor; right?
[19] A: Correct.
[20] Q: And this isn't, then, a matter of Unocal
[21] having to tell you about pending applications because
[22] of some specific directive or statement that CARB
[23] made to participants; is that fair?
[24] A: Can you repeat that?
[25] Q: Yeah. I'm just trying to understand —

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[1] A: No, I know.
[2] Q: — the nature of this obligation, sir. You
[3] never asked people to disclose pending patents or
[4] patent applications, but as I understand your
[5] testimony, you're saying I think they still should
[6] have because it could have impacted cost. Is that —
[7] A: Absolutely.
[8] MR. ROBERTSON: Objection, form.
[9] Q: Is that — is that your testimony?
[10] A: What I said is they should have — we
[11] believe they should have informed us, they should
[12] have told us the complete story. They presented just
[13] part of it. They chose not to tell us that they had
[14] a pending patent application. We never had the
[15] opportunity to evaluate what the impact could have
[16] been in terms of our Phase 2 regulation, so we were
[17] operating with just part of the information.
[18] Q: Okay. I understand — I understand what
[19] you're saying. I understand your words, but I'm
[20] trying to get an answer to a little bit more narrow
[21] question right now before I move on.
[22] A: Okay.
[23] Q: You've testified that you didn't ask anyone
[24] in this industry to disclose patents or pending
[25] applications; correct?

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[1] MR. ROBERTSON: Asked and answered.
[2] A: Yes. Well I — I did answer this, that
[3] it's not our routine business practice to ask people
[4] about patents. We expect people to tell us
[5] everything that has a material effect or could impact
[6] a regulation that we're developing or decision-
[7] making —
[8] Q: And you were —
[9] A: — and could in fact affect your
[10] decision-making.
[11] Q: And you say despite not asking them, you
[12] feel Unocal should have disclosed the pending
[13] application to you because it could have impacted
[14] upon your cost; —
[15] A: Yes.
[16] Q: — is that right? Is that the basis of why
[17] they should have told you?
[18] A: Yes.
[19] Q: Okay.
[20] A: Because it had an impact on the regulation.
[21] Q: Upon the cost of the regulation?
[22] A: Yes.
[23] Q: Okay. Was CARB or its staff ever advised
[24] that the determination of the validity of patent
[25] rights or the risk of infringement of such rights was

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[1] entirely their own responsibility?
[2] MR. ROBERTSON: I'm sorry, I didn't —
[3] Could you read that back, please.
[4] (Record read by the court reporter.)
[5] MR. ROBERTSON: Objection, vague.
[6] Objection, form.
[7] A: What do you mean by "their?"
[8] Q: CARB's.
[9] A: I don't — I don't think we — we have an
[10] obligation to ask — ask people. I think it's —
[11] Q: Okay. Let me ask it again.
[12] A: Uh-huh.
[13] Q: You're here today speaking on behalf of the
[14] staff and the board on certain issues. I'm asking
[15] you whether, in connection with your 1991
[16] regulations, were you ever advised that the
[17] determination of the validity of patent rights or the
[18] risk of infringement of patent rights was your own
[19] responsibility?
[20] A: I —
[21] MR. ROBERTSON: Objection, vague.
[22] Objection, form.
[23] A: I — I really have a hard time
[24] understanding your question.
[25] Q: Were you ever given that advice?

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[1] A: About what?
[2] Q: That the determination of the validity of
[3] patents or the risk of infringement of patents was
[4] your own responsibility.
[5] A: Not to my recollection.
[6] MR. ROBERTSON: Same objection.
[7] Q: If you would have been given the advice
[8] that the determination of patent rights or the risk
[9] of infringement of patent rights was your own
[10] responsibility, would it then have occurred to staff
[11] to ask about patent rights?
[12] MR. GOLDMAN: Objection, assumes facts not
[13] in evidence.
[14] MR. ROBERTSON: Objection, calls for a
[15] legal conclusion. Objection, calls for speculation.
[16] MR. GOLDMAN: Join in the objection.
[17] A: I just have to answer the way I've answered
[18] this, I think, multiple times already: As a routine
[19] course of our business we don't ask people, "By the
[20] way, do you have a patent or a patent pending?" We
[21] do expect the people that we deal with to disclose to
[22] us information that's pertinent to our rulemaking.
[23] Q: I'm asking something a little bit different
[24] here though.
[25] A: Well I'm missing the distinction then. I'm

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[1] sorry.
[2] Q: I'm asking —
[3] I first asked whether anybody gave you the
[4] advice that the determination of patent rights or
[5] infringement of patent rights was CARB's
[6] responsibility, and you said you didn't recall
[7] something like that. So I'm asking you now: If you
[8] had been told or given such advice, can you tell me
[9] if the thought of patent rights would have occurred
[10] to you then?
[11] MR. GOLDMAN: Same objections as previously
[12] asserted.
[13] MR. ROBERTSON: And I'll —
[14] Same objections, and also it's now been
[15] asked and answered.
[16] A: Yeah. I — I truly think I've answered this
[17] question, Mr. Beehler.
[18] Q: If one of your staff members had become
[19] aware that the issue of the validity of patent rights
[20] or the risk of infringement of patent rights was
[21] CARB's responsibility, you would have expected them
[22] to bring it to your attention; wouldn't you?
[23] MR. ROBERTSON: Objection, calls for
[24] speculation, calls for a legal conclusion.
[25] MR. GOLDMAN: Join in the objection, and it

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assumes facts not in evidence.
A: I can't speculate on that. It would be truly just speculation.
Q: Because the thought of patent rights or pending patent rights did not occur to CARB or CARB staff during the 1991 or 1994 regulations: correct?
A: As I — as I said, we don't routinely ask people whether or not they have a patent, whether they have a pending patent, we expect them to tell us, particularly when someone's told us just part of the information.
Q: CARB staff and CARB used the ASTM standards to describe the specifics of certain aspects of your regulations in '91 and '94: didn't you?
A: You mean in terms of the test procedures?
Q: Yes.
A: Oh, for test procedures we referred to ASTM standards.
Q: In fact you incorporated by reference those ASTM standards: didn't you?
A: Yes.
Q: As part of the regulations.
A: I — I'm —
I haven't looked back to see, but I believe that's correct.

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Q: And you did that for the various parameters of Reid vapor pressure and T90 and T50, sulfur, various other properties: correct?
A: Correct. I —
Where we can, we try to rely on ASTM test procedures because they're well established and well known.
Q: Is it fair to assume that the staff reviewed the standards that were incorporated by reference?
A: Oh, yes.
Q: Is it fair to assume that the board did so?
A: Well I think the board relied upon the staff's — board relied on the staff saying these are the appropriate test procedures and relied on the staff's technical credibility and technical knowledge.
(Respondent's Exhibit 13 was marked for identification.)
BY MR. BEEHLER:
Q: Mr. Venturini, looking at Respondent's Exhibit 13. —
A: Uh-huh?
Q: — you can see these are from the CARB files again, and looking through this document, does

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it appear to you these are the various standards that are referenced in your regulations?
A: Appears to be so.
Q: Would you turn, for example, to the page marked CARB 4968.
A: Yes.
Q: And do you see, looking back all the way to page 4958, that those — that appears to be the ASTM procedure for distillation? Page 4958 I believe is the front part. Do you see that, sir?
A: Yes.
Q: So this would be the test procedure that CARB itself incorporated by reference for determining what the T50 — how the T50 is measured and how the T90 is measured according to your regulations: right?
A: Correct. I — just —
Just to clarify, I haven't gone back to look at the regulation, but I'm assuming that's factual.
Q: Okay. Now look at that page that I first referenced you to, 4968.
A: Uh-huh.
Q: You see at the bottom in italics it states that "The American Society for Testing and Materials takes no position respecting the validity of any

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[1] patent rights asserted in connection with any item
[2] mentioned in this standard. Users of this standard
[3] are expressly advised that determination of the
[4] validity of any such patent rights, and the risk of
[5] infringement of such rights, are entirely their own
[6] responsibility." Do you see that, sir?
[7] A: Uh-huh.
[8] THE REPORTER: Your answer?
[9] THE WITNESS: Yes.
[10] Q: Did CARB staff take any action based upon
[11] this statement and the standard that they
[12] incorporated by reference into their regulations?
[13] MR. ROBERTSON: Objection, misleading.
[14] A: I don't — I — I don't under —
[15] understand. I mean basically we would have reviewed
[16] the test procedure, found this as a suitable test —
[17] test procedure for assuring compliance with our
[18] regulation. And I'm assuming this is pretty standard
[19] language that's in all the ASTM test procedures, so
[20] it's kind of boilerplate that they use to probably
[21] cover themselves.
[22] Q: It is in every ASTM standard: isn't it?
[23] A: Well I assume it is. I haven't looked
[24] myself. But I assume it's boilerplate language that
[25] they use.

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[1] Q: But my question was: Did your staff take
[2] any action based upon the statement I just read to
[3] you?
[4] MR. ROBERTSON: Objection, misleading,
[5] asked and answered.
[6] A: I can't say what staff did or did not do
[7] with respect to that.
[8] Q: You're not aware of any action they took as
[9] a result of the advice in that ASTM standard: is that
[10] true?
[11] A: That's —
[12] MR. GOLDMAN: Objection to the extent it
[13] mischaracterizes the document. I don't know that
[14] this is advice. You can answer.
[15] A: Yeah. I — I really have trouble —
[16] I don't — can't tell you what staff did or
[17] did not do with respect to this language.
[18] Q: Okay. Well given your counsel's objection,
[19] let's just look at this second sentence again.
[20] "Users of this standard are expressly advised that
[21] determination of the validity of any such patent
[22] rights, and the risk of infringement of such rights,
[23] are entirely their own responsibility." I'm simply
[24] asking whether you're aware of what — of your staff
[25] taking any action based upon that statement.

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[1] MR. GOLDMAN: Asked and answered.
[2] MR. ROBERTSON: Objection, misleading.
[3] A: I answered. I said I'm not aware of any
[4] action they took, if any.
[5] Q: Okay. Now CARB knew that various refiners
[6] had research and development departments prior to its
[7] 1991 regulations: right?
[8] A: Yes.
[9] Q: And you were aware that various refiners
[10] were active in patenting inventions: weren't you?
[11] A: Well I'm aware the refiners will have
[12] patents from time to time. Again, how — how active
[13] they are I can't say.
[14] (Respondent's Exhibit 14 was
[15] marked for identification.)
[16] BY MR. BEEHLER:
[17] Q: Mr. Venturini, Respondent's Exhibit 14 is a
[18] document out of CARB's files again. Do you see that
[19] by the production number down at the bottom?
[20] A: Yes.
[21] Q: And this would appear to be a Form 10-K for
[22] Union Oil Company of California. Do you see that?
[23] A: Yes.
[24] Q: From the year 1990.
[25] A: Yes.

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[1] Q: Any idea why that was in CARB's files?
[2] A: This is probably likely in our files as —
[3] because we were looking probably to see if there was
[4] anything in here that would help us in conducting our
[5] analysis of the costs of the regulations.
[6] Q: Would you look at page number 14 in this
[7] document.
[8] MR. GOLDMAN: Fourteen?
[9] MR. BEEHLER: Uh-huh. It's Bates number
[10] 4678.
[11] Q: And do you see here there's a section on
[12] research and competition?
[13] A: Yes.
[14] Q: And do you see that in this Respondent's 14
[15] that was in your files it states that the company's
[16] Science & Technology Division in Brea are currently
[17] working to develop new improved products, processes
[18] and techniques for use — for use in every phase of
[19] the petroleum business? Do you see that?
[20] A: Uh-huh.
[21] THE REPORTER: Your answer?
[22] THE WITNESS: Oh, I'm sorry. Yes.
[23] Q: And it goes on to say that Unocal — Union
[24] Oil owns over 1100 active patents which are generally
[25] available to others under licensing agreements. Do

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[1] you see that?
[2] A: Yes.
[3] Q: Then in the next paragraph it states that
[4] the company operates in a highly competitive
[5] environment. Do you see that?
[6] A: Yes.
[7] Q: You appreciated, then, that —
[8] Well were you aware of this information
[9] prior to the 1991 regulations?
[10] A: Well it indicates that this is dated —
[11] Q: Shows a stamp received of April 1, 1991:
[12] doesn't it?
[13] A: Yes. I'm trying to see if that's our —
[14] our stamp or — I —
[15] Here, sorry. Actually I assume that staff
[16] used this information to help them with their
[17] analysis.
[18] MR. GOLDMAN: For clarification, the
[19] received stamp seems to indicate received by the SEC
[20] on April 1, 1991.
[21] THE WITNESS: Oh, yeah.
[22] Q: Okay. It came out of CARB's files. I'm
[23] simply asking: Did you have this information
[24] available to you prior to the 1991 rulemaking?
[25] A: I assume we did: came out of our files.

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[1] Q: Did you have any discussions within staff
[2] about the extent of Unocal's research and development
[3] given its disclosure here of 1100 active patents?
[4] A: No. I mean there would be no reason for us
[5] to. This is kind of boiler — you know, standard
[6] language, it — to us, so would not have been any
[7] specific discussion on this.
[8] Q: You took no action, separate action based
[9] upon the language that I read to you.
[10] A: No.
[11] (Respondent's Exhibit 15 was
[12] marked for identification.)
[13] BY MR. BEEHLER:
[14] Q: Sir, looking at Respondent's Exhibit 15, do
[15] you recognize this to be a Form 10-K for Atlantic
[16] Richfield Company from 1990?
[17] A: Yes.
[18] Q: And you can see that this document is also
[19] from CARB's files: right?
[20] A: Correct.
[21] Q: And if you turn to page number 13, it's
[22] document production number 3907, you'll see a
[23] discussion there of patents and competition. Do you
[24] see that?
[25] A: Yes.

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[1] Q: And here it says that "ARCO owns numerous
[2] patents, many of which are available for license to
[3] the petroleum industry..." Right?
[4] A: Correct.
[5] Q: And despite that statement, CARB staff or
[6] CARB never asked anybody about what patents were
[7] involved here or described here: correct?
[8] A: No. As I — as I indicated —
[9] Q: What I said was correct.
[10] A: Repeat it.
[11] Q: Okay. Because I think you answered it
[12] understanding the last part of my question to be
[13] differently.
[14] Despite the statement that occurs here on
[15] this page, CARB staff or CARB never asked anyone
[16] about what patents were involved or described here.
[17] MR. ROBERTSON: Objection, argumentative.
[18] Q: Is that right?
[19] MR. ROBERTSON: Misleading.
[20] Q: Is that right is my question.
[21] A: No. Because as I said before, as a matter
[22] of our business we don't ask people about patents.
[23] We expect them to tell us anything that will have an
[24] effect on our regulation. I don't know how many
[25] times —

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[1] Q: No.
[2] A: — I have to tell you that, Mr. Beehler.
[3] Q: And the only point here is that my question
[4] simply asked you if I was right and you said no, and
[5] so I'm just trying to clear this up on the record.
[6] I'm not trying — truly, I'm not asking —
[7] A: Okay. Why don't you ask me again.
[8] Q: Please, you just have to let me ask it a
[9] different way and then we can move past it.
[10] Did staff take any action based upon the
[11] discussion of the patents section in the ARCO Form
[12] 10-K here?
[13] A: No, I don't believe so.
[14] (Respondent's Exhibit 16 was
[15] marked for identification.)
[16] BY MR. BEEHLER:
[17] Q: Mr. Venturini, do you recall there being a
[18] California Advisory Board on Air Quality and Fuels?
[19] A: I do.
[20] Q: Would you describe generally what that was.
[21] A: This was a — a board that was established
[22] by statute to basically investigate the prospect for
[23] clean — clean fuels into the future.
[24] Q: And Roger Beach of Unocal was on that
[25] board?

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[1] A: Yes.
[2] Q: Jananne Sharpless.
[3] A: Yes.
[4] Q: Would you identify for the record who
[5] Jananne Sharpless was during this time period.
[6] A: She was the secretary of environmental
[7] affairs and she was also the chair of the Air
[8] Resources Board. She held two hats.
[9] Q: Chevron also had someone on this California
[10] Advisory Board: correct?
[11] A: Correct.
[12] Q: And that was Dixon Smith?
[13] A: Correct.
[14] Q: And Atlantic Richfield Company, also known
[15] as ARCO, had someone on this board: correct?
[16] A: Correct.
[17] Q: Other than Jananne Sharpless, if you turn
[18] to page 10922, you can see that Jim Boyd appeared to
[19] be an alternate to the board: right?
[20] A: Yes.
[21] Q: As well as Tom — is it Cackette?
[22] A: Cackette.
[23] Q: C-a-c-k-e-t-t-e, correct?
[24] A: Yes, it's Tom Cackette.
[25] Q: Were you kept up to date — were you kept

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up to date on the various reports that this board issued?
A: Gen — generally I — I followed some of their — their activity. Now you're asking me personally?
Q: Sure.
A: Yeah. Personally I tried to keep up to date on generally what they were doing. I wasn't heavily involved in the day-to-day stuff.
Q: Now this particular document is entitled "Volume IV, ECONOMICS REPORT."
A: Uh-huh.
Q: Do you recall seeing this document?
A: I can't say I recall. This is quite a while ago.
Q: Do you remember specifically any of the various volumes of reports?
A: Oh. I do recall that I had gone through some of the reports. I just can't tell you now after all these years which ones I actually went through and looked at.
Q: Did staff rely on any of the information from the California Advisory Board as part of their proposal for rulemaking that you're aware of?
A: Not that I — not that I recall

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specifically.
Q: Any idea why this Volume IV entitled "ECONOMICS REPORT" would have been in CARB's files?
A: Well I — I think, first, what files? Was it —
It would be in CARB's files because it was a report we were involved in. I'd need to know what files it was in to be more specific.
Q: Okay. I — I don't know that.
A: Okay.
Q: This has been given to me by complaint counsel.
A: Okay.
Q: This particular document says that it was created by a company called A-c-u-r-e-x. Acurex —
A: Acurex, yes.
Q: — Corporation. Are you familiar with them?
A: Yes.
Q: What are they?
A: They're a consulting firm that over the years has done quite a bit of environmental consulting. They've done work for — for the ARB in the past.
Q: And I don't mean to spend any time to get

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into detail at all about this report. —
A: Uh-huh.
Q: — but it looks generally to me from reading it that it looks to deal with methanol as — as an alternative. Do you remember any study being done as to whether methanol was viable as a clean fuel?
A: Well it dealt with what I'll call alternative fuels, clean fuels. It dealt with ethanol and it dealt with — it dealt with methanol, dealt with ethanol, compressed natural gas. I mean the charge of the panel was to take a look at, you know, the role — the potential for alternative fuels in — in California.
Q: Now on the second page of this Respondent's Exhibit 16 there's a legal notice. Do you see that?
A: What page again?
Q: Just the second page of the document, sir. And it says, "This report was prepared as the result of work sponsored by the California Air Resource Board," as well as others; right?
A: Uh-huh.
Q: Correct? Sir?
A: Correct.
Q: And at the bottom there it says, "These

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[1] organizations or their employees, contractors, and
[2] subcontractors make no warranty, expressed or
[3] implied, and assume no legal responsibility for the
[4] information in this report, nor does any party
[5] represent that the use of this information will not
[6] infringe upon privately owned rights." Do you see
[7] that?
[8] A: Yes.
[9] Q: Were you aware that that statement was
[10] there before this time?
[11] A: No.
[12] Q: Is it fair to say that CARB staff took no
[13] separate action based upon such legal notice in their
[14] files?
[15] MR. ROBERTSON: Objection, misleading.
[16] A: That would cause me to speculate.
[17] Q: When —
[18] From time to time did CARB staff come
[19] across published papers like SAE papers that they
[20] would take into consideration?
[21] A: Yes.
[22] Q: And when they did that they made no
[23] attempt, then, to determine whether there were
[24] property rights associated with that research; fair?
[25] A: Correct, yeah. Wouldn't have any reason

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[1] to.
[2] Q: You mentioned before that you had a
[3] conversation with Dean Simeroth —
[4] A: Yes.
[5] Q: — about a company or individual known as
[6] Talbert. Do you recall that testimony?
[7] A: Yes.
[8] Q: Did you ever determine whether you received
[9] a letter from Mr. Talbert?
[10] A: I recall receiving a letter from Mr.
[11] Talbert in relationship to — I believe he was
[12] commenting on — on one of our regulations that we
[13] were working on.
[14] (Respondent's Exhibit 17 was
[15] marked for identification.)
[16] BY MR. BEEHLER:
[17] Q: Mr. Venturini, looking at Respondent's
[18] Exhibit 17, it's entitled "Text of letter sent to the
[19] members of the EPA, Clean Fuels Negotiated Rulemaking
[20] Committee." Do you see that?
[21] A: Yes.
[22] Q: And handwritten on it on the top is
[23] "4/1/91." Do you see that?
[24] A: Yes.
[25] Q: And on the back page here it shows your

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[1] name, Mr. Peter Venturini. Do you see that, sir?
[2] A: Yes.
[3] Q: Do you know whether you received this
[4] document?
[5] A: I don't recall ever receiving this
[6] document.
[7] Q: Do you —
[8] Did you have e-mail capacity back in 1991?
[9] A: You're stretching my — my memory. Let's
[10] see. I just don't remember when we started e-mails.
[11] But yeah, it's whenever e-mail became popular in the
[12] web, whenever that was.
[13] Q: Do you know if CARB has ever searched your
[14] e-mail to determine whether this document was
[15] received in any fashion?
[16] A: I believe that —
[17] You know, we were asked to look through —
[18] through our records. We would have taken a look at
[19] our e-mails, presume that's the normal course of our
[20] business.
[21] Q: And I'm not — I just want your best
[22] recollection.
[23] A: Sure.
[24] Q: Is it your testimony that you do not
[25] believe you received this, or you simply don't know.

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[1] this Exhibit —
[2] A: To the best of my recollection, I do not
[3] recall receiving this.
[4] Q: Respondent's Exhibit 17.
[5] A: Correct. Respondent's Exhibit 17.
[6] (Respondent's Exhibit 18 was
[7] marked for identification.)
[8] BY MR. BEEHLER:
[9] Q: Sir, looking at Respondent's Exhibit 18, it
[10] appears to be a letter to Bob Fletcher, copy to you,
[11] from William Talbert.
[12] A: Okay.
[13] Q: Do you recall that letter?
[14] A: Not specifically.
[15] Q: This one, however, is shown as being
[16] received from your files; isn't it? Do you see the
[17] CARB reference?
[18] A: Yes.
[19] Q: But you don't recall receiving this letter.
[20] A: I — I don't recall receiving it
[21] personally.
[22] Q: Now in this letter Mr. Talbert says, "I
[23] appreciate the opportunity to comment, for the
[24] record, in regard to the ARB preliminary draft of
[25] regulations..." A short question or — or two about

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[1] that.
[2] You have a very specific procedure as to
[3] which comments need to be replied to; don't you?
[4] A: Correct.
[5] Q: And so, for instance, this being August of
[6] 1991, this letter was never responded to as part of
[7] the formal rulemaking; was it?
[8] A: If this was not part of the hearing record
[9] and was not submitted within the 45-day period when
[10] we send the staff report out, then it would not
[11] have — and unless he didn't put it into the record
[12] at the hearing, it wouldn't have been responded to.
[13] Q: Why is —
[14] Do you have an understanding as to why you
[15] have that procedure?
[16] A: Well I think —
[17] I do, but it's — it's really — I think
[18] this is really a question, because it deals with our
[19] responsibilities under the APA and so forth, and I
[20] really think that's something that, you know, should
[21] be addressed to one of our attorneys.
[22] Q: Okay. Prior to the time that you met with
[23] Unocal in June of 1991, Toyota had informed you that
[24] they thought T50 reduced emissions; is that right?
[25] A: That's correct.

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[1] Q: In fact they had told you that they
[2] believed T50 reduced hydrocarbon emissions; correct?
[3] A: That's correct.
[4] Q: And they did that in April of 1991; is that
[5] correct?
[6] A: I believe that's — that's correct.
[7] Q: And they did that in a document to you —
[8] A: Yes.
[9] Q: — at a meeting that you were present at.
[10] A: I believe so.
[11] Q: Was the document marked confidential, do
[12] you recall?
[13] A: I don't — don't recall, but I don't —
[14] Well if you have the document you can
[15] refresh my memory.
[16] Q: I'll try.
[17] (Respondent's Exhibit 19 was
[18] marked for identification.)
[19] BY MR. BEEHLER:
[20] Q: Looking at Respondent's Exhibit 19, do you
[21] see it starts off with a letter to a couple of
[22] lawyers, one which has a striking similarity to my
[23] name — a typo there — from Jim Ryden of CARB. Do
[24] you see that?
[25] A: Yes.

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[1] Q: Who is Jim Ryden?
[2] A: He at that time was staff counsel.
[3] Q: And he states here that this is a copy of
[4] information that was submitted to the Air Resource
[5] Board on or about April 17, 1991. Do you see that?
[6] A: Yes, I do.
[7] Q: If you turn to the next page, it says
[8] "Toyota, Note Confidentiality of data."
[9] A: Okay.
[10] Q: Do you see that?
[11] A: Yes.
[12] Q: Whose writing is that?
[13] A: The "Note Confidential?"
[14] Q: Uh-huh.
[15] A: That I don't know. But I —
[16] Q: In any event it was provided to Dean
[17] Simeroth and Bob Fletcher and someone else there.
[18] Who's that?
[19] A: Susan Huscroft. This is my writing here.
[20] Q: Oh, it is.
[21] A: Yeah. The X.C. is my writing, and I sent
[22] this off to Dean — the X.C. is make a xerox copy to
[23] Dean, Susan and Bob Fletcher. And, you know, our
[24] correctness is — was asked to be —
[25] (Discussion off the stenographic record.)

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[1] A: The X.C. means xerox copy. It went to Dean
[2] Simeroth, Susan Huscroft and Bob Fletcher. And I was
[3] just noting that — refreshing my memory that this
[4] was confidential. They asked us to treat this
[5] confidential.
[6] Q: Now this —
[7] A: And let me just state — I want to be as
[8] accurate as I can — I am not sure if I was at this
[9] meeting, looking at this, because this is Jim Boyd's
[10] copy, these are his initials here, so it could be I
[11] was not at that meeting and he sent the information
[12] down to me from the meeting. But I'm not sure. I
[13] could have been at the meeting, maybe not.
[14] Q: Now this document does not bear separate
[15] Bates numbers, so we'll just have to get you to page
[16] through to a page about halfway through that has two
[17] numbers on it, one and two. And if I can show it to
[18] you, sir, you can find that page.
[19] A: Okay. I was just looking here and it's
[20] quite possible I wasn't at this meeting because it
[21] looks like a lot of it had to do with the vehicle
[22] standards, so probably I may not have been at that
[23] meeting, and then that's why Jim sent it on down
[24] because there was some fuel stuff in there.
[25] I'm there.

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[1] Q: When you brought up vehicle standards, let
[2] me ask you something about that. There were various
[3] control measures that CARB staff and CARB considered
[4] as part of its duties; is that right?
[5] A: Correct.
[6] Q: What does the word "control measures" mean
[7] in that context?
[8] A: A regulation/control measure, it's — we
[9] use those.
[10] Q: So there could be control measures for
[11] stationary sources?
[12] A: Correct.
[13] Q: Control measures for vehicle standards?
[14] A: Correct.
[15] Q: Are those the low emission vehicle
[16] standards, or is that yet a different control
[17] measure?
[18] A: We had vehicle standards, we had low
[19] emission vehicle standards, which is a class of
[20] standards that were adopted, you know.
[21] Q: You had stationary sources.
[22] A: Some —
[23] Districts have a primary responsibility for
[24] stationary sources, but —
[25] Q: You had reformulated gasoline.

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A: We had reformulated gasoline.
Q: Are there any other control measures that you can think of that we are missing, or is that pretty much the —
A: Control measures that ARB adopts —
Q: Right.
A: — or develops and adopts? Yeah, we do toxics control measures, we do consumer products control measures/regulations.
Q: There's diesel regulations?
A: There's the fuel —
Well you mentioned fuels. I incorporated diesel in fuels. There's a diesel regulation, certification fuel specifications.
Q: Looking at this particular page now, sir, on Respondent's Exhibit 19, it states here that Toyota reported at the last meeting that the 50 percent distillation temperature of gasoline affects hydrocarbon emissions. Do you see that?
A: Yes.
Q: And specifically that a 10-degree Celsius decrease of T50 reduced hydrocarbons by about 15 percent. Do you see that?
A: Yes.
Q: And going to the last sentence on that

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page, the test results shows again that a decrease of T50 conclusively reduces hydrocarbon emissions. Do you see that?
A: Yes.
Q: And you had that information prior to meeting with Unocal in June of 1991: correct?
A: Correct.
Q: Do you know if that information from Toyota in Exhibit 19, did anybody ever ask them to remove the confidentiality?
A: I don't — don't recall.
Q: Okay.
A: Although at some point, according to this letter, Toyota did declassify it. So at some point. How that came about I don't recall.
(Respondent's Exhibit 20 was marked for identification.)

BY MR. BEEHLER:

Q: Looking back for just one moment on Exhibit 19, nobody ever asked Toyota if they had any patent rights in connection with their document marked confidential; did they?
A: I'm not aware of that.
MR. ROBERTSON: Objection, calls for speculation, foundation.

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A: I'm speculating.
Q: Look now at Exhibit 20, if you would, sir, and you can see that this is also a document from CARB's files that was previously marked as a deposition exhibit. Do you see that?
A: Yes.
Q: Can you identify this document.
A: Yes. It's Toyota's —
Looks like a presentation that Toyota made presenting their — they call it ideas for clean gasolines.
Q: Do you know when this information was provided to you?
A: It was probably in the '91 time — had to be in the '91 timeframe.
Q: Prior to the 1991 rulemaking you would assume?
A: Yes.
Q: And this document does not bear any confidentiality designation: does it?
A: Well can — can I go back a moment —
Q: Of course, sir.
A: — just to be clear? On —
The third page of this document says "CARB's Draft (August 14, '91) is acceptable to

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Toyota," so that means they had to provide this to us around that time or after that time. So I mean I just want to clarify the record there.
Q: Given your point, you believe it was available to you, then, prior to your October 1991 proposal.
A: Yes.
Q: Okay. And this document — I'm not sure whether you answered this.
A: Sure.
Q: Is this Exhibit 20 marked confidential?
A: No, it is not.
Q: Okay. And on the very first page of Exhibit 20 there's a reference to the Reid vapor pressure regulation being acceptable if you keep T50 low. Do you see that?
A: Yes.
Q: Do you understand what the concept is that's being described there?
A: Yes. One of the — the issues Toyota had is they were very concerned about driveability, and I don't re — recall right now, haven't seen it for a while, the driveability equation, but it has several parameters in. I know it has the T50, I think T90 and — and something else. So the thrust, what I

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recall is the thrust of their testimony is they were very concerned about Phase 2 gasoline having very good driveability, and so what this relates to is the interactions between some of these terms and how they have — these properties, let's say, how they affect driveability.
Q: Let's see, then, if I can get a little bit better explanation from you looking at points one and two. In point two it says "T50 (and/or driveability index) should be defined. Reduction of T50 decreases hydrocarbon and carbon monoxide emissions..." Do you see that?
A: Yes.
Q: Do you understand, then, that Toyota was telling you that there's at least two reasons to keep T50 low, one, that it reduces certain emissions: correct?
A: Correct.
Q: And — and second, separate from an emissions standpoint, it affects your RVP regulation in terms of evaporative emissions. Is that what they were saying?
A: Well it affects driveability. And see, that's why they say T50 and/or driveability should be defined, because you can constrain the —

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Depending on what number you put on the Driveability Index, that will constrain the terms that are in there. And as I recall, the T50 is the significant factor, so — in the driveability, so a small change to T50 is, as I recall, more weighted than some of the other terms. So my recollection of all this is that they were primarily concerned about driveability, and, you know, of course from their perspective you can either do it through a spec or an appropriate Driveability Index and you kind of get to the same point. And they were also impressing upon us by improving driveability, in their view, you'd be — T50 would have to come down, there's some emission benefits associated with that, and they also say that it's also going to help us, Toyota, with hot-starting and fuel-handling problems.
Q: I think I understand. So Toyota is telling you that they think lowering T50 reduces emissions, but that you should also keep your T50 low to make sure the performance of the car is maintained.
A: The Driveability Index, need — need to distinguish the Driveability Index —
Remember, T50 is just one parameter: Driveability Index is what, three, or whatever number of parameters it is. So what — what they were

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[1] impressing upon us is, number one, the importance of
[2] a Driveability Index, and T50 is very important in
[3] that Driveability Index, and by doing — and by
[4] coming up with a Driveability Index, it's going to
[5] bring T50 down, which you'll get some emissions
[6] benefits from as a result as well.
[7] Q: Right. I — and I understand —
[8] A: Okay.
[9] Q: — the emissions reductions point. I'm just
[10] saying the driveability part, that's a performance
[11] concept, that they also wanted a low T50 for their
[12] driveability performance of vehicles; is that — is
[13] that true?
[14] A: Well they wanted a Driveability Index, and
[15] you've got different parameters in there you can
[16] adjust to get a low Driveability Index. Am I — am I
[17] clear? I —
[18] Q: Well I'm just — I — not quite.
[19] A: Okay.
[20] Q: Separate and apart from Toyota telling you
[21] that lowering T50 decreased certain emissions. —
[22] A: Yes.
[23] Q: — did they also tell you that they wanted
[24] a low T50 or at least a low Driveability Index for
[25] performance reasons?

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[1] A: Yes.
[2] Q: Okay.
[3] A: Driveability for performance.
[4] THE WITNESS: Could we take a short break?
[5] MR. BEEHLER: Of course.
[6] THE WITNESS: I need to wash my hands. Too
[7] much coffee.
[8] THE REPORTER: Off the record, please.
[9] (Recess taken.)
[10] BY MR. BEEHLER:
[11] Q: Mr. Venturini, looking at Respondent's
[12] Exhibit No. 11, which as you said was part of the
[13] presentation materials which Unocal discussed with
[14] you in June of 1991. First of all, do you recognize
[15] the handwriting which states that it's confidential?
[16] A: No.
[17] Q: If you turn to the second page of this
[18] document, it says "UNOCAL AGENDA," and there's four
[19] different bullet points there; correct?
[20] A: Correct.
[21] Q: And the third and the fourth bullet points
[22] are conclusions, "MINIMIZE OXYGENATE IN GASOLINE"
[23] and, four, "ACTION STEPS." Do you recall that?
[24] A: Correct.
[25] Q: Do you understand or do you have a

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[1] recollection as to what Unocal meant in terms of
[2] minimizing oxygenate in gasoline?
[3] A: My recollection or — recollection is
[4] basically as — as it's stated, they were asking us
[5] to minimize the amount of oxygenate that would be
[6] required in gasoline, one, or they were concerned
[7] because we were considering when we did the — I'm
[8] sorry, let me back up. I'm getting my regulations
[9] confused.
[10] We had the 1990 regulation where we did
[11] oxygenate. I think this is just as I said, they
[12] wanted us to minimize the amount of oxygenate that
[13] was used in gasoline.
[14] Q: We'll go through in a little bit more
[15] detail. —
[16] A: Okay.
[17] Q: — but sir, do you have a specific
[18] recollection of what was discussed during this
[19] meeting?
[20] A: Yes.
[21] Q: Tell me, if you could, what —
[22] A: Certainly.
[23] Q: — what — what Unocal discussed with you.
[24] A: Okay. Unocal discussed their test program,
[25] this innovative program that they had conducted, and

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[1] they called it an innovative approach, they shared
[2] with us the — the basis for the test program, the
[3] data, information that was the basis for the test
[4] program, they shared with us the results of the test
[5] program, those — those data, and they basically
[6] shared with us the effect of different fuel
[7] properties on emissions. And the key thing that I
[8] recall very, very clearly was the T50 and the
[9] relationship of T50 to emissions. They also talked
[10] to us about the predictive model and they felt it was
[11] very important for us to do a predictive model. They
[12] told us the predictive model would be cost effective,
[13] would be practical and so forth.
[14] Q: Let me ask you something. You said they
[15] also talked to you about the predictive model. Those
[16] were the words you used.
[17] A: Yes.
[18] Q: Wasn't it your understanding that Unocal
[19] was meeting with you because they were very concerned
[20] that you were going to propose regulations that had
[21] rigid fuel specifications?
[22] A: I don't recall that specifically. I do
[23] know the concept of a predictive model was something
[24] they were very interested in, and we listened to them
[25] because it would basically provide some additional

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[1] flexibility to refiners. We took that very seriously
[2] because in our vernacular, you know, additional
[3] flexibility means less cost, less burden on the
[4] consumers.
[5] Q: Let's under — let's —
[6] Let's go into your testimony on that point
[7] a little bit. The 1991 regulations, is it fair to
[8] call them a prescriptive standard?
[9] A: Not — not truly. And I will be happy
[10] to — to explain why I say that. If we had only done
[11] flat limits — and are you familiar — want me to use
[12] the term "flat limits?" If we had only done flat
[13] limits — which is basically we included in the
[14] regulation for each of the eight properties here's
[15] the limits — if we had only done that, then I would
[16] agree that's prescriptive, but we were very concerned
[17] about cost and doing anything we could to achieve our
[18] emissions reductions goals and minimize cost. So —
[19] and — and if you go through the pattern of events
[20] and so forth, we also had flat limits and we also had
[21] proposed in the report several averaging limits, and
[22] then we had caps which we felt were very important to
[23] allow us to enforce anywhere in the distribution
[24] system.
[25] Now it's very interesting to note, and I

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[1] think this is very important because I — I can't
[2] stress upon you more how concerned we were about
[3] cost. This was a major undertaking for the Air
[4] Resources Board. I mean I've been through 30 — this
[5] is probably the most significant regulation that I've
[6] had the pleasure to work on. We were looking at
[7] imposing costs on California refineries, five billion
[8] dollars or more. We were having a cost to the
[9] consumer. You know, depending on the estimate, we
[10] estimated 12 to 17 cents a gallon or 14 to 20 cents
[11] if you include the fuel economy thing. For us that
[12] was huge, and I think anyone outside that time would
[13] say what to heck are you doing? But we saw
[14] tremendous air quality benefits. And so our whole
[15] goal through this is maximize our emissions
[16] reductions and minimize the cost — have the most
[17] cost-effective regulation as possible. We felt it
[18] important that we do this comprehensive set of — of
[19] specifications because we wanted to let refiners know
[20] basically, look, we're going to take this — this one
[21] comprehensive regulation, it's going to cost a
[22] significant amount of money, but then we want to do
[23] this and we want to get out of your way so you can go
[24] make this fuel and then go about your — your
[25] business. We didn't want to, you know, do one

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regulation now, come back a few years later, hit them with another one on the — on the fuel specifications. So that was somewhat of a — of a philosophy. And I think if you look through things, in the staff report we presented to the board a set of standards, flat limits, average limits, cap limits. When we made our presentation to the board we as staff modified the proposal that was in the staff report, which means during that 45-day comment period. I mean we had I can't say how many meetings and discussions, we were constantly looking for ways, are there ways to — to improve this, and so at the board meeting we made some additional changes, and, following the testimony and everything, came out that there were some additional I'll call tweaking made. And the outcome of all of this — I don't want to belabor this — that the final regulation the board adopted preserved — it was 95 percent of the emission-reduction benefits of the initial staff proposal but at 85 percent of the cost. So with some — some adjustments, some tweaking, adding some more parameters to allow more averaging, we — we were able to knock off 15 percent basically of what the cost was. That — that — that was major.

Q: And we'll — and we'll get to that. Right

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now, though, let's go back to my question.

A: Sure.

Q: You understood that Unocal was coming to you and meeting with you because they had a concern about what your proposed regulations might be; correct?

A: I think this meeting was basically to share — the focus of this was to share the results of their test program with us.

Q: Okay. And did you understand that that was because Unocal had a concern about rigid fuel specifications?

MR. ROBERTSON: Objection, calls for speculation.

A: You know, they may have — may have had that, but that's what I recall the main focus of this was, to share — the main focus of this meeting that they had asked for was to share the results of their test program and to talk to us about developing the predictive model.

Q: And you understood from your conversations with Unocal that they thought that a predictive model approach was better than fuel specifications; correct?

A: Yes, they felt —

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Well they go hand in hand actually. The predictive model has to have something to rely on. The purpose of the predictive model was to provide additional flexibility. Do I need to —

Q: Well let me ask you a couple of questions on that. Would you describe what the term "performance standard" means.

A: It basically means you set — you set a benchmark, and you have to get there somehow.

Q: In other words, a performance standard could tell an industry that I want you to achieve a certain amount of grams of a certain criteria pollutant or less, and how you get there is your own business.

A: Right. Or a percentage reduction. That's basically correct.

Q: That would be a performance standard; correct?

A: In — in that term, yes. I mean —

Q: Now on the other far side of that would be a prescriptive standard; correct? You're familiar with that term, "prescriptive standard?"

A: Yes, I am.

Q: And a prescriptive standard, a pure prescriptive standard would be one that tells you

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[1] exactly the fuel that you would have to make;
[2] correct?
[3] A: Yes. This is what you have to do, there s
[4] no latitude.
[5] Q: And the 1991 regulations, if you look at it
[6] from a flat-limit standpoint, that would be a
[7] prescriptive standard.
[8] A: Yes.
[9] Q: And what you're saying is we did allow some
[10] flexibility because certain of those flat limits,
[11] we — we allowed alternatives that you could average
[12] certain of those property limits; correct?
[13] A: Yeah. Well —
[14] Q: So it had sort of a hybrid of being a
[15] prescriptive standard but with some flexibility.
[16] A: I think that's fair.
[17] Q: And what Unocal was discussing with you,
[18] did you understand that that would be a pure
[19] predictive model?
[20] A: Pardon me, a pure or peer?
[21] Q: Pure, p-u-r-e.
[22] A: I don't know what you mean by "pure
[23] predictive model."
[24] Q: One with no flat limits, one with no
[25] limits.

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[1] A: Well then how — see that — that
[2] doesn't —
[3] It's hard for me to understand that because
[4] what the predictive — what the predictive model is
[5] is a set of equations that allows you to put in fuel
[6] properties and calculate the outcome in terms of —
[7] of a — of an emissions term.
[8] Q: And did you understand that what Unocal was
[9] discussing with you was the concept of being able to
[10] use equations to predict what the emissions would be
[11] so that you wouldn't have to put any specific limits
[12] on as part of your regulations —
[13] MR. ROBERTSON: Objection.
[14] Q: — but simply predict what a fuels
[15] composition really meant?
[16] MR. ROBERTSON: Objection, form.
[17] A: Well what's missing there is what do you —
[18] what are you matching it to? If we didn't have the
[19] limits, what are you matching the equations to, to
[20] whether or not you know you've achieved the
[21] objective? You either have to have some benchmark —
[22] Q: A baseline fuel.
[23] A: A base —
[24] Well a benchmark, a baseline, whether it be
[25] a performance standard, say a percentage reduction.

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[1] or an in our case we use the flat or average limits.
[2] Q: And all I'm trying to ask you is when —
[3] when you met with Unocal, did you have the
[4] understanding that what Unocal was advocating was a
[5] performance standard using the predictive model
[6] against a baseline fuel?
[7] A: You know, I recall they may have been
[8] suggesting to us that we go with a performance
[9] similar to what EPA had done, but their main — their
[10] main thrust, what I took away, was the importance of
[11] having a predictive model.
[12] Q: It says here "ACTION STEPS" on — on number
[13] four. If you would turn over to Respondent's Exhibit
[14] 12 and the final page, do you see that that's
[15] entitled "ACTION STEPS?"
[16] A: Yes.
[17] Q: Did you understand "action steps" to mean
[18] this is what Unocal wants CARB staff to do?
[19] A: Correct.
[20] Q: And the first thing it says is "AVOID RULES
[21] OVERLAP." Do you see that?
[22] A: Yes.
[23] Q: And by that Unocal was discussing whether
[24] federal rules or California rules would apply to
[25] gasoline made in California; correct? Correct?

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[1] A: Yes. The interaction of the federal rules
[2] and Cal — any California rules.
[3] Q: And Unocal was trying to advocate avoiding
[4] having to comply with two rules. Is — is that what
[5] this indicates?
[6] MR. ROBERTSON: Objection, calls for
[7] speculation.
[8] A: I don't — I don't recall that, and it
[9] would be improper for me to speculate at this point
[10] on what they meant by that.
[11] Q: Well you were in the meeting and it says
[12] here "AVOID RULES OVERLAP
[13] "- OPT OUT 211(c)(4)(B)
[14] "- DON'T OPT IN."
[15] Do you have any recollection of what that
[16] action step meant?
[17] A: Well opt out refers to the Clean Air Act
[18] provision. It's been a long time since I looked
[19] at — looked at that. The thrust that I recall now
[20] from that is you got federal rules, you've got
[21] California rules; make sure we don't overlap. And
[22] that — and that's —
[23] Q: What does that mean?
[24] A: That whatever we do —
[25] And you see, there was another — there was

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[1] another issue here, too, because tech — technically
[2] the federal rules will apply, and so there was a lot
[3] of effort that we went to with the oil companies to
[4] obtain what we call the — the federal enforcement.
[5] It basically allowed in California the California
[6] rules to govern so refiners didn't have to comply
[7] with all the details of the two regulations. So —
[8] Q: Let's step back for a moment because I —
[9] because I think —
[10] A: Sure.
[11] Q: — we've gotten into the detail before
[12] we're really laying the base.
[13] A: Okay.
[14] Q: Okay? The federal Clean Air Act applied
[15] throughout the country; didn't it?
[16] A: Correct.
[17] Q: And California wanted to adopt its own
[18] rules; correct?
[19] A: Correct.
[20] Q: Because California in its wisdom had
[21] determined that its air-pollution problem was perhaps
[22] more significant or more serious than other places.
[23] A: Well for a variety of reasons we chose to
[24] do our own regulation, yes.
[25] Q: And what Unocal was advocating here is that

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[1] you make clear that either the California rules are
[2] good enough to comply with the federal standard,
[3] or — well I — I won't put words in your mouth.
[4] Tell me what "AVOID RULES OVERLAP" now
[5] means given that background of the federal Clean Air
[6] Act and the California Clean Air Act, as you
[7] understood it.
[8] A: You know, I — I can't recall here some 12,
[9] 13 years later the actual dialogue, this discussion,
[10] and my take-away here is that we avoid what over —
[11] The specific overlap they were concerned
[12] about, it probably had to do with this provision of
[13] the Clean Air Act which I haven't looked at for a
[14] long time.
[15] Q: Do you know what opt out of 211(c)(4)(B)
[16] means?
[17] A: No, I don't recall. I'm — I'm aware of
[18] it, but I just have..'t looked at that for a while so
[19] I don't recall the specifics of 211(c)(4)(B).
[20] Q: Do you remember there being a requirement
[21] under the federal Clean Air Act to use oxygenates?
[22] A: Oh, yes.
[23] Q: Was Unocal advocating to you to opt out of
[24] that provision?
[25] A: To use oxygenates?

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[1] Q: Correct.
[2] A: I'm — I'm trying to put in — in context,
[3] because we had a federal oxygen mandate which we
[4] didn't have any choice on.
[5] Q: Wasn't Unocal asking CARB to advocate a
[6] waiver of that federal mandate?
[7] A: That's possible. I just don't recall. Mr.
[8] Beehler.
[9] Q: And the basis of Unocal asking for that was
[10] their belief that oxygenate in fact didn't reduce
[11] emissions at all. —
[12] MR. ROBERTSON: Objection, calls for
[13] speculation.
[14] Q: — do you recall that position being taken?
[15] MR. ROBERTSON: Objection, calls for
[16] speculation.
[17] A: I don't. I don't recall that.
[18] Q: Well you mentioned that you recall Unocal
[19] discussing the importance of T50; —
[20] A: Yes.
[21] Q: — correct?
[22] Do you recall that they mentioned the
[23] importance of T50 in relation to oxygenates not being
[24] something that reduced emissions? Do you remember
[25] that connection?

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[1] A: The connection I remember is relationships
[2] between oxygen and T50. In terms of — of the
[3] emissions, it's — it's not clear. I mean oxygen
[4] would tend to depress the T50.
[5] Q: And wasn't Unocal telling you that they
[6] believed their studies had shown that it is the T50
[7] and not the oxygenate that was in fact reducing
[8] emissions?
[9] A: Well what I recall clearly from this is the
[10] importance of T50 in reducing emissions. I — that
[11] other link is — I — I can't recall that other link.
[12] Q: Okay. You don't remember whether Unocal —
[13] A: I — I really don't on that specific point
[14] with the oxygen.
[15] Q: Okay. Do you remember Unocal telling you
[16] that they did not have a separate facility to
[17] manufacture oxygenate?
[18] A: They may have. I don't — don't recall
[19] that discussion.
[20] Q: Do you recall Unocal voicing concern that
[21] they should not be forced to have to either build or
[22] buy oxygenate if oxygenates were not reducing
[23] emissions?
[24] A: They may have. I just don't recall.
[25] Q: The second bullet point in here says adopt

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[1] a predictive model, and that's something that you
[2] recall Unocal advocating.
[3] A: Absolutely.
[4] Q: And it says here:
[5] "- PRACTICAL
[6] "- COST EFFECTIVE
[7] "- ENFORCEABLE."
[8] Do you recall what the discussion was on
[9] any of those bullet points?
[10] A: Yes. Basically that a predictive model
[11] would provide much more flexibility, that it's
[12] practical to do a predictive model, you can do it,
[13] that's a practical means; it's cost effective, which
[14] means it's — it would basically through that — that
[15] flexibility reduce costs, so it's cost effective; and
[16] it's enforceable, so, you know, you can enforce the
[17] regulat..n and you don't have to worry about
[18] enforceability.
[19] Q: Do you recall what Unocal said about cost
[20] effectiveness of a predictive model here?
[21] A: My recollection is what I said, that it
[22] would be cost effective to do a model. I mean the
[23] juice is worth the squeeze, that's — that's
[24] basically it.
[25] Q: You don't recall any specific words that

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they used —
A: No.
Q: — to describe what they meant by the words "cost effective?"
A: No, not after all these years.
Q: Could you describe for me what you just meant when you said well if it's flexible, it means it's cost effective? What do you mean by that?
A: Well the predictive model provides refiners some additional flexibility in making gasoline, and that means they could make the gasoline cheaper, so it improves the cost effectiveness of our regulation.
Q: Because there's more than one way to make a formulation that gives you more flexibility.
A: Yes, within the model. Because remember, the model — the model defines a space.
Q: Well your — your model that you adopted in 1994 defines a space.
A: Well I think any model defines a space as a mathematical — set of mathematical equations.
Q: Only if it's in reference to a baseline.
A: I don't — I don't follow you. It defines a space. You've got —
Q: Sir, if I have a set of mathematical equations —

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A: Uh-huh.
Q: — that tell you that for any composition of gasoline you want, I can tell you what the emissions are going to be, okay, that's a form of a predictive model, what I've just described; correct?
A: Correct.
Q: And using that sort of a predictive model, one could change various parameters contained in those equations to affect the ultimate emissions; correct?
A: Correct.
Q: And at least you can envision a predictive model where there are no specific limits on any of those individual properties; correct?
A: No, I can't — how — how are you going to have an equation if there's no —
Oh, you mean outside of the model? You have a model. It's got terms and — and coefficients and so forth.
Q: Uh-huh. And let's say that the coefficient for T50 was X.
A: Okay.
Q: Okay? And so I know that I can affect my emissions by reducing T50 in this particular equation.

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A: That's a positive term, yes.
Q: Okay. Now I have other variables in that equation; correct?
A: Correct.
Q: Which would also theoretically allow me to reduce or increase emissions; right?
A: Correct.
Q: So can you envision a model where — where you're not telling the refiners that their T50 or in fact any other variable has to be at a specific level or lower, but simply that the results must be a certain amount of grams?
A: Oh, that the outcome has to be — Well then you're getting back to a performance-based —
Q: That's exactly what I'm asking you, sir. Is that what you understood Unocal to be describing to you when they talked about a predictive model?
A: Honestly, I don't recall what they meant by "predictive model."
Q: Ah — go ahead.
A: Well I was just going to say to us, the relevance to us was the importance of providing a predictive model in terms of flexibility and so forth.

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[1] Q: This last bullet point says "AVOID RFG
[2] OXYGEN MANDATE.
[3] "- ALLOW MODEL TO WORK
[4] "- ADDITIONAL NOX." N-O-X "CONTROL."
[5] Do you see that?
[6] A: Yes.
[7] Q: Do you have an understanding of what that
[8] bullet point referred to?
[9] A: I think what they were trying to get at
[10] is — is allow oxygen to float within the model
[11] rather than say you have to put a certain value in
[12] for oxygen in the model. And there is a relationship
[13] between oxygen and NOx emissions.
[14] Q: As found by CARB.
[15] A: Pardon?
[16] Q: As found by CARB in its model?
[17] A: As what was found by CARB?
[18] Q: Well you said there was a certain
[19] relationship between oxygen and NOx.
[20] A: No, based — based on testing.
[21] Q: Unocal didn't find such emissions benefit
[22] for oxygenate; did it?
[23] A: I — I'd have to go back and check. I'm
[24] not — don't remember that aspect.
[25] Q: In any event, do you remember that Unocal

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[1] opposed your 1991 regulation?
[2] A: I don't think that's a fair
[3] characterization that they fully opposed the
[4] regulation. Yes, they gave us testimony, but I don't
[5] recall they flat out said don't do this. I think
[6] they would have preferred it be done differently, but
[7] I —
[8] Q: Don't you remember the entire refining
[9] industry, save ARCO, opposing your regulations or
[10] criticizing them?
[11] MR. ROBERTSON: Objection, compound.
[12] A: They had —
[13] I'll characterize it this way: The
[14] industry recognized the importance of reformulated
[15] gasoline. Where the discussion was: How far do you
[16] go and how much do you reformulate? So my response
[17] is the industry were all — I don't believe said
[18] don't do any regulation at all, my belief is they
[19] basically wanted different, different regulation.
[20] And a lot of the comments were about this
[21] specification, that specification, do it this way or
[22] that way. So that's the distinction I have versus a
[23] flat out don't do anything.
[24] Q: Okay. Let's — let's see if we can go a
[25] little bit deeper into this. As part of the

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[1] documents which were presented to — withdraw that
[2] question.
[3] In your final statement of reasons there is
[4] a discussion about which companies supported the
[5] regulations; correct? Do you remember that?
[6] A: Well I — I believe so. I'll have to take
[7] your word for it.
[8] Q: And — and there's a discussion about which
[9] companies even wanted more-stringent regulations;
[10] correct?
[11] A: Yes, I believe so.
[12] Q: Did Unocal support your regulations in
[13] 1991?
[14] A: I guess they — they supported some
[15] reformulated gasoline regulations, but not the ones
[16] we specifically proposed. They wanted some changes.
[17] I think that's the best way to fairly characterize
[18] it.
[19] Q: So the regulations that you proposed they
[20] did not support; is that true?
[21] A: Yes.
[22] Q: Okay. And in fact you recall that Denny
[23] Lamb said that the T50 specification was not
[24] necessary. In front of the board he said that;
[25] didn't — didn't he?

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[1] A: He said it was not necessary, but he did
[2] not oppose it.
[3] Q: You make a distinction between the two?
[4] A: Very much so.
[5] Q: Is it your understanding that Unocal
[6] thought that specifications should be put in that
[7] aren't necessary?
[8] A: Can you repeat the question, please?
[9] Q: Well you're making the distinction, sir,
[10] between Denny Lamb saying it's not necessary and
[11] opposing it. When Denny Lamb said that the T50
[12] specification is not necessary, you're saying that
[13] that was not opposition to the T50 spec?
[14] MR. ROBERTSON: Objection, form.
[15] A: What I'm saying is saying it's not
[16] necessary is different from opposing it and saying
[17] don't put it in, or in this case take it out. And I
[18] can further clarify that if you like.
[19] Q: Please.
[20] A: It's my recollection that in their written
[21] testimony they didn't comment on T50. They commented
[22] on all the other specifications, but not T50.
[23] Q: Do you know why that was?
[24] A: You have to ask Unocal. I don't know why
[25] they didn't comment formally.

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[1] Q: Well let's — let's consider why that might
[2] have been. As part of your regulation proposals you
[3] worked up a cost-effectiveness calculation: correct?
[4] A: Correct.
[5] Q: And part of that cost-effectiveness
[6] calculation that — that you did, part of it related
[7] to cost and part of it related to benefits: correct?
[8] A: Correct.
[9] Q: You never separately determined cost for
[10] T50 as part of those regulations: did you?
[11] A: I don't believe so. We tried to look at
[12] the fuel as a — as a whole.
[13] Q: You never separately determined benefits of
[14] T50 for purposes of your cost/benefit analysis: did
[15] you?
[16] A: It was incorporated into the benefit of the
[17] full specification.
[18] Q: You used the Auto/Oil regression analysis
[19] as part of your cost/benefit analysis: didn't you?
[20] A: And we also —
[21] Yes.
[22] Q: Okay. That's all I'm asking. We'll —
[23] A: Okay.
[24] Q: Okay. And as part of the Auto/Oil
[25] regression analysis. T50 was not included as a term:

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[1] was it?
[2] A: No.
[3] Q: The other thing that you did in your
[4] cost/benefit analysis is to look at certain fuels
[5] studies: correct?
[6] A: Correct.
[7] Q: It was not the Unocal study: was it?
[8] A: No. We did look at the — in fact we
[9] relied on the Unocal study for the T50 specification.
[10] Q: Okay. We're being very clear here.
[11] A: Yes.
[12] Q: And we — and we — we'll get to these
[13] documents.
[14] A: Sure.
[15] Q: Something you said made me want to take it
[16] up right now.
[17] A: Uh-huh.
[18] Q: As part of your cost/benefit analysis,
[19] sir — let me withdraw it.
[20] You did a cost-effectiveness analysis.
[21] A: That's more correct, yes.
[22] Q: And as part of that cost-effectiveness
[23] analysis you looked at air-emissions benefits.
[24] A: Emissions reductions, yes, specifically.
[25] Q: All right. You had to look at emissions

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[1] reductions in order to do your cost-effectiveness
[2] analysis.
[3] A: Yes.
[4] Q: And you did two things there. You looked
[5] at — you used the Auto/Oil regression analysis:
[6] correct?
[7] A: Correct.
[8] Q: That did not have a T50 term in it: did it?
[9] A: No.
[10] Q: And the second thing you did was to use
[11] ARCO test fuels and a CARB/GM study and a Ford study:
[12] correct?
[13] A: Those I'd have to refresh my memory on.
[14] Q: Okay. You know what, when we get to the
[15] documents —
[16] A: Sure.
[17] Q: — we'll —
[18] A: Go through those.
[19] Q: Right now as we sit, you don't remember
[20] whether you used Unocal at all for determining cost
[21] effectiveness.
[22] A: I don't recall specifically.
[23] Q: Okay.
[24] A: I know we relied on the Unocal information
[25] for the T50 specification.

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[1] Q: We'll get — we'll get to this document,
[2] then —
[3] A: Okay.
[4] Q: — we'll — we'll go through that.
[5] You mentioned that you believe the August
[6] letter of 1991 was fraudulent: is that fair?
[7] A: Well let me draw — the letter —
[8] The letter itself is fine. What I believe
[9] is — what we believe is — is fraudulent is the
[10] non-disclosure of the patent application. This
[11] letter very clearly says non-proprietary.
[12] Q: And — and you believe that for Unocal to
[13] say what it did in the 1991 letter and later enforce
[14] its patents is fraudulent.
[15] A: Yes.
[16] Q: Okay. Are there some other statements that
[17] Unocal made, separate now from this August 1991
[18] letter, that CARB says is fraudulent?
[19] A: Every time Unocal met with us or with
[20] anyone connected with the Air Resources Board and
[21] they did not share with us the fact that they had the
[22] patent pending I believe was just the continuing
[23] deception. It went on for three and a half years,
[24] especially when they were talking to us about costs
[25] and how concerned they were about costs and — and so

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[1] forth, and never during this time did they say, "Oh,
[2] by the way, we have a patent that's going to add to
[3] your costs."
[4] Q: Okay. Now I — I want you to try and make
[5] the distinction for me, if you can, you've said that
[6] this August 27, 1991 letter is fraudulent because it
[7] used this term "non-proprietary" in reference to the
[8] data, and Unocal ended up enforcing a patent. Okay.
[9] And I understand you to be saying then you think you
[10] should have been told during this —
[11] A: Uh-huh.
[12] Q: — ensuing period about the pending
[13] application: correct?
[14] A: I think we should have been told at this
[15] meeting in June.
[16] Q: Right. Right. But I'm — what I'm trying
[17] to —
[18] A: Okay.
[19] Q: — to drive at now is if there is a
[20] separate statement made by Unocal that you believe
[21] was misleading, false, a half-truth, a hood-winking
[22] to — to use your language.
[23] A: It's all in these documents.
[24] Q: Okay. And can you point me to specific
[25] language in the documents that you've brought with

that you would say would constitute such a thing?
A: I can go through these with you at any time.
Q: Okay. Please do. Shall we take the first one?
A: Sure. Let's go through.
(Discussion off the stenographic record.)
(Respondent's Exhibit 21 was marked for identification.)

BY MR. BEEHLER:

Q: Looking at Respondent's Exhibit 21, sir, what is this document?
A: Okay. This is a 6-20-91 document, it's somebody's notes, and it basically is — the notes indicate it's — it's a document of a meeting that was held at Unocal in June 20, '91. It indicates Dr. Jessup, Dr. — is it Croudace? Croudace?
Q: It's C-r-o-u-d-a-c-e.
A: Jim Wusz.
Q: Wusz. W-u-s-z.
A: And Denny Lamb. Those were the folks, people present from Unocal. Then it just states that the information presented is confidential.
Q: You think Tim Wusz was present on June 20, 1991?

A: I infer that from — from this.
Q: Do you know whose notes these are?
A: It's possibly Bob Fletcher's notes.
Q: What was the purpose in bringing this document with you today to show me?
A: Just to show the — another show that it was considered confidential.
Q: It says "Information Presented" —
A: Confidential.
Q: — "in Confidential" is the words used.
A: Yes.
Q: How does this Exhibit 21 reflect fraud by Unocal?
A: This document just is to document the meeting. In and of itself there's not —
Q: Okay. Well here's what I want to go through, and maybe we'll just have to go through them anyway. I'd asked you if there are separate statements that Unocal made that reflect that it committed fraud and you referenced me to these.
A: Correct.
Q: So let's go to the next document you have.
(Respondent's Exhibit 22 was marked for identification.)

BY MR. BEEHLER:

Q: Looking at Respondent's Exhibit 22 —
A: This is the actual slides, the presentation that Unocal made to us on 6-20-1991. This is my copy. I marked it confidential. And we've — we've already discussed this.
Q: Now there's a couple of things I want to ask you about this.
A: Certainly.
Q: Respondent's Exhibit 22 you said was the slides. In fact if you look at the next document which we're going to mark, you see that Respondent's 22 isn't the whole presentation, is it, because there's a separate page.
A: Yeah. I think there are actually three pieces in total.
Q: Okay. Okay. So we'll clarify that when we get to it.
A: Sure.
Q: Looking at Respondent's Exhibit 22, you've written the word "CONFIDENTIAL" across this presentation; is that right?
A: Correct.
Q: You've made various notes throughout this slide.
A: Yes.

Q: Looking at any of those notes, does that refresh your recollection on anything that was discussed?
A: Well yes. Well, discussed at the meeting? Well as I've indicated previously, it certainly — excuse me — certainly shows the results of the T50 work, it shows they did a one-car, 10- and a 13-car study.
Q: I really don't want to interrupt you here. I'm — I apparently wasn't clear. You yourself made personal notations on these presentation slides.
A: Uh-huh.
Q: Right?
A: Yes.
Q: Do any of those notes reflect fraudulent statements by Unocal?
A: My notes?
Q: Correct.
A: Well, you know, let's — There's one note I'm specifically looking for that I think is toward — here it is. It's a chart that's entitled "UNOCAL REFORMULATED GASOLINES PROPERTIES."
MR. ROBERTSON: Do you know what page we're on?

THE WITNESS: The pages aren't numbered.
MR. BEEHLER: Okay. Just a minute, sir. Three pages from the back of Respondent's Exhibit 22?
THE WITNESS: Yes.
MR. ROBERTSON: I'm there. I got it.
Q: And what is your — What does your handwritten note state?
A: "Fuel that could be produced at refinery with minimal refinery changes."
Q: Okay. Does that reflect a statement made by Unocal?
A: Yes.
Q: Does that reflect a fraudulent statement in your view?
A: Well from the perspective that it doesn't tell the whole story, that by the way, we have a patent application pending that we're going to, you know, charge royalty for, license. I think yes. Because I think at this point and —
Somewhere in this presentation they should have disclosed to us that they had a patent pending.
Q: I want to make sure I'm understanding what you're saying. Unocal told you that — what in relation to your — your — your comment here, your handwritten notation?

A: What they were suggesting to us was that this 92 premium test fuel with a set of specifications that could be produced at the refinery with minimal refinery changes.
Q: Doesn't that suggest to you that they were opposed to fuel specifications because they were showing you that there was a very simple way to reduce emissions without huge investments in reconfiguration?
A: No. This is actually demonstrating these are some actual specifications that they feel would be appropriate.
Q: So your testimony is that you think Unocal was advocating for this fuel to be your regulation?
A: What I'm saying is what's right here, that they said this is a fuel with these specifications that could be produced at a refinery.
Q: Okay, I — and I understand that.
A: Yes.
Q: I'm trying to go a little bit deeper here to see if you have a further recollection. Was Unocal showing you this fuel as an example to illustrate how a predictive model could work —
MR. ROBERTSON: Objection, form.
Q: — or was it suggesting to you that this

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should be the regulation you adopt?
MR. ROBERTSON: Objection to form.
Q: Do you remember?
A: I think neither. I think they were just pointing out this is a set of fuel specifications that could be made at a refinery with minimal changes. I —
Q: And —
A: — can't read anything else into it.
Q: And you referenced this statement in terms of something that was fraudulent by Unocal. How is that fraudulent?
A: From the perspective that throughout this whole presentation they did not disclose to us the fact that they had a patent pending. and so they were just telling us part of the story. They were misrepresenting themselves because they knew darn well at that time that they had applied for a patent.
Q: So Unocal could not show you a fuel with the eight-pound Reid vapor pressure. a 208-degree T50. a 136-degree T10. a research octane of 97.5. an MTBE volume percent of 7.2. a paraffin content of 45.4 percent. an olefin content of 3.3 percent. and an aromatics content of 44.1 percent. without disclosing the existence of their patent application

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and be truthful: is that what you're saying?
A: What I'm saying is they could have shared whatever they wanted with us. What my objection is that they didn't share something that was very important to our rulemaking.
Q: Why in relation to this fuel are you pointing that — that out?
A: Because this is just an example. an opportunity they had to tell us they had a patent applied for. They had specification. They identified specifications here. Could be this — this fuel is subject to that patent application. We don't know that.
Q: Do you know if it is?
A: I don't know.
Q: Okay.
A: They certainly didn't tell us at the time.
Q: Have you fully told me why you believe that it — that this particular page was fraudulent?
A: Yes.
Q: Is there anything else. sir. in this Respondent's Exhibit 22 that reflects fraud by Unocal?
A: In general I think the presentation overall does. Because they made this presentation to us.

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they provided us information that they clearly wanted us to use. and they did not tell us at the same time that they had a patent pending for gasoline. And they were talking about gasoline. so —
Q: I — I understand that you're saying that generally.
You pointed out one page. Is there any other page that you can reference me in Respondent's Exhibit 22 that reflects fraud by Unocal?
A: Well you have to take — you have to take it not just the page by page. but the context of the whole thing.
Q: You've described the context.
A: Okay.
Q: I'm asking you for any other specific pages.
A: For a specific page? I'll say that one is the one that comes — is — comes to mind right away.
Q: Are there any others. sir?
A: Specific pages?
Q: Yes.
A: No.
Q: Okay.
(Respondent's Exhibit 23 was marked for identification.)

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BY MR. BEEHLER:
Q: Looking at Respondent's Exhibit 23. this is entitled "ACTION STEPS." and we looked at this in reference to a previous document: right?
A: Correct.
Q: And I just want to make sure here of a couple of things. In the — in the previous document. the action steps had the word "CONFIDENTIAL" written on it. Do you recall that?
A: Yes.
Q: Is it your recollection that this action steps page was a separate page during the presentation?
A: It was a separate handout.
Q: Do you have an understanding as to why one of your staff members would have written "CONFIDENTIAL" on action steps and why it wouldn't appear on yours?
A: No. It may have been that this really wasn't con —
Sometimes someone on everything will just write confidential.
Q: You understood that the entire meeting was supposed to be confidential.
A: Yeah. Information they presented to us was

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confidential.
Q: Would that explain why the action steps page on other staff members' — I'm sorry.
A: I can't —
Q: Let — let me —
A: Yes.
Q: Did you have an understanding that all the materials that were provided to you at that meeting were supposed to be confidential?
A: Yeah. basically. Basically.
Q: Now does Respondent's Exhibit 23 reflect fraud by Unocal?
A: Yes. it does.
Q: Please tell me where.
A: In the discussion and their reasons for urging us to develop and adopt a predictive model they used the terms that it's practical. cost effective. enforceable. and when they used the term cost effective they basically did not tell us that there's an aspect of these regulations that would affect the cost effectiveness: that is. their pending patent. and if it were granted. they were going to charge — charge people to — that made fuels that violated that patent. So it's — it's very mis —
Yeah. Now looking at this. it's very

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misleading and it kind of undermined the cost effectiveness of a predictive model because there was this other element going on. which is their patent. which they didn't tell us about.
Q: Sir. didn't you testify just a few minutes ago that you don't recall asking Unocal what it meant by cost effective during this meeting?
A: I may not have asked them or I don't recall what they said about cost effective. but the fact of the matter is they chose not to tell us an item of very important information that had bearing on cost effectiveness of what we did and what we were going to do.
Q: Because they used the words "cost effective." you feel that they should have disclosed a pending patent application and thus — and thus it is fraud.
A: Yes.
Q: You don't recall asking them what they meant by the term "cost effective."
A: No. But I'm sure they explained to us at that meeting what — what they meant by "cost effective." I just don't recall the words.
Q: Okay. I've — that's what I've asked you before and —

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A: Right.
Q: — let's — let's get to it now. Did you ask Unocal what they meant by the term "cost effective?"
MR. ROBERTSON: Objection, form, and argumentative.
A: I don't recall the actual exchange we had at the meeting. I — I'm —
My presumption is they went through their reasons why we should do a predictive model. I don't recall the actual words. I think that's what I said earlier, but I know they didn't tell us they had a — had applied for a patent.
Q: Have you fully told me now what is reflected in Exhibit 23 as fraud by Unocal?
A: Yes.
(Respondent's Exhibit 24 was marked for identification.)
BY MR. BEEHLER:
Q: Would you identify what Exhibit — Respondent's Exhibit 24 is, sir.
A: Yeah. This is another copy of the action steps and the presentation. This appears to be Bob Fletcher's copy.
Q: Actually you called it action steps, but if

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you'd look at it, sir, doesn't seem to have all the pages; does it?
A: Well —
Q: Or are they reverse-ordered?
A: There may be an order issue here. There's the action steps which is a separate handout, then the next page has a presentation.
Q: And these are Bob Fletcher's —
A: Yes.
Q: — documents; right?
A: Correct.
Q: And they both bear the confidential stamp as well.
A: Correct.
Q: You previously told me about this exhibit. Is there anything else that —
A: No.
Q: — you can add that's special about this one showing fraud?
A: No. Already covered it.
(Respondent's Exhibit 25 was marked for identification.)
BY MR. BEEHLER:
Q: Looking at Respondent's Exhibit 25, sir, we talked about this letter before, it's the one from

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Mike Kulakowski to you dated July 1, 1991; correct?
A: Correct.
Q: Does this document reflect fraud by Unocal?
A: Yes.
Q: Where?
A: It's — it's another opportunity that Unocal had to disclose to us that they had the patent — had applied for a patent.
Q: So when Unocal requests that you hold equations confidential, that's fraud.
MR. GOLDMAN: Objection, misstates his testimony.
A: It's misleading. It is deceiving that here again was another opportunity that Unocal representatives had to tell us that they had a patent applied for and they did not.
Q: Okay. But I'm looking —
A: So that's part of —
Q: Go ahead.
A: No. I said that's —
You have to understand from our perspective of this — this activity, this deception, this misrepresentation, you know, in our — in our view, you know, started with this meeting and persisted basically for, what was it, three and a half years

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until '95. So this —
Q: Sir, I —
You have testified several times that you believe that Unocal had a continuing obligation to tell you about a pending patent application. We're going through right now, though, whether there were specific things in these documents you brought with that you believe were fraudulent. Looking at Respondent's Exhibit 25, this is the document where Jim Kulakowski — or Mike Kulakowski —
A: Right.
Q: — said hold these equations confidential. What about this letter, sir, was fraud?
MR. ROBERTSON: Objection, it's asked and answered, and you're arguing with the witness.
A: I — I think I answered this question, that this is another instance where Unocal had an opportunity to disclose some very material information to us.
Q: Did they say something in Exhibit 25 that you believe to be false?
A: No. That's not the whole story.
(Respondent's Exhibit 26 was marked for identification.)
BY MR. BEEHLER:

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Q: Would you identify Respondent's Exhibit 26.
A: Yes. These are my notes from an August 14, 1991 meeting on Phase 2 gasoline that was held with Jan Sharpless. Attendees were Chevron, Unocal, Tosco, Gina Gray of WSPA and Dick Kreutzen of WSPA.
Q: Does Respondent's Exhibit 26 reflect any statements by Unocal?
A: Basically it — it's the same rationale I gave you for the —
Q: Just answer my first question.
A: — last document.
Q: Just answer my first question. Does Respondent's Exhibit 26 reflect any statements by Unocal?
A: Oh, statements by Unocal. My notes don't indicate any specific statements.
Q: Is your point that there's a — here was another opportunity for Unocal to say something about their pending patents?
A: Absolutely.
Q: And Chevron and Tosco and Western States Petroleum Association members were all there.
A: Correct.
(Respondent's Exhibit 27 was marked for identification.)

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BY MR. BEEHLER:
Q: Would you identify Respondent's Exhibit 27, sir.
A: These are someone's notes from a Phase 2 workshop that occurred on August 14 of 1991.
Q: Someone's notes. Do you know whose they are?
A: Oh, I — I —
It's someone on the staff. I don't know who.
Q: Who found these notes for you?
A: These were part of the — the record that was discovery, I assume. There's a number down here; it's a CARB document.
Q: Who gave you Respondent's Exhibit 27 to bring with today?
A: Some of these documents were given —
Q: I'm asking —
A: Oh.
Q: — about Respondent's Exhibit 27.
A: Mr. Goldman.
Q: Okay. Mr. Goldman gave you Respondent's Exhibit 27 to bring today. You didn't find it yourself; is that right?
A: Correct.

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Q: You don't even know whose notes these are: is that correct?
A: No.
Q: What I said, is that correct?
A: No. Correct.
Q: Does Respondent's Exhibit 27 reflect any statements by Unocal at all?
A: Yes. There's a — there is a reference on the first page, Mike Kulakowski.
Q: Uh-huh.
A: On the next page there's a reference to Denny Lamb, part way down.
Q: Uh-huh.
A: On the next page there's Mike Kulakowski again. There is Mike Kulakowski again on the next page.
Q: Now you're on 1063?
A: Six three, that's correct. And on the last page, Mike Kulakowski, he did a Unocal presentation.
Q: Okay. Now this says it's 8-14-1991. Were you at this workshop?
A: I — I don't recall specifically. There's a very high probability that I was at that workshop and was heavily involved in the regulations.
Q: You believe you were?

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A: I believe I was, but I can't say for certain.
Q: Okay. Do any of the statements reflected here by Unocal — ah, let me withdraw that.
Are any of the statements here by Unocal false?
A: I don't think I'll use the word false, but I would say misleading.
Q: How are they misleading?
A: If you go to the third page, that's 1061 —
Q: Yes, sir.
A: — Mike Kulakowski says, "Set RVP to limit." I think that's "Reproducibility factor," then he says "final cost effectiveness should match reality." I think that's — we think that's misleading because the reality was that Unocal had applied for a patent, and certainly, had they told us about that, that the reality would have been different. And so —
Q: What was Mike Kulakowski discussing here, can you tell?
A: Looks like he was talking about RVP limits.
Q: And what was the issue?
A: They were —
Probably had some issues with what we were

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doing with RVP.
Q: The fact that you were not willing to average it?
A: That — that could have been it. Although he's talking about here reproducibility factor. I'm not totally clear on that.
Q: Wasn't Mike Kulakowski discussing with you the fact that your regulations weren't taking into effect the potential reproducibility factor in measuring Reid vapor pressure?
A: That could be possible.
Q: And if in fact you took a reproducibility factor into effect, that your Reid vapor pressure would have a broader range, wasn't that what was being discussed?
A: I don't recall the specific details, but that's not what I was focusing on at this point.
Q: Well I'm — I'm asking you back on August 14, 1991, what the context of his statement was. It related to Reid vapor pressure and the reproducibility of Reid vapor pressure: correct?
A: That's what this says, correct.
Q: And the final cost effectiveness should match reality, is that comment made in reference to the Reid vapor pressure?

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A: You could infer that. It probably is. But regardless of what it was in reference to, I assume that he's referring to the cost effectiveness of what we're doing and the cost effectiveness of the regulations.
Q: And does he mean reality here of how gasoline is actually produced and measured?
A: I don't know. You'd have to ask him.
Q: Anything else in here that's false or misleading?
A: That's it for this document.
Q: Okay, sir.
(Respondent's Exhibit 28 was marked for identification.)

BY MR. BEEHLER:

Q: Please identify Respondent's Exhibit 28.
A: This is another set of notes from that meeting of August 14, '91.
Q: Whose notes?
A: These look like Bob Fletcher's. I would — I would suggest they're Bob's.
Q: Did you discuss these notes with Bob Fletcher?
A: In — in what time? Any — at any time?
Q: Well when did you first see these notes

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marked as Exhibit — Respondent's Exhibit 28?
A: Oh, probably a week —
Within the last couple of weeks.
Q: Okay. Have you discussed these notes with Bob Fletcher?
A: No.
Q: Where is Bob Fletcher?
A: Bob Fletcher is a division chief at the Air Resources Board.
Q: Located here in Sacramento?
A: Correct.
Q: Does this document reflect any false or misleading statements by Unocal?
A: Just refresh my —
The reason I think this — this document is important, it — it shows that at that workshop on page 599, that there was discussions of cost on the page —
Q: Okay. Let me see if I can —
A: Sure.
Q: — have you answer my question first. Does this document reflect any false or misleading statements by Unocal?
A: Since the majority of the comments here don't have an identified individual, I really —

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really can't say specifically. Toward the end there's some different names, but up front —
Q: I'm sorry.
A: — there doesn't —
Okay, ask me again. I'm sorry.
Q: Does Respondent's Exhibit 28 reflect any false or misleading statements by Unocal?
A: Only through omission.
Q: Do the statements reflect — I'm sorry. Let me back up.
I understand your testimony that you've already told us that you think Unocal should have told you any time they met with you: —
A: Right.
Q: — right?
A: Correct.
Q: Okay. We're beyond that right now into the reason you brought these documents with.
A: Okay.
Q: And I'm asking you if Respondent's Exhibit 28 reflects any false or misleading statements by Unocal.
MR. ROBERTSON: Objection, form, argumentative.
MR. GOLDMAN: Asked and answered. He said

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by omission they do.
A: That's my answer.
Q: Can you point me to any statement in Exhibit 28 that is not true?
A: Well some statements that we view as misleading from the perspective that there was here another opportunity for Unocal to advise us, because there — the purpose of this is to indicate cost was part of the discussion at this workshop.
Q: Okay. And —
A: So that's why —
Q: — for — let me ask it again.
A: Okay.
Q: You brought this document with and I want to see if there's a statement in here that you contend was made by Unocal which was false.
A: And as I indicated, by omission they — they —
They were at this meeting and they chose not to inform us.
Q: Which statement contained in this Exhibit 28 is false by omission?
A: The fact that they have a patent pending.
Q: Which statement are you referring to in Respondent's Exhibit 28 was false by omission?

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A: Whenever in here there was discussions — On page 599 there was discussion of costs.
Q: By Unocal?
A: I don't know who — who, but it was — cost was discussed.
Q: Sir, I'm asking you a very specific question here, whether there are statements by Unocal in Respondent's Exhibit 28 that are false or misleading.
A: And I have to answer you by saying what's misleading is the things they didn't say, and that's why I think this is important.
Q: Okay. There's nothing — there's nothing in here that you would say Unocal said was false. —
A: On the — on the —
Q: — you want us to —
A: On the face of this, yeah, the words.
Q: You think you should have been told about the pending application on August 14, 1991.
A: Correct.
Q: Okay. Other than that —
A: Before —
Q: — is there something that Unocal said on this date that was false reflected in this document?
A: Okay. Other than what I said about

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omission, I would say no.
Q: Now this is the same date as Respondent's Exhibit 27.
A: Yes, it is.
Q: Okay. Do you see any reference here to Mike Kulakowski saying something about cost effectiveness reflecting reality or matching reality? Is that in Exhibit 28?
A: I don't believe so.
Q: Are you certain, sir, not even knowing who —
A: It is not here.
Q: — who the author is of Exhibit 27, that that was a statement that Mike Kulakowski ever made?
A: Well I'm quite confident that — that whoever —
This had to be someone on my — in the ARB, that that was a statement by Mike.
Q: But it's not reflected in Bob Fletcher's document.
A: No. And that's not surprising.
(Respondent's Exhibit 29 was marked for identification.)
BY MR. BEEHLER:
Q: Respondent's Exhibit 29 is the August 27,

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1991 letter. Have you already told me all the reasons that you believe that letter was fraudulent?
A: I believe so.
(Respondent's Exhibit 30 was marked for identification.)
BY MR. BEEHLER:
Q: Would you please describe what Exhibit 30 is.
A: These are my notes of an October 29 meeting with Unocal, and it indicates at least Denny and Mike Kulakowski were there.
Q: Given your previous testimony, let's see if we can cut to the ultimate question here.
A: Sure.
Q: Are there statements reflected here by Unocal in Exhibit 30 that were false or misleading?
A: Yes.
Q: Would you point those out for me.
A: Certainly. One, two — if you go down to the third dash. —
Q: Uh-huh?
A: — you see it says "Most heavily impacted of majors?" So Unocal was telling us that they are the most heavily impacted of major refiners. They said we're not sure we can recover costs or that we

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can acquire capital. (Clearing throat.) Excuse me. They further said they have one billion dollars in their budget.
Q: Okay. Let's go back to your first point. Okay? Just so —
A: Certainly.
Q: It's your recollection here from looking at your notes that Unocal asserted that it was the most heavily imported — impacted of the majors —
A: Yes.
Q: — by your proposed regulations.
A: Correct.
Q: Did they say what they meant by that? Is that the two bullet points you have there?
A: Yes, that sub —
That's what they had said underneath that.
Q: So when they said they were the most heavily impacted, they said what? What's their first point?
A: "Not sure can recover costs."
Q: Did they tell you what they meant by that?
A: Yeah, that they weren't sure they could recover the costs that they were going to have to incur to meet our regulation.
Q: Have any of your refiners recovered their

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costs as a result of your regulations?
A: I — I don't know.
Q: Do you know if Unocal ever recovered its costs?
A: I don't know.
Q: Unocal went out of the refining business; didn't they?
A: Yes, they did.
Q: What was the second point here?
A: The other reason why they're most heavily impacted was that — basically that they're not sure that they could acquire the capital.
Q: Did they tell you what they meant by that?
A: Yeah, the money to make the refinery modifications they would need to make.
Q: Any other discussion on that?
A: Well they went on, they said they had one billion dollars in their budget to cover the Phase 2 regulations. Then further down you see sulfur is a big problem. Then the next —
Q: Can — can I stop you before you go to the next one?
A: Sure.
Q: How is what you've just described about being most heavily impacted and the two bullet points

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[1] that you referenced and having a billion dollars in
[2] their budget to cover the Phase 2 regs. how is that
[3] false or misleading?
[4] A: Well it's kind of — it — it's another
[5] instance where they had an opportunity to tell us
[6] that they had this patent that was going to have
[7] significant impacts on the regulation. and it's to me
[8] somewhat misleading that not sure we can recover
[9] costs. and yet they have a patent applied for. and if
[10] the patent's granted they have a potential huge
[11] windfall that they're going to obtain. And then they
[12] tell us they're not sure they can recover their
[13] costs. you know. that's whatever they are able
[14] ultimately. if ever. on the. you know. the patents,
[15] so that to me was very misleading.
[16] Q: Okay. What else in this document?
[17] A: Sure. As you go down the — see sulfur is
[18] a big problem, go to the next bullet. and that word
[19] there is "Probs." short for problems. They talked
[20] about emissions. costs —
[21] Q: I'm sorry. are you still on 1921?
[22] A: Yes. Right here. this one. Mr. Beehler.
[23] Q: Okay.
[24] A: And the first — the first dash says "E-m."
[25] that's my shorthand for emissions. The next says

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[1] "Costs." and once again — well they have reiterated
[2] their concerns about costs and —
[3] Q: Well let me ask you this: Do you remember
[4] what Unocal said the problems were with costs in
[5] reference to this bullet point?
[6] A: Yeah. it's costs of complying with the —
[7] with the regulations.
[8] Q: That's the same point. then. that you've —
[9] A: Yes.
[10] Q: — earlier told me about?
[11] A: Yes. Because see what they did. they
[12] reiterated all of the problems that they had.
[13] Q: Okay. Is there something else here that's
[14] false. misleading?
[15] A: That's it.
[16] Q: Did they tell you that you had lack of
[17] technical justification for your regs?
[18] A: It says here. yes. they — they believe
[19] that.
[20] Q: Was that false or misleading?
[21] A: That's their view.
[22] Q: Anything else on Exhibit 30. sir?
[23] A: That's all.
[24] MR. GOLDMAN: I need to take a very quick
[25] break.

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[1] THE WITNESS: Okay.
[2] THE REPORTER: Off the record, please.
[3] (Recess taken.)
[4] (Respondent's Exhibit 31 was
[5] marked for identification.)
[6] BY MR. BEEHLER:
[7] Q: Looking at Respondent's Exhibit 31. sir.
[8] would you identify that document.
[9] A: They are notes of the 10-29-91 meeting that
[10] we had with Unocal.
[11] Q: Whose notes are they?
[12] A: I believe these are Bob Fletcher's notes
[13] again.
[14] Q: Does Respondent's Exhibit 31 reflect any
[15] false or misleading statements by Unocal other than
[16] the general statement that you've provided that
[17] Unocal should have told you at every opportunity they
[18] had?
[19] A: By-omission —
[20] Q: Right.
[21] A: — statement? Yes.
[22] Q: Which — which ones. sir?
[23] A: And I'll take you through those. The
[24] first — first line. again "All Unocal's refineries
[25] are in California - Cannot pass costs over other

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[1] products."
[2] Q: What did Unocal mean by that?
[3] A: Basically that they couldn't pass the costs
[4] of the — of the — excuse me. it's getting late.
[5] I'm going to have to slow down a little bit. The
[6] mind is getting slow.
[7] But they basically could not pass on the
[8] costs and spread them over other products that they
[9] had or even to refineries outside of California since
[10] they made the reference to all their refineries are
[11] in California.
[12] Q: What Unocal is telling you here is that
[13] because all their refineries are in California. it's
[14] not as though they have gasoline in other states that
[15] they could put production costs off on: is that fair?
[16] A: That — that's fair. And also it says they
[17] cannot pass costs over other products. so — which to
[18] me means. you know, pass — impose some of the costs
[19] on like diesel fuel. jet fuel. lubes and that kind of
[20] stuff.
[21] Q: Okay. How was that false and misleading?
[22] A: Well what's false and misleading here. once
[23] again they're talking about their difficulty in being
[24] able to make the investment and incur the costs
[25] that — for compliance with the regulation. and they

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[1] did not tell us the rest of the story. that there was
[2] a heck of a cost-recovery factor sitting out there
[3] which is basically their — their patent that they
[4] had applied for.
[5] Q: Is that the reason it's false or
[6] misleading?
[7] A: Correct.
[8] Q: Anything else. sir?
[9] A: Well the next statement. "Concerned about
[10] recovery costs." same — same reason.
[11] Q: That's false and misleading.
[12] A: Correct.
[13] Q: Did you understand that that was Unocal
[14] expressing concern about recovering costs as a
[15] refiner in connection with your proposed regulations?
[16] A: It's Unocal as a company.
[17] Q: Did you understand that they were talking
[18] about the costs that would be imposed upon them as a
[19] refiner in connection with your reconfigure — in
[20] connection with your regulation?
[21] A: Refinery costs that —
[22] Yeah. They were talking about the costs
[23] associated with the refinery and their inability or
[24] difficulty to recover those costs. but they did not
[25] tell us about the patent application which would have

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[1] had a significant factor in terms of cost recovery.
[2] Q: Anything else. sir?
[3] A: Let me just go down here briefly if you
[4] don't mind.
[5] Well they make a point here under
[6] "Wintertime oxygenates" that they're not recovering
[7] costs for — I believe the current supplies of
[8] oxygenates.
[9] Q: What did they mean by that?
[10] A: Well our oxygenate — let's see. this is
[11] '91. Just — just what it says. they're using
[12] oxygenates and they're not recovering the costs that
[13] they're incurring for their current supplies of
[14] oxygenates.
[15] Q: Does that refresh your recollection that
[16] one of the points that Unocal was advocating to you
[17] was that oxygenates should not be mandated by your
[18] regulations?
[19] A: It — it's possible. See —
[20] And let me explain so you understand. The
[21] problem of not mandating. we were under a federal
[22] mandate that there had to be a certain amount of
[23] oxygen in the fuels. so what I'm having difficulty —
[24] We didn't have much choice because we had
[25] to — our regs had to comply with the federal

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mandate.
Q: Unocal was asking you to opt out of that federal mandate: weren't they?
A: Yes. Well they indicated that.
Q: And they were making that statement to you by expressing concern about their recovery of costs by having to use oxygenates: is that fair?
A: In this — this point here. But it's another —
Q: No. Is what I said fair?
A: I'm sorry, could you please repeat it?
Q: The concern expressed on oxygenates here which you've identified as being false or misleading related to Unocal's ability to recover costs for oxygenates: right?
A: That is correct.
Q: And you understood that they did not want you to have regulations which, whether it was because of California or because of federal requirements, mandated oxygenates: is that —
A: Well the problem is if you look at the next line it says they plan on meeting a two percent oxygen requirement, so that doesn't comport with that.
Q: So how did you understand this then?

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A: I understood this just as the face of this says, that they're having current problems in recovering the costs that they're having to incur for oxygenates. And what's misleading is the omission of the fact that they have a patent applied for and there's a huge — they're going to recover, you know, all sorts of money if that patent's granted.
Q: Anything else false or misleading in Exhibit 31?
A: Yes. You note it says "RFG - Phase 2," then it says "Predictive model?"
Q: Yes.
A: Okay. Then it says "No predictive model yet. Supportive of this approach. Progress being made. Must happen soon. Linkage to compliance date."
Q: Do you recall what that discussion was?
A: Yes. That — that's very clearly they wanted —
The predictive model would have enabled Unocal, if they had the predictive model soon enough, they could have used the predictive model in determining what, in the degree of refinery modifications, they had to make. If they didn't have the model they would have had to rely on the

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regulations that were adopted. So what they were telling us is that the model's important, linkage of it to the compliance date, because they wanted to have the opportunity to use the predictive model in updating or making the changes to their refinery. And the reason for that is they thought by having the ability to use a predictive model, it would save them costs.
Q: Unocal was advocating to you at this meeting that you not put in fuel specifications in '91 but rather delay those specifications until a predictive model was developed: isn't that right?
A: I think what they were saying here is link the compliance date of being when they have to make Phase 2 gasoline available, push it out the refinery, so to speak, to the predictive model. Because basically we were providing refineries, oh, about four years, was it, from — was it November of '91 till March '96? Whatever that is. And what Unocal wanted is they were okay with the four years, but they wanted the four years to start when we adopted the predictive model.
Q: Okay. Let's see if we can — I — I think I understand what you're saying here. You were proposing to pass regulations in 1991: correct?

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A: Correct. Correct.
Q: And what Unocal was saying is, well, if you're going to develop a predictive model anyway, don't tell us that we have to comply by 1996, link that compliance date to a time period when you pass the predictive model so we only have to reconfigure once in terms of your ultimate regulations. Is — is that what you're saying?
A: No. What I'm saying — it's a little — a little different. Let me try again. What they wanted to be able to do was have the clock start for the four years, have — have that clock start when the predictive model is adopted.
Q: Okay. I thought that's what I was saying. So —
A: Yeah.
Q: So if you developed a predictive model in 1992 or 1993, then they wanted that full time period again in order to have that full time period to reconfigure the refineries.
A: Correct.
Q: That's what they were expressing to you here: right?
A: Correct.
Q: And in fact they go on to express that part

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of the reason for doing that is they don't want you to end up changing your flat limits when you get to the predictive model if you're already passing them in '91 and they have to build them: is that — isn't that right?
A: No. I — I have a different take on this next point where they talk about certainty.
Q: Okay. Tell me.
A: The issue with certainty is — keep — Keep in mind we were asking refiners to spend significant amounts of money, you know, five billion dollars plus. Refiners wanted to make certain that we weren't going to change the game throughout this process. Because they had to move very quickly. You know, you can appreciate what they had to get: permitting, environmental documents, local permitting, Coastal Commission stuff possibly, there was a tremendous amount of work, in addition to deciding what they need to do with their refinery, hire con — hire contractors, get the construction done, get everything started up, get it all working so in March '96 they can start pushing gasoline out the door. So what this — what this really relates to is the fact that don't change the game, don't change the flat limits or, see, don't change the

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predictive hotel because — and we had — were —
See, here we were in the process of working to start development of the predictive model, because up here it says progress being made, so — so even before we took the Phase 2 regulations to the board we started working with the companies on the effort to develop the predictive model. Because at one point I think we — we had said, you know, we thought we were going to come back in '92 with the predictive model, although it turns out it turned out to be a much greater undertaking than we thought, and every — and we and I think others agreed we needed to take some more time because we wanted to get it right. So this thing about certainty is — is a very fundamental thing that we hear quite a bit about in a lot of areas, says: Don't change the rules. Because we're going to invest so much, if you change the rules at the last minute because you're getting opposition from the public because they're going crazy because you're going to maybe increase gasoline ten cents a gallon, you, ARB, need to stay the course because we're going to make this investment, we want to have an opportunity to recover this investment, so don't change the rules on us, i.e., the regs, such that it undermines our ability to recover our costs.

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Q: When — when did they want certainty, throughout the entire compliance period here?
A: They wanted certainty, once the regs were put in place, they were going to be — they were going to be there.
Q: Because once they started then to make those investments, they didn't want you to down the line decide to change those regulations and make their investments different; is that what you're saying?
A: Yeah, strand — strand their investments or, you know, make them significantly less or — or more.
Q: Now was that statement false or misleading?
A: It is from the perspective of — of the omission once again, because this is all tied to costs.
Q: Okay.
A: You know, the reason for certainty is costs.
Q: Anything else that's fraudulent or deceptive in this document?
A: Well let me just — I'm just noting something here. They're mentioning a T50 averaging of 205, so it sounds like

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they were suggesting a T50 average limit to us.
Q: Well let's — let's spend a couple of minutes there, sir.
On October 29, 1991, what was your proposed spec for T50?
A: Ten twenty — let me take a look. Well the report went out October, so this is — so this was in the 45-day — day process. Well let me take a — take a quick look here. Because it would have been what was in the — in the staff report.
Okay. We had a proposed 210 as a flat limit. Ah. We didn't have an average limit back at that time.
Q: That's exactly right, sir. You —
A: They were suggesting averaging for T50 and were suggesting we put in a T50 averaging limit at 205.
Q: Okay. So looking at this document and now refreshing your recollection, let's go back through and clear this up.
By the time of this Exhibit 31 you had already put out proposed regulations.
A: Correct.
Q: And you didn't have any proposal for being able to make T50 flexible or average; did you?

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A: That — that's — that's correct.
Q: And so what Unocal was suggesting to you here was to try and gain flexibility on T50; correct?
A: That's — that's correct.
Q: Anything else in this document that is fraudulent or deceptive?
A: Other than again the omission of not telling us about the patent. And I don't — I don't want to minimize the importance of that to us.
(Respondent's Exhibit 32 was marked for identification.)
MR. ROBERTSON: Sir, did you get his last comment? Read back the last thing Mr. Venturini said.
MR. BEEHLER: "I don't want to minimize the importance of that to us."
MR. GOLDMAN: No. I noticed that the court reporter was picking up something; I just wanted to know if you had gotten that.
MR. BEEHLER: The comment is —
THE REPORTER: I did.
MR. ROBERTSON: Okay. Thank you.
BY MR. BEEHLER:
Q: Would you identify Respondent's Exhibit 32.
A: Yes. It's — it's — it says "Union Oil

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10/29/91." This is — was — was — was given to us at this meeting by Unocal. And it's very common how they were interacting with us in many cases. They'd present us something like they did with the June presentation and say action steps and things, so they were — this is basically their — their agenda.
Q: Who was present from Unocal during this meeting?
A: Well let's see, up — I'm going back to Respondent's Exhibit 31.
Q: Okay.
A: Mike Kulakowski, Denny Lamb. Did you just ask for Unocal or —
Q: Yes.
Were you there?
A: Yes.
Q: Okay. What is deceptive or fraudulent about Respondent's Exhibit 32?
A: If you look down, the third, it says "RFG PREDICTIVE MODEL."
Q: Yes.
A: And here again they talk about the delay in development must be linked to compliance date, the certainty. And — and once again, you know, linked to compliance date was — really had to do with costs

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and associated with costs, and also —
Q: Cost of reconfiguration.
A: Cost to Unocal to comply with the regulation. And they had another opportunity at this meeting to advise us of a very material cost to — to our program, and so once again they did not give us the full story.
Q: Now the words actually used by Unocal here for certainty says "CERTAINTY MUST BE THE SAME WITH SPECS OR MODEL." Looking at this language here, what do you understand that to mean?
A: I think it's consistent with the way I described it: They don't want the specs or the model to change. You know, once you've decided the — what the regulations are, keep them in place.
Q: So if you decided on a predictive model, that you should keep that predictive model in place as well and not change it?
A: Right.
Q: Okay. And in fact you should delay the compliance date with ultimately having to make gasoline, link that to when you finish your predictive model.
A: That's correct, so they can take advantage of any cost savings that the model would provide to

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them in terms of their capital costs.
Q: Is there anything else on this RX 32?
A: I think I already mentioned the omission and another opportunity that —
Q: You did.
A: — they had. Okay.
Q: Is there anything else?
A: No.
Q: The next document, before the court reporter marks it, appears to be an identical document to what you've just provided me. Is that right?
A: It is. The only difference is that's my handwriting saying "Union Oil."
Q: Okay. Is there any different testimony?
A: No.
Q: Can we set that one aside?
A: Sure.
MR. ROBERTSON: I'm sorry, you didn't mark that? I wrote too fast here.
(Respondent's Exhibit 33 was marked for identification.)
BY MR. BEEHLER:
Q: Looking at Respondent's Exhibit 33, sir, is this a letter directed to Jananne Sharpless of the

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California Air Resource Board from Roger Beach dated November 21, 1991?
A: That is correct.
Q: These were Unocal's official comments as part of the CARB 1991 rulemaking; correct?
A: That is correct.
Q: Other than your testimony that you feel Unocal should have told you about the pending patent application at every opportunity that they met with you, other than that, is there something reflected in here that's false or misleading?
A: Yes, and it's illustrative of the continuing misrepresentation, continuing to mislead us. You know, in the first paragraph Mr. Beach states that the regulation "...is the most costly regulation proposed to date by any California regulatory body. Estimates of the cost of compliance are as high as 10 billion for our industry." And there's a failure there to mention the other — the costs of the — of the patent.
Q: Okay. Just a minute here. First of all, you have check marks on the document you're looking at. Are those your check marks?
A: Those are mine.
Q: Okay. On the first paragraph, the line

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that you just read, did you understand Mr. Beach to be making some representation as to what Unocal's individual refinery costs were?
A: No. He's talking about the costs for our industry, upwards of 10 billion dollars.
Q: And others had made such statements to CARB; is that right?
A: I — I'm sure we heard from others about the cost overall to the industry. In my review I was focusing on Unocal's information.
Q: And did you understand that Mr. Beach was making some separate representation of his individual determination of the cost to the industry?
A: Maybe, as we get back into this — this further.
Q: When he said "Estimates of the cost of compliance are as high as 10 billion dollars for our industry," did you understand that is something Unocal had determined or that others had said?
A: This is Unocal's statement. I cannot say and recall if others had used this same number. They may have, I just — just don't — don't recall.
Q: You don't recall whether you — how you understood that at that point in time.
A: What I do understand is this is Unocal's

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statement of the cost of compliance for the industry. I can't verify where they got that — that number.
Q: And when they said "cost of compliance," did you understand that to mean in connection with refinery reconfiguration?
A: All the costs associated to comply with the regulation. Because it could have been more than refinery configuration. There may have been some terminal stuff and, you know, so forth. But the cost of complying with the regulation.
Q: With the regulations that were coming out.
A: The — yes.
Q: And you —
I just want to make sure what you understood. That number one, you understood there to be some reconfiguration costs; right?
A: It's the —
What he is telling us is that the cost for our industry to comply with this proposed regulation is as high as 10 billion dollars, whatever that includes in terms of the costs.
Q: Did anyone ever ask him what costs of compliance he meant when the figure 10 billion dollars was used?
A: Don't know.

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Q: Okay. What else is false or misleading?
A: And — and I guess just for the record, you know, that we believe was misleading because there's another significant cost that was not mentioned.
The next statement basically where Mr. Beach says we are strongly opposed to the imposition of measures that are not cost effective.
Q: Did you understand that he felt your measures as proposed were not cost effective?
A: Correct.
Q: So he was objecting to your regulations.
A: That they were not cost effective as they were proposed.
Q: He was objecting to your regulations.
MR. ROBERTSON: Objection, misleading.
Q: Is that right?
A: But I — I think I answered it because it — he objected to the regulations as proposed. And as I said earlier, I don't think they were opposed to regulation — to reformulated gas regulations, they were opposed to the specifics that we were proposing.
Q: Well sir, this is the November 21, 1991 letter, a formal comment in response —
A: Correct.

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Q: — to your rulemaking for specific regulations; right?
A: That's correct.
Q: He was opposed to those specific regulations; correct?
A: A very narrow interpretation that he was opposed to those specifications.
Q: And he said they weren't cost effective; didn't he?
A: He did.
Q: Okay. What else is false or —
A: Let me finish there, though, please. The reason why I think this is important is he expressed the view — and you know, he's really saying opposed to the imposition of measures that are not cost effective, so that means any measure, whether it's gasoline or something else I could interpret that — that. But the thing that's troublesome, here again is another opportunity where information was withheld that had a material effect on the cost effectiveness of our Phase 2 regulations.
Q: Would you turn to the next page, sir, given the point that you've just made. Do you see where it says specifically the "Proposed specifications?" Do you see that bullet point?

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A: Yes.
Q: Okay. You understood that to be — to be in relation to the regulations you were proposing; right?
A: Correct.
Q: The ones in 1991.
A: That's specific to the Phase 2 regulations.
Q: And the last sentence that he says in that bullet point is, "Based on Unocal's review of the documentation for this regulation, there is inadequate support for any conclusion that the proposed specifications result in cost effective emission reductions." Do you see that?
A: In — in his view.
Q: Well yes, in his view. He opposed these regulations on the grounds that they were not cost effective; didn't he?
A: In terms of what was proposed specifically. And — and see, the trouble I have is — have is we just went over the meeting that we had with Unocal where they were suggesting to us changes that they would find appropriate to the regulations, so that's where I have to draw the distinction between flat-out opposition versus opposition to the set of specifications that we proposed. And is —

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[1] Am I clear on that distinction?
[2] Q: Sir, I'm asking a very straightforward
[3] question here.
[4] A: Uh-huh.
[5] Q: You had regulations that you put out and
[6] there was a formal comment period and Unocal opposed
[7] those regulations during the formal comment period on
[8] the grounds that they were not cost effective as
[9] reflected in Exhibit 33.
[10] A: Yes.
[11] Q: Okay. Is there anything else that's
[12] misleading or false?
[13] A: And just for clarification, too, you're
[14] correct that he talks about the Phase 2 and that
[15] proposed specifications, you pointed out cost
[16] effective, but I would argue that his mention of cost
[17] effectiveness in the first paragraph is a much
[18] broader — it's basically a statement of policy, that
[19] they're opposed to any regulations that are not cost
[20] effective. That's the distinction.
[21] Q: He was making this statement in relation to
[22] your proposed specifications as part of the formal
[23] rulemaking; right?
[24] A: This letter is — yeah. This letter is in
[25] response to the rulemaking, correct.

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[1] Q: Okay.
[2] A: On the bottom of the first page —
[3] Q: Uh-huh?
[4] A: — Unocal was very much opposed to one of
[5] the options we had in the regulation that said, hey,
[6] if you don't want to meet our limits that we've set
[7] out, you can conduct your own vehicle testing program
[8] and come up with your own specifications as long as
[9] it got the same emission reductions that we
[10] identified in our specifications. Unocal very much
[11] opposed that. And it's interesting the choice of Mr.
[12] Beach's words here that — that the testing only
[13] provided an illusion of flexibility.
[14] Q: And did he say what he meant by that?
[15] A: No. Well —
[16] Q: Isn't the —
[17] A: — in their view that they didn't feel they
[18] were flexible.
[19] Q: Well —
[20] A: He doesn't describe flexible.
[21] Q: — does he describe in the next sentence
[22] what he meant by that?
[23] A: Well he says, "The statistical treatment
[24] proposed by Staff will result in programs that are
[25] not workable and do provide an economically feasible

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[1] chance of passing a truly equivalent fuel."
[2] Q: No. I'm sorry.
[3] A: Yes.
[4] Q: Looking at that statement, do you have an
[5] understanding of what Mr. Beach meant when he said
[6] that your vehicle-testing option only provides an
[7] illusion of flexibility?
[8] A: Yes, I do.
[9] Q: Okay. What was his criticism?
[10] A: His criticism of the — that basically the
[11] vehicle-testing option really was not a viable option
[12] for someone to use, so where we were saying it
[13] provided flexibility, it really provided an illusion
[14] of flexibility because they believed it was so — so
[15] rigid or constrained it would be hard for someone to
[16] use.
[17] Q: In other words, in order to comply with
[18] your vehicle-testing option you would have to prove
[19] something statistically that he didn't believe CARB
[20] staff would ever agree was statistically valid.
[21] A: Yeah, that the — the statistical test was
[22] probably a big hurdle to overcome.
[23] Q: Did you agree with Mr. Beach on that?
[24] A: No. We included the vehicle-testing option
[25] in the — in the regulation.

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[1] Q: And it's still there.
[2] A: It's still there.
[3] Q: Even as part of Phase 3 it's still there.
[4] A: Correct.
[5] Q: In fact staff said that it was relatively
[6] cheap to develop a vehicle testing option; didn't
[7] they?
[8] A: I don't recall that.
[9] Q: Okay. We'll get to that.
[10] A: Okay. The point here which I wasn't able
[11] to explain is why I felt the term "illusion of
[12] flexibility" was misleading is because they were
[13] critical of us for providing this illusion of
[14] flexibility, and yet they withheld information from
[15] us which significantly affected the — the
[16] regulations. So that's another example of the
[17] deception.
[18] Q: Anything else on Exhibit 33?
[19] A: Well once again in the "Predictive model"
[20] paragraph they — they talk again about the linkages
[21] of the compliance date and so forth, and — and once
[22] again that is tied to — to costs once again. And so
[23] they were arguing delay so we can decide on our costs
[24] using the predictive model to reduce our costs, yet
[25] once again not sharing the costs — the fact of the

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[1] patent and the material effect it would have on our
[2] program.
[3] Q: Isn't Mr. Beach specific here in the last
[4] sentence of that paragraph, when he's discussing —
[5] A: Yes.
[6] Q: — wanting you to delay implementation, he
[7] is saying this is the only way in which producers can
[8] take advantage of the model in development of Phase 2
[9] compliance strategies?
[10] A: No, that's — that's correct in what he's
[11] saying.
[12] Q: Okay.
[13] A: But what I'm — what I'm saying is what's
[14] not being said here, the sin of omission.
[15] Q: Okay. Have — are you finished with —
[16] A: No.
[17] Q: — everything that's fraudulent or
[18] deceptive in Exhibit 33?
[19] A: No.
[20] Q: Okay. Tell me what else.
[21] A: On the proposed specifications, Mr. — Mr.
[22] Beach says that we set the level of specs at levels
[23] that make the strategy significantly less cost
[24] effective than previous measures passed by the board.
[25] Q: Okay. How was that fraudulent or

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[1] misleading?
[2] A: Because there's a significant cost that
[3] they didn't mention to us which would have had a
[4] significant effect on — on our program.
[5] Q: So it would even be less cost effective
[6] under your view.
[7] A: By me "less cost effective" meaning more —
[8] more costly.
[9] Q: Mr. Beach is telling you that your
[10] regulations are not cost effective. You're saying
[11] that that's fraudulent and misleading.
[12] A: Because they didn't tell us information
[13] that was important in the determination of the cost
[14] effectiveness.
[15] Q: Did you understand what in particular Mr.
[16] Beach was referring to here when he was using this
[17] term "less cost effective?"
[18] A: Yes.
[19] Q: What?
[20] A: Well he was saying in their view that the
[21] cost effectiveness that we calculated for this
[22] regulation was — the numerical number was greater
[23] than previous measures that had been passed by the
[24] board.
[25] Q: Did you ever ask him for details on that?

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A: Mr. Beach? No, I don't recall that.
Q: Okay.
A: The report did have a discussion in it of cost effectiveness of other regulations.
Q: And we'll get to that.
A: Okay.
Q: Is there anything else about this document you want to tell me is —
A: Let's go to page —
Q: — fraudulent?
A: — 1748.
Q: Uh-huh.
A: These are the detailed comments. I find it interesting, under the sentence that says "EMISSION REDUCTIONS/COST EFFECTIVENESS" —
Q: Yes.
A: — and Unocal is saying — and this is on the winter oxygenate program I want to clarify, and it's ironic Unocal does not oppose a statewide enforcement of the proposed program; however, the estimated 20 percent oversupply would cost the consumer in the range of seven to — 7.3 to 10.8 million dollars and so forth and so forth.
Q: We're talking about the winter oxygen program here.

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A: That's correct.
Q: Okay. And — and what — what is being represented here that's false or misleading?
A: They seem very concerned in pointing out to us the fact that by making our winter oxygen program statewide that we were going to cost the consumer some additional dollars, and yet at the same time failed to tell us how much the consumers are going to have to pay or disclosing to us the patent which was going to increase the cost for — for the consumers in California.
Q: So when Unocal told you that they thought your winter oxygen program would create a 20 percent oversupply and cost consumers seven to 10 million dollars over the program duration, that was fraud — that was false and misleading because they didn't disclose the patent.
MR. GOLDMAN: Objection, misstates his testimony.
A: What I said was that they kept telling us — and what I'm —
Maybe this will help if I put this in context. What I'm focusing on is the fact that Unocal was very much — I mean constantly talking to us about costs of the program and so forth.

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Q: Complaining about your costs.
A: Well complaining, yeah, commenting, complaining about cost, and yet they did not tell us of a material fact that would affect the cost of that program, not only the cost of that program, but the benefits that they as a single company would derive from that — that patent.
Q: And the comment that you're referring to right here is the cost of having to have too much oxygenate in the program; right?
A: Correct.
Q: Okay. What else?
A: I guess at the bottom of the page again it talks about distorting cost effectiveness of — of the program, and once again there's some information they didn't provide to us about — that was material to the cost effectiveness.
Q: Okay. The document —
The statement that you just pointed out is in reference to the winter oxygen program; right?
A: Correct.
Q: And Mr. Beach in this attachment to his letter is complaining that the emissions benefits are exaggerated and thus distort the cost effectiveness; right?

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A: Yes.
Q: Okay. Anything else in this document, sir?
A: And let me — let me go through here. On page 1751, get into the Phase 2 standards — oh, I —
We already dealt with this. This is the illusion of flexibility and the testing option. We already discussed that.
Under "CERTIFICATION BY PREDICTIVE MODEL," I think we discussed the — the concerns we had with the linkage issue, and I would just like —
Q: I just ask is there something different about that that you not have told me?
A: That's why I'm going through. Let's see. fuel — certification of fuel specs. Let's see, they comment on RVP, comment on T90, they comment on sulfur, they comment on summertime oxygen, comment on olefins, aromatics, heavy aromatics, and benzine. No comments on the T50 proposal.
If you go back a few more pages we get to Section V, talks about "ECONOMICS." Second paragraph, they're commenting that there is no support for the assumption that we used that one half of the total capital spent would be operating expenses. This is — they get into the ratio of capital versus operating expenses, then they refer to

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some Turner Mason — work done by Turner Mason & Company for Unocal, "...the ratio of annual expense to total capital was characteristically between 60 and 70 percent," and they go on to say if we were to use the higher ratio it would have raised the cost of compliance for refiners that did not report operating expense data.
Q: If you would use a figure of 60 to 70 percent instead of 50 percent, would you end up with a figure that would show a higher cost of compliance?
A: I would have to go through the numbers, but I think — I think you would tend to have a higher — higher cost. I mean that's what he's alluding to here.
Q: Okay. Other than your statement that it was another opportunity to tell you about the pending application, what was false or misleading about that statement?
A: What's misleading about this statement and the misrepresentation is they were very concerned in commenting about annual expenses and annual costs, operating costs basically, and yet they did not tell us about what potentially would be a very significant annual cost.
Q: For Unocal?

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A: No, for the other refiners in light of the — the pending patent.
Q: Okay. Well is Unocal talking about their costs or refiners' costs here?
A: Well it's mixed. What they are saying here is that in work done by Turner Mason for Unocal, the ratio of annual expense to total capital — capital was, what, between 60 and 70 percent.
Q: Okay. So they were talking in that sentence about Unocal.
A: Right. But then the next sentence says if you apply — basically application of the higher ratio would tend to raise the cost of compliance for refiners that did not report operating expense data.
Q: Exactly.
A: And —
Q: Because you had used 50 percent; right?
A: Right.
Q: And you had used 50 percent based upon a Turner Mason document. Or was that wrong?
A: I don't — I don't recall what — actually what we used for the cost, but —
Q: In fact, sir, did you only use the survey of those six refiners for costs that you previously told me about?

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[1] A: We used that, sir. I think we did some LP
[2] work ourselves, too.
[3] Q: Didn't you decide that you couldn't get
[4] that LP work done by Bechtel and you never used it?
[5] A: Well that's — that's possible. I just
[6] don't — don't recall.
[7] Q: Okay.
[8] A: But the point here is that the comment is
[9] related to annual operating costs, and that referred
[10] to refiners that did not report operating expense
[11] data. And we only had, as you indicated, data from a
[12] few refineries.
[13] Q: Which you had not disclosed to Unocal
[14] because of confidentiality.
[15] A: Okay. And the point being that in — in
[16] actuality Unocal knew that the operating costs were
[17] probably going to be — annual operating costs were
[18] going to be probably higher because there was one
[19] cost that we weren't able to consider, and that's the
[20] cost of the patent.
[21] Q: They were telling you to raise your
[22] compliance cost — or at least criticizing the way
[23] you had done it, saying that they were off by 10 to
[24] 20 percent; right?
[25] A: That's correct.

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[1] Q: Okay. That yours was 10 to 20 percent too
[2] low; correct?
[3] A: That's correct.
[4] Q: Okay. Anything else?
[5] A: Let's go to the next page. They talk about
[6] our calculations and so forth on costs, they had some
[7] concerns about that, and — and —
[8] Q: I'm sorry, sir. Would you show me on page
[9] 1762 —
[10] A: Sure.
[11] Q: — the statement that you said is
[12] fraudulent or misleading?
[13] A: Okay. Let's see, the fourth paragraph,
[14] one, two, three — the fourth sentence. Let's begin
[15] where it says the word "However." "However, even if
[16] it were true, there would still be operational costs
[17] associated with the production of Phase 2 gasoline,"
[18] and once again, there were some operational costs
[19] which Unocal knew about and should have told us.
[20] Q: Sir, this paragraph, they're discussing how
[21] you've done your cost effectiveness in terms of when
[22] capital is paid off.
[23] A: Granted, yes.
[24] Q: And they are telling you that to interpret,
[25] as staff has, that capital is paid off by 2005 is

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[1] wrong; right?
[2] A: They disagreed with our — with our
[3] analysis, correct, and how we did the analysis.
[4] Q: They in fact say that they have refuted
[5] that assumption; right?
[6] A: Yes.
[7] Q: And then —
[8] A: Yes.
[9] Q: — they go on to say that even if you were
[10] right, even if —
[11] A: Uh-huh.
[12] Q: — even if capital was paid off by 2005,
[13] there's going to be additional operational costs;
[14] right?
[15] A: Correct.
[16] Q: Okay. How is that false or misleading?
[17] A: It's — I think I've said this. I'll say
[18] it again. It's misleading because there's another
[19] operational cost that wasn't put into the equation.
[20] Q: Where did they tell you what operational
[21] costs are included here?
[22] A: No, no. The fact that —
[23] Q: No, I'm just asking: Where did they tell
[24] you what operational costs are included here?
[25] A: They don't. That's what I wasn't referring

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[1] to.
[2] Q: Did Unocal tell you what operational costs
[3] they were referring to here in this sentence that you
[4] said is false and misleading?
[5] A: They don't say specifically what the
[6] operational costs are.
[7] Can — can I state my point again, please?
[8] Q: Sure.
[9] MR. GOLDMAN: Actually you were
[10] interrupted. You can complete your point.
[11] THE WITNESS: Okay, thank you.
[12] A: The point I'm trying to make, and this is a
[13] theme that is throughout all of this, is that Unocal
[14] was very concerned about costs. They kept talking to
[15] us about costs: the costs are too high, it's not
[16] cost effective. And yet they knew that they had
[17] applied for a patent, they knew that if that patent
[18] were granted they were going to charge people that
[19] wanted to make gasoline that impacted that — that
[20] patent, and yet through all this time they're talking
[21] about costs, providing technical comments, at the
[22] same time they knew there was this other factor and
[23] chose not to tell us till way late in the game. And
[24] so that's — that's — that's the theme. I mean
[25] the — you know, the statements they're making are

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[1] technical comments, but it's the omission of some
[2] very material information that is pervasive
[3] throughout all of the interactions during this period
[4] of time. And that's — that's the theme I'm trying
[5] to present to you and — and how frustrated, how
[6] disappointed, how angered we were at the Air
[7] Resources Board that, you know, we were — that we
[8] were used and our process was used. I mean these
[9] regulations were adopted to protect the public health
[10] of the people of California, they were not adopted to
[11] benefit one company, being Unocal. I can't be any
[12] more explicit than that, Mr. Beehler.
[13] Q: Did you ask Unocal what it meant when it
[14] used the term "cost effective?"
[15] A: No, because that's pretty well understood
[16] in our business when we're dealing with people what
[17] "cost effectiveness" means.
[18] Q: Okay. Anything else in this document
[19] that's fraudulent or misleading?
[20] A: On page 1763, the next page, —
[21] Q: Uh-huh?
[22] A: — the last paragraph before Section VI,
[23] they're commenting on our analysis of the impact of
[24] the regulation on small businesses, and we're
[25] criticized for only considering jobbers.

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[1] Q: They're telling you that there are
[2] additional costs.
[3] A: They're saying staff did not identify any
[4] other segments of the economy that will be impacted,
[5] say a cost increase of 20 cents per gallon will cause
[6] consumers to redirect over two and a half billion
[7] dollars of disposable income from other purchases to
[8] gasoline, this has significant impacts on small trade
[9] and service-related businesses, staff should include
[10] some mention of this fact. That's well and good, but
[11] for crying out loud, they're worried and criticizing
[12] us about this cost increase and yet there's another
[13] cost increase that's going to affect the consumers of
[14] California, that's going to affect small trade and
[15] service-related businesses, and they chose not to
[16] disclose that to us.
[17] Q: Did you only consider jobbers on the impact
[18] of the proposed regulations on small businesses?
[19] A: Well I assume that this is a correct
[20] statement. I'd have to go back and review things.
[21] Q: Unocal was telling you that there are other
[22] segments of the economy that will be impacted?
[23] A: By these regulations.
[24] Q: Did you change your cost-effectiveness
[25] analysis because of this statement?

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A: No. The report was — was already out.
Q: Anything else in this document?
A: I think that does it for this document.
MR. BEEHLER: It's 5:00 o'clock.
MR. GOLDMAN: Tomorrow at 9:00 a.m.
THE REPORTER: Off the record, please.
(Deposition recessed.)

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CERTIFICATE

I, Richard G. Stirewalt, hereby certify that I am qualified as a verbatim shorthand reporter, that I took in stenographic shorthand the deposition of PETER D. VENTURINI at the time and place aforesaid, and that the foregoing transcript is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at Minneapolis, Minnesota, this 16th day of May, 2003.

RICHARD G. STIREWALT
Registered Professional Reporter
Notary Public

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CERTIFICATE

I, PETER D. VENTURINI, hereby certify that I have carefully read the foregoing transcript, and that the same is a true and complete, full and correct transcription of my deposition, except:

PETER D. VENTURINI
Deponent

Signed and sworn to before me this day of May, 2003.

Notary Public

1

1 7:23; 8:21; 9:4; 16:13; 22:7; 33:5; 37:21; 38:15; 46:5; 57:21; 103:14; 104:1; 139:23; 157:11, 20; 224:1
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In The Matter Of:

Union Oil Company of California
Docket No. 9305

Peter D. Venturini
Vol. 2, May 14, 2003

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
Union Oil Company of California, Docket No. 9305
a corporation.

DEPOSITION OF PETER D. VENTURINI
VOLUME II, PAGES 285 - 545
May 14, 2003

(The following is the continued deposition of PETER D. VENTURINI, taken pursuant to Notice of Taking Deposition, via videotape, at the Hyatt Regency Hotel, Sacramento, California, commencing at approximately 9:03 o'clock a.m., May 14, 2003.)

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PROCEEDINGS

(Witness previously sworn.)

PETER D. VENTURINI

called as a witness, being previously sworn, was examined and testified as follows:

ADVERSE EXAMINATION (cont'd)

BY MR. BEEHLER:

Q: Good morning, Mr. Venturini.

A: Good morning, Mr. Beehler.

Q: Yesterday we started with Exhibit 21 and began to talk about all the documents that you brought with that you contend indicate or reflect that Unocal committed fraud or deceptive conduct. Do you remember that?

A: Yes.

Q: Let's continue on then with that process with the next document that you brought.

A: Certainly.

(Respondent's Exhibit 34 was marked for identification.)

BY MR. BEEHLER:

Q: Would you please identify RX 34.

A: This document is a November 21, 1991 oral statement by Unocal. It's — I'll just read it.

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It's "Unocal's Oral Testimony on California Air Resources Board Hearing on Adoption of Phase 2 Gasoline Specifications," it's signed by — well it's Denny Lamb's testimony, Manager of Planning, Fuels Planning Group.

Q: Couple of questions first of all. This says "Unocal Oral Testimony." Many times during your rulemaking people put in statements and they refer to them as testimony; don't they?

A: That's correct.

Q: In fact they — they don't sign them or take an oath as part of this testimony; do they?

A: That's correct.

Q: They simply submit these statements to you, or do they actually read them into the record?

A: It depends. Sometimes people will submit them for the record and summarize them; other times people will actually read the — the full statement.

Q: Okay. Looking at RX 34, would you tell me what statements there of Unocal are fraudulent or deceptive?

A: Okay. And — and some of these things we've already covered in Mr. Beach's letter, but I think it's important to reiterate that here Mr. Lamb was expressing some of the same —

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Q: Okay.

A: — views.

Q: And here's — and here's what I'd — what I'd like you to do. I'm very interested and want you to testify fully when I ask you a question, but I really want you to try and just answer the question that I pose and I'll follow up as needed. So at this point, sir, looking at RX 34, would you identify for me the statements that you believe are fraudulent or deceptive on Unocal's part.

A: Certainly. If you look at the second heading, the "VEHICLE TESTING CERTIFICATION OPTION," the fourth paragraph, Mr. Lamb was commenting on Unocal's concerns with that option, their belief that it's not workable, and they use the statement that it really doesn't provide any flexibility and it creates an illusion of flexibility.

Q: And you discussed with me yesterday why you feel that that statement is fraudulent or deceptive; correct?

A: I did. I certainly can go through that again.

Q: Not unless there is something different from — to add to your comments of yesterday.

A: No, other than it's deceptive in our view.

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On the next page, discussion of the predictive model, the fifth paragraph says, "The industry, however, needs the model for compliance flexibility in order to deliver the same benefits while minimizing capital investment and thus consumer cost." Particularly the mentioning of consumer cost to us is extremely misleading and deceptive in light of the fact that — that they've continued to not apprise us of a significant factor that would affect the cost to the consumer, and here they're using consumer cost as a basis to ask us to delay the implementation date so they can use the — the model and gain some cost savings through use of the model for their refinery management or development.

Q: As I understand it, Unocal was asking — we discussed this a little bit yesterday — Unocal was asking you to delay implementing any regulations until you had gotten the predictive model in order and then run the compliance date from — from that time. Is that fair?

A: They wanted us to delay the compliance date, not delay the regulation. They wanted —

The basic issue was four years for compliance. That started with the basically adoption of the Phase 2 regulation in '91. In essence they

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wanted that clock to start with the adoption date of the predictive model.

Q: And you didn't follow their advice; did you?

A: No.

Q: Okay. What's the next one?

A: On the next page they're — they're commenting basically on the — on the fact that we could meet our — the requirements in — in state law if we took no — no action. However, you know, they do make the point that Phase 2 could make contributions to early reductions, and once again they mention cost effectiveness —

Q: I'm sorry. Just show me the paragraph.

A: Oh. I'm sorry. It's the second paragraph. "The Board can select any set of specifications that are cost effective and feasible and still be assured that the Clea Air Act goals will be achieved."

Q: Okay. That statement is fraudulent or misleading to you?

A: Particularly where they talk about cost effective, because once again, you know, they know there's some material information that they're not sharing with us that affects the cost effectiveness of the program.

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[1] Q: Just a minute. Unocal had taken the
[2] position before staff and CARB that in fact you
[3] didn't have to do anything in order to meet the
[4] California Clean Air Act requirements; didn't they?
[5] A: I believe that's correct.
[6] Q: Did you follow their advice?
[7] A: No. We disagreed.
[8] Q: What's the next statement, sir?
[9] A: Very last page, —
[10] Q: Yes.
[11] A: — at the bottom of the page there's a
[12] discussion of the small refiner exemption.
[13] Q: Yes.
[14] A: The second. I guess, paragraph/sentence
[15] says, "Such an exemption could destroy any ability of
[16] the industry — any ability the industry may have to
[17] recover the extensive investments being required."
[18] Q: And why is that statement fraudulent or
[19] deceptive?
[20] A: Because they're — they're — they're
[21] commenting against providing some flexibility for
[22] small refiners and arguing that it could affect the
[23] ability of the industry, presumably the larger
[24] refiners, to recover their investment, and yet
[25] there's a major cost that they have not disclosed to

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[1] us that would also have an effect of hampering the
[2] ability of refiners potentially to recover their
[3] investments. That's misleading.
[4] Q: Every major refiner opposed the small
[5] refiner exemption; didn't they?
[6] A: I believe that's correct.
[7] Q: Even ARCO, which otherwise supported your
[8] regulations, opposed the small refiner exemption;
[9] didn't they?
[10] A: I believe that's correct.
[11] Q: And they opposed it generally on the
[12] philosophy that your rules and regulations should
[13] apply to all of the refiners, even the small
[14] refiners. Wasn't that the general objection?
[15] A: Yes, I — I believe so.
[16] Q: And did you follow Unocal's advice here?
[17] A: No, we did not.
[18] Also, I — I'd like to add the other
[19] refiners were not representing and not leaving half
[20] of the story out from us. And, you know, they had a
[21] valid, from their perspective, concern about small
[22] refiners. We disagreed and we went about our
[23] business.
[24] Q: So you didn't follow the other refiners'
[25] advice either.

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[1] A: No.
[2] Q: And —
[3] A: But you understand my — my point here why
[4] I believe Unocal's statement is — is deceptive
[5] and — and misleading, because of the fact of there's
[6] a major cost out there that they didn't tell us about
[7] that could affect the refiners' ability of recovering
[8] investment.
[9] Q: I understand your words.
[10] A: Okay.
[11] Q: Anything else on —
[12] A: That's it for that document.
[13] Q: — RX 34? Okay.
[14] (Respondent's Exhibit 35 was
[15] marked for identification.)
[16] BY MR. BEEHLER:
[17] Q: Would you please identify Respondent's
[18] Exhibit 35.
[19] A: Certainly. These are meeting notes, maybe
[20] Bob Fletcher's notes, but I'm not — not certain.
[21] they're dated 3-5-92.
[22] Q: Let me ask you something about that.
[23] A: Certainly.
[24] Q: Do you think these might be Bob Fletcher's
[25] notes because you over the years have become familiar

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[1] with his handwriting?
[2] A: Correct.
[3] Q: How far away is Bob Fletcher from your
[4] office when he's there?
[5] A: Oh, he's on another floor.
[6] Q: He's in the same building as you?
[7] A: Yes.
[8] Q: And you made no — no attempt to discuss
[9] these notes with him prior to this deposition.
[10] A: No. I didn't — didn't see a need to
[11] Q: Let me ask you: All the exhibits from —
[12] that — that you brought with, were all of those
[13] provided to you by your counsel?
[14] A: Virtually all of them except a couple of
[15] them that I added.
[16] Q: Okay. Looking at Respondent's Exhibit 35,
[17] then, would you please tell me —
[18] A: Sure.
[19] Q: — which statements of Unocal reflect fraud
[20] or deception.
[21] A: Okay. This was a workshop on the
[22] predictive model, and you go down the page a little
[23] bit and you'll see it says "QUESTIONS," and then
[24] there's "Unocal," and there's one, two — third line
[25] down there's "Reasonable period of stability

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[1] considering the required investment." And this again
[2] has to do with, you know —
[3] Q: Well let me ask you: Is that the statement
[4] on — on this page one that you're going to refer to?
[5] And then I'll follow up with you.
[6] A: Yes, it is.
[7] Q: Okay. This document is dated March 5,
[8] 1992. It was a workshop, I take it.
[9] A: Correct.
[10] Q: Were you there?
[11] A: I — I don't specifically recall.
[12] Q: You don't have any notes from this
[13] workshop; do you?
[14] A: I don't think so.
[15] Q: And it's your practice to take notes; isn't
[16] it, sir?
[17] A: It depends. Sometimes I do, sometimes I
[18] don't.
[19] Q: If it's not confidential, you take notes as
[20] a practice; don't you?
[21] A: It — it depends. Sometimes I'll take a
[22] note at a workshop, sometimes I don't.
[23] Q: So you're unable —
[24] A: Or sometimes I don't keep my notes either;
[25] I'll take notes and I'll just discard them.

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[1] Q: Are you saying that there were notes that
[2] you took during the 1991 through 1995 time period of
[3] workshops or meetings which you no longer have?
[4] A: That's — that's possible, because
[5] sometimes what I'll do sometimes at a workshop is,
[6] like — like you saw at the meeting with Unocal,
[7] rather than take my own notes, I'll put notes in,
[8] say, the presentation. Other times I might just take
[9] a scribble or two from the workshop and I'll go back
[10] to my office and "I don't need this" and I'll discard
[11] it.
[12] Q: Okay. I'm just trying to understand. You
[13] don't know if you were at this meeting reflected by
[14] RX 35 and you didn't talk to the one person that you
[15] think these notes reflect.
[16] A: That's correct.
[17] Q: Okay. Given that, tell me what was
[18] fraudulent or deceptive of Unocal in the statement
[19] that you pointed out.
[20] A: Well it — it's once again a case where,
[21] you know, they're talking about investments and
[22] certainty so people can recover investments and again
[23] not informing us of the — of the costs associated
[24] with the patent that could affect the ability of
[25] people to recover their investment.

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Q: The statement says, "Reasonable period of stability considering the required investment."
A: Yes.
Q: Do you know what was meant by that statement?
A: I — I believe I just said it's the certainty issue. They wanted stability in the model, that we wouldn't be changing the model every few years, updating it, because that would affect their investment.
Q: They wanted you to delay compliance with the regulations you were proposing and develop a predictive model first of all; correct?
A: They didn't want us to delay adoption of the regulations.
Q: That's not what I asked you, sir.
A: Okay. Repeat the question.
Q: They wanted you to delay compliance with the regulations that you were proposing and develop a predictive model; correct?
A: Correct.
Q: And then what they were saying, as you understand this writing, is: And when you do develop the predictive model, then don't go changing it a bunch in the future because we want certainty then.

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Is that — is that a fair characterization?
A: Yes.
Q: Okay.
A: It's fair.
Q: What's the next statement?
A: Well again on the third page —
Q: The document bearing a Bates number of 564?
A: That's correct.
Q: Which statement are you referring to here?
A: The — let's see. You see "AVERAGING?"
Q: Yes.
A: Then you go right —
Next down it says, you know, the question: "What certainty is there that the fuel specs could not — not be changed?" And — and the reason I — I think this is important is I think it's important to understand, and you have to kind of stand back and move back from a lot of the — the detailed stuff, is — is that in all of our — virtually all of the meetings, discussions, cost was a very important — important factor, and I just wanted to point this out that, yes, cost was something that was brought up and there were points made about cost at this workshop as well.
Q: Looking at page 10000564 of Respondent's

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Exhibit 35, you've pointed out the statement, quote, "What certainty is there that fuel specs could not be changed, question mark," is that right, —
A: Yes.
Q: — as being fraudulent or deceptive by Unocal. Correct? That's what you just pointed out.
A: Let me — let me make sure that I'm clear what I'm saying. I don't — doesn't say who made that — that comment. My point in pointing this out is not necessarily a statement by Unocal, but it was to point out that costs in general were something that were discussed and were permeated throughout, you know, this whole time period, our discussions and meetings, and I just wanted to point out that, you know, cost did come out at this meeting and Unocal was present at this meeting and here was another opportunity where costs were talked by many people, and, you know, a cost that they knew about wasn't disclosed. That — that's the point here.
Q: This statement — this statement is in fact a question; isn't it?
A: Yes, it is a question.
Q: And you don't know who even asked the question.
A: No, I don't.

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[1] Q: And at this workshop, would you assume that
[2] all of Unocal's competitors were there?
[3] A: Yes.
[4] Q: Does that fully describe how Unocal
[5] committed fraud or deception through this statement?
[6] A: By omission, yes.
[7] Q: Okay. Anything else on this Exhibit 35?
[8] A: I think that's it for this — this item.
[9] (Respondent's Exhibit 36 was
[10] marked for identification.)
[11] BY MR. BEEHLER:
[12] Q: Would you please identify —
[13] A: Certainly.
[14] Q: — Respondent's Exhibit 36.
[15] A: Okay. Now these are my notes of a meeting
[16] on March 16, 1992, a meeting with Unocal.
[17] Q: Okay. Let's set the picture a little bit
[18] first.
[19] A: Certainly.
[20] Q: Now your 1991 regulations have been
[21] adopted — or voted on.
[22] A: Right.
[23] Q: And so now this meeting, I take it, relates
[24] to work now on a potential predictive model that
[25] staff was looking into; is that true?

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[1] A: Yes. There were some other things it looks
[2] like we discussed at that meeting, compliance plans
[3] and so forth.
[4] Q: Okay. Would you please point out what —
[5] what on this document shows fraud or deceptive
[6] conduct by Unocal.
[7] A: Well look under the heading that says
[8] "Predictive Model," and the second bullet, they were
[9] indicating that they'll use the model for capital
[10] planning, and it's another indication of a meeting
[11] that we had with Unocal where they had an opportunity
[12] to inform us of their patent application and that,
[13] you know, they were going to exercise their rights to
[14] that and it would affect our program, so it's another
[15] case where cost came up, capital investments and so
[16] forth, and by omission they didn't tell us the whole
[17] story.
[18] Q: Anything else on this page?
[19] A: No.
[20] Q: Let me ask you just a couple questions,
[21] then, about this statement that you pointed out.
[22] Unocal was telling you that if you would get this
[23] predictive model done, then they would be in a
[24] position to use it for their capital planning —
[25] A: Correct.

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[1] Q: — instead of having to plan for the
[2] specifications that had just been adopted.
[3] A: That's correct.
[4] Q: Okay. So Unocal wanted you to act quickly
[5] in adopting the model.
[6] A: Oh, yes.
[7] Q: But the model didn't get put in place or
[8] approved until June of 1994.
[9] A: That's correct.
[10] (Respondent's Exhibit 37 was
[11] marked for identification.)
[12] BY MR. BEEHLER:
[13] Q: Would you please identify Respondent's
[14] Exhibit 37.
[15] A: Certainly. This is notes — I believe
[16] these are Mr. Fletcher's notes again of the 3-16
[17] meeting.
[18] Q: This was the meeting that you attended —
[19] A: That's correct.
[20] Q: — that we just discussed.
[21] A: That's correct.
[22] Q: Did Mr. Fletcher's notes reflect something
[23] that you didn't put down?
[24] A: I just —
[25] Basically verifying that — you know, the

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[1] discussion of the use for capital planning which is
[2] under "Predictive Model, Concerns," and there's a
[3] little indent, which is basically reiteration of what
[4] I had in my notes.
[5] Q: So in Mr. Fletcher's notes, if — if these
[6] are his notes —
[7] Because you're not certain of that; right?
[8] A: I'm not — I'm not certain. They look like
[9] his, but —
[10] Q: But at least in these notes it says
[11] "Concerns, Use for capital planning," and that's
[12] consistent with Unocal wanting you to act quickly on
[13] a predictive model so that they could use that model
[14] and not your '91 specifications —
[15] A: That is — that is correct.
[16] Q: — for capital planning.
[17] A: That is correct.
[18] Q: Anything else on that —
[19] A: Well just understand, though, that the —
[20] it's what's —
[21] What's very important in most of these
[22] documents is what's not being said, and I think I've
[23] said that a number of times before, and I —
[24] Q: You have. You have indeed.
[25] A: — and I think it's very important for you

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[1] to understand that.
[2] Q: Anything else in that exhibit?
[3] A: No.
[4] (Respondent's Exhibit 38 was
[5] marked for identification.)
[6] BY MR. BEEHLER:
[7] Q: Please identify this exhibit.
[8] A: Just a moment.
[9] This is a March 20, 1992 comment letter
[10] from Unocal. It's signed by — looks — that looks
[11] like Mike Kulakowski for Denny Lamb. It is their
[12] comments on — we — we call our 15-day comments on
[13] the — on the winter oxygenate program.
[14] Q: Let's see if we can provide a little
[15] background —
[16] A: Sure.
[17] Q: — to this exhibit. During the 1991
[18] timeframe you not only adopted specifications for
[19] reformulated gasoline, but you had a separate control
[20] measure that you were looking at; correct?
[21] A: That's correct.
[22] Q: And you referred to that as your wintertime
[23] oxygenated gasoline program?
[24] A: That's correct.
[25] Q: And after that program was approved, I take

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[1] it that there must have been some modified text which
[2] then allows people to comment on the modified nature
[3] of the text.
[4] A: That's correct, yes.
[5] Q: And so these are Unocal's comments to that
[6] effect.
[7] A: That's correct.
[8] Q: Okay. Given that, would you tell me —
[9] A: Certainly.
[10] Q: — what was fraudulent or deceptive in
[11] these comments.
[12] A: If you look on the first page of the
[13] comments, one, two — the third paragraph down says
[14] "Compliance During the First 15 Days of the Control
[15] Period."
[16] Q: Yes.
[17] A: The fourth paragraph, they're supporting a
[18] change that we made in response to — to comments and
[19] they're basically saying we believe this provision
[20] will reduce the cost of the regulation by allowing
[21] producers to develop conversion plans based on the
[22] average rather than low-volume station, but — but
[23] here's another case where they're talking to us about
[24] costs and by omission not apprising us of other
[25] costs.

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[1] Q: The statement that Unocal is making here is
[2] in reference to a modification that staff had made
[3] recommending that certain service stations be given a
[4] little bit easier time period before the regulations
[5] would apply to them.
[6] A: Correct.
[7] Q: And Unocal said that will help reduce the
[8] economic costs because of the reasons they state
[9] there.
[10] A: That is correct.
[11] Q: Was what Unocal said true?
[12] A: What they said in reference to the
[13] specifics is true, it's what they didn't say which
[14] was the problem.
[15] Q: Anything else on this document?
[16] A: No.
[17] (Respondent's Exhibit 39 was
[18] marked for identification.)
[19] BY MR. BEEHLER:
[20] Q: Respondent's Exhibit 39 is a letter from
[21] Denny Lamb to the California Air Resource Board dated
[22] June 19, comma, 1992; is that correct?
[23] A: That's correct.
[24] Q: And this comment is directed, it would
[25] appear, specifically to what Unocal describes as

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[1] differential treatment of small refiners under the
[2] Phase 2 gasoline rules; is that right?
[3] A: That's correct.
[4] Q: Would you please tell me what is fraudulent
[5] or deceptive in this Exhibit 39.
[6] A: Okay. If we go to the first page, please,
[7] under "SMALL REFINER TREATMENT," Unocal once again
[8] expresses their strong opposition to differential
[9] treatment for any segment of the refinery industry;
[10] the small refiners, that Unocal's concern — concern
[11] stems from the possibility that gasoline produced
[12] under an exemption will have a lower production cost.
[13] "Introduction of this lower cost gasoline into the
[14] marketplace could result in market dislocations.
[15] This could severely hamper the recovery of capital by
[16] major refiners."
[17] Q: Now this is a concern, I think you've
[18] already said, that's been expressed by everyone else
[19] as well, the major refiners.
[20] A: Correct.
[21] Q: Okay. How is this statement not true, or
[22] fraudulent, or deceptive?
[23] A: Well it — it's misleading and it's
[24] deceptive from the — they're —
[25] They're expressing concerns about small

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[1] refiners being able to produce at lower production
[2] cost which could hamper the recovery of capital by
[3] the major refiners, and they failed to mention, by
[4] omission again, the fact that there's this patent out
[5] there and there's going to be tremendous, you know,
[6] profits, and they talk about market dislocations, and
[7] to me that's — to us that's misrepresentative and
[8] misleading because once again they omitted some very
[9] material information.
[10] Q: Unocal's comments here are under the
[11] heading "SMALL REFINER TREATMENT:" correct?
[12] A: Correct.
[13] Q: You anticipated that your regulations would
[14] lead to increased production costs; didn't you?
[15] A: Yes.
[16] Q: The small refiners exemption issue related
[17] to whether small refiners would have to meet those
[18] regulations at a particular point in time; correct?
[19] A: That's correct.
[20] Q: If they did not have to meet those
[21] regulations, by definition their cost of production
[22] would probably be less than those who have to meet
[23] regulations; correct?
[24] A: That's — that's correct.
[25] Q: Is that what Unocal was expressing concern

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[1] over here?
[2] A: That's what they're expressing concern
[3] about. However, I have to reiterate the deception is
[4] not telling us the rest of the story.
[5] Q: You've already said that. Is there
[6] something —
[7] A: Well it seems I have to keep emphasizing
[8] that. I mean that's — that's the theme.
[9] Q: Not for me.
[10] A: Okay.
[11] Q: I know it's your theme, you've said
[12] yesterday it was your theme, and what I'm trying to
[13] do now is go through the statements that you say
[14] reflect fraud or deceptive conduct.
[15] A: Okay.
[16] Q: So I appreciate that, but if we can focus
[17] on that.
[18] A: Okay.
[19] Q: Are there other statements here, sir?
[20] A: Yes. Let's look at the next paragraph.
[21] Q: Uh-huh.
[22] A: It says, "In addition to possible
[23] interference with capital recovery, it is likely that
[24] small refiners may receive an economic windfall as a
[25] result of the differential treatment."

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[1] Q: Is that the concern that I just asked you
[2] about, that if they don't have to comply with the
[3] regulations, then they can make gasoline for lesser
[4] cost?
[5] A: Yes.
[6] Q: And that Unocal was saying if you're going
[7] to have regulations, it should apply to all refiners.
[8] A: That's correct.
[9] Q: Okay.
[10] A: But, you know, I think — I — I have —
[11] and please bear with me. I know I've said this
[12] before, but Unocal is telling us that — and arguing
[13] with us that we shouldn't provide an exemption or
[14] special provisions for small refiners because they
[15] may receive an economic windfall, and don't you think
[16] that's really misleading when they don't tell us
[17] about the huge economic windfall that they know they
[18] have the potential to obtain?
[19] Q: No. I don't, but it's really not proper for
[20] me to be responding at all.
[21] A: That's a rhetorical question.
[22] Q: Well I wanted to make sure you understood
[23] that I — that I don't, but —
[24] A: It's understood.
[25] Q: You responded to this comment: didn't you?

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[1] A: Yes, in the final statement of reasons.
[2] Q: Would you pull that out once —
[3] A: Sure.
[4] Q: — and turn to final statement of reasons
[5] 30 — 333. And it's been marked previously as
[6] Exhibit 10.
[7] A: What page?
[8] Q: It's your response to comment 333, sir.
[9] You can find that on or about page 178.
[10] A: Okay.
[11] Q: Are you there?
[12] A: Yes.
[13] Q: In looking at comment 333, you see it's
[14] attributed to Unocal.
[15] A: Yes.
[16] Q: And it is in that comment where Unocal is
[17] expressing the concern of what would happen if you
[18] make an exemption for small refiners: correct?
[19] A: Correct.
[20] Q: And the agency responds by indicating, if
[21] you look at the second paragraph, —
[22] A: Uh-huh.
[23] Q: — that Unocal didn't show how their
[24] cost-per-ton figures were calculated: right?
[25] A: Yes.

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[1] Q: And then you go on to say that you actually
[2] believe that Unocal didn't use its own refinery
[3] figures but just the industry figures to calculate
[4] their cost-per-ton figures. Do you see that?
[5] A: Uh-huh.
[6] Q: You need a verbal —
[7] A: Oh, yes. I'm sorry.
[8] Q: Then you end your comments in the last
[9] paragraph by saying that even if the cost
[10] effectiveness — even if Unocal was right and the
[11] cost effectiveness of Phase 2 RFG was changed by 25
[12] percent, that the Phase 2 RFG cost effectiveness
[13] would still be comparable to recently adopted
[14] regulations: correct?
[15] A: That's correct.
[16] Q: Which means it would still be cost
[17] effective underneath those regulations.
[18] A: Correct.
[19] Q: Okay. Is there something else, looking
[20] back at Exhibit —
[21] A: But — but let me state this is on the
[22] basis that we had no knowledge there was this other
[23] cost factor out there. You know, we had no knowledge
[24] at the time that there was this patent that had been
[25] applied for and there would be this economic

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[1] windfall, and so we had — there's no — no
[2] opportunity to evaluate that. So this is based on
[3] what we knew at the time and the information we had.
[4] We took, you know, the comments as they were
[5] presented to us at their face value.
[6] Q: You didn't follow Unocal's advice on the
[7] small refinery exemption.
[8] A: No, we did not.
[9] Q: Okay. Is there something in addition in
[10] Exhibit 39 that reflects fraud or deceptive conduct
[11] that we have not discussed?
[12] A: The first paragraph under "ECONOMIC
[13] IMPACT." —
[14] Q: Yes, sir.
[15] A: — down at the — if you go three lines up
[16] from the bottom of the page —
[17] Q: So on the page marked page one.
[18] A: Yes. It's 3233 on the — that stamp.
[19] Q: Okay. And what's the statement?
[20] A: Okay. May be easier if I just — just read
[21] it.
[22] Q: It would be.
[23] A: "For the two year period in which small
[24] refiners receive differential treatment, their
[25] production will be subject to a lower cost structure.

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[1] Unocal estimates that this cost will average around
[2] six cents per gallon. If small refiners follow the
[3] market and sell their product at a price to reflect
[4] the average cost of 1" cents per gallon, they will
[5] receive an economic benefit of 11 cents per gallon
[6] during the two year period." And they talk about the
[7] total benefit. Then the next sentence down says,
[8] "This subsidy will allow small refiners to be able to
[9] pay off much, if not all, of their capital investment
[10] prior to their effecive date of '98. Since much of
[11] the capital will be paid-off, small refiners may be
[12] able to interfere with the capital recovery of major
[13] refiners in the post '9" period."
[14] Q: Now you disagreed with Unocal's position
[15] here.
[16] A: We did.
[17] Q: Did you think that what Unocal was saying
[18] was true?
[19] A: I believe that they — they felt that
[20] they — yeah, in — in good faith this is what —
[21] their comment, they felt that we should not provide
[22] the small refiner exemption, and that was their
[23] rationale.
[24] Q: And as we just looked at in your final
[25] statement of reasons, you didn't follow their advice

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[1] in pointing out that even if it was true, it would
[2] still be cost effective under your regulations.
[3] A: That's correct. But as I said, it's the
[4] rest of the story that's missing. And here they use
[5] the words "small refiners may be able to interfere."
[6] I mean that — you know, knowing what we know now,
[7] you look at that and say, you know, that's fine, but
[8] then the rest of the story is the fact that they have
[9] applied for a patent and are going to exercise and
[10] charge for that patent could very well interfere as
[11] well, and they never told us.
[12] Q: How did you understand a small refiners
[13] exemption could interfere?
[14] A: That's what they said.
[15] Q: I'm asking you if you understood that
[16] argument.
[17] A: Oh, yes.
[18] Q: What was your understanding?
[19] A: That if the small refiners are able to pay
[20] off their investment, they could sell their gasoline
[21] at a lower cost, they estimated about six cents a
[22] gallon, this difference, then at the end of their
[23] period they could sell gasoline at a lower cost than
[24] the majors, so potentially the majors might have to
[25] reduce their cost in the marketplace so they could

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[1] compete, or lose market share, which, Unocal's
[2] concern, could affect capital recovery.
[3] Q: In rejecting this argument, did you make a
[4] determination as to whether refiners, if they don't
[5] have to meet compliance costs, would charge a lower
[6] market price for their gasoline?
[7] A: I don't believe so.
[8] Q: Do you have —
[9] Do you believe that to be the case?
[10] A: I don't —
[11] Could you please repeat the question —
[12] Q: Yeah.
[13] A: — so I understand?
[14] Q: I'm trying to figure out —
[15] A: Well —
[16] Q: You didn't follow Unocal's advice here.
[17] A: That's —
[18] Q: You didn't follow the major refiners'
[19] argument which was identical; correct?
[20] A: Correct. Yeah, they all had concerns.
[21] Q: Well they all had the same concerns
[22] expressed.
[23] A: About small refiners.
[24] Q: Correct?
[25] A: Correct.

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[1] Q: So you must have thought their arguments
[2] were not correct.
[3] A: We disagreed with their arguments.
[4] Q: Okay. Did you disagree with the argument
[5] that these small refiners would be able to pay off
[6] their capital investment prior to their effective
[7] date in 1998 and thus charge at a lower price?
[8] A: I don't know if I can say we specifically
[9] disagreed with that statement. I think what we
[10] basically did is disagreed with the concept of —
[11] of — well, disagreed with the desire of the major
[12] refiners to provide special — some other treatment
[13] for small refiners.
[14] Q: Sir, is competition one of the issues that
[15] is detailed under your cost-effective guidelines?
[16] A: No. I don't believe so.
[17] Q: Okay. Is there anything else on this
[18] Exhibit 39 that is fraudulent or deceptive by Unocal?
[19] A: Well I'll just point out again —
[20] Q: That — that we haven't already discussed,
[21] because now we've spent a little bit of time on it.
[22] But please go ahead and answer.
[23] A: Okay. Let me just point out — I've
[24] discussed this, but just so you know where the
[25] reference is —

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[1] Q: Okay.
[2] A: — for future, the third paragraph, the
[3] first sentence, "This increase in cost has a
[4] significant impact on the cost effectiveness of Phase
[5] 2 gasoline."
[6] Q: That's on page two?
[7] A: That's correct.
[8] Q: And you've already fully discussed that.
[9] A: I've discussed, and it's again the
[10] omission.
[11] Q: We're talking about, again, this whole
[12] document is about the small refiners exemption,
[13] correct?
[14] A: I don't believe the whole document is. As
[15] it says in the front, it's — the primary focus is
[16] treatment of small refiners, then they have some
[17] stuff on the predictive model and so forth.
[18] Q: Okay. Is there anything else in this
[19] document?
[20] A: On the next page.
[21] Q: Page two —
[22] A: Page three.
[23] Q: Three.
[24] A: The third paragraph, they talk about the
[25] issue we've discussed about the delay of the

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[1] predictive model and they will lose the model as a
[2] capital-planning tool.
[3] Q: So they're —
[4] A: And —
[5] Q: They're continuing at this point in June of
[6] 1992 —
[7] A: Correct.
[8] Q: — to tell you to move forward and get your
[9] predictive model done.
[10] A: So they — yes, so they could use it as a
[11] capital-planning tool. And they — actually in this
[12] case they shared with us that — and let me read this
[13] so it's clear — "Based on initial model formulations
[14] developed by WSPA, and Unocal's existing refinery
[15] facilities, we estimate that use of the model could
[16] save Unocal at least 10 million in capital
[17] investment."
[18] Q: Was that fraudulent or deceptive?
[19] A: What's fraudulent and deceptive is they
[20] didn't inform us of the economic windfall, the
[21] economic reward they would reap from the patent that
[22] they had applied for.
[23] Q: Their comment is specifically directed to
[24] what they could save in capital investment; right?
[25] A: That's correct.

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[1] Q: Is that statement —
[2] Do you have any basis for saying that that
[3] statement was false?
[4] A: No. I think that's — that's their — their
[5] belief. I don't have any basis to say that's a false
[6] statement.
[7] Q: Okay.
[8] A: What the issue is: The omission of
[9] relevant and material information.
[10] Q: Anything else in this document, sir?
[11] A: That's it for this document.
[12] (Respondent's Exhibit 40 was
[13] marked for identification.)
[14] BY MR. BEEHLER:
[15] Q: Please identify Respondent's Exhibit 40.
[16] A: This is the reporter's transcripts —
[17] transcript of proceedings from August 14, 1992.
[18] Q: To be fair, it's selected pages of that —
[19] A: That's correct.
[20] Q: — proceeding?
[21] A: That's correct.
[22] Q: Are those —
[23] Have those pages been selected to just
[24] reflect statements made by Unocal?
[25] A: That's correct.

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[1] Q: Were those selections you pulled out or
[2] that your lawyer pulled out?
[3] A: Mr. Goldman provided this to me.
[4] Q: Okay. And at least on my copy there is
[5] also an attachment of the written statement of Mike
[6] Kulakowski. Is that on yours as well?
[7] A: Yes, it is.
[8] Q: Okay. And I take it that that statement
[9] you understand would have been put in on or about the
[10] same time as the hearing took place on August 14?
[11] A: Yes.
[12] Q: Okay.
[13] A: That's part of — part of the hearing
[14] record.
[15] Q: Please tell me what statements in here
[16] reflect fraudulent or deceptive conduct by Unocal.
[17] A: Okay. If I can, just to provide a little
[18] just brief background, this was a hearing where we
[19] considered the adoption of —
[20] Q: I really — I really appreciate it. I'm
[21] going to —
[22] A: Okay.
[23] Q: I'm trying —
[24] I may well ask you about the background. —
[25] A: Okay.

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[1] Q: — but I think it's going to help if you
[2] try to listen to my question. Could you point out
[3] the statements, sir, that are fraudulent or deceptive
[4] conduct by Unocal.
[5] A: Okay. On page 60, the bottom of the page,
[6] commenting on the inclusion in this motor vehicle
[7] certification fuel specification of a parameter for
[8] multisubstituted aromatics —
[9] Q: Yes.
[10] A: — in the fuel, and they're concerned and
[11] opposing this because they're concerned that — that
[12] it could first go into the certification
[13] specifications and then creep into basically the —
[14] the regulations, and their concern is that, you know,
[15] this parameter would be expensive and difficult to
[16] control with commercial fuel, and therefore we're
[17] opposed.
[18] Q: From June 1991 until the adoption of the
[19] regulations in 1991, and even after into the
[20] development of the predictive model, Unocal
[21] continually told you that they wanted fewer
[22] specifications and not more; isn't that true?
[23] A: No. I — I think I have to dis — disagree,
[24] and let me tell — tell you why. Once we adopted the
[25] specifications, Phase 2, to gasoline, we really all

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[1] collectively really started working very hard to get
[2] the predictive model going. There were some other
[3] issues out there. I think Unocal still had — had
[4] some current concerns about RVP and so forth. This
[5] is something they had, you know, some technical
[6] issues with for a period of time. But I think, you
[7] know, once the regulations were adopted, you know,
[8] and having been intimately involved with all of this,
[9] we really set to work to get this predictive model
[10] going and to do all the technical work for that. I
[11] mean it — it was one of actually a very enjoyable
[12] time because we were all working in the same
[13] direction. You know, the decisions had been made on
[14] the regulations, and now let's get this model, we all
[15] agreed the importance of the model, and let's get it
[16] done.
[17] Q: From a refiner's standpoint, every time you
[18] decide to add another requirement, which I guess you
[19] call specifications, refiners view that as a
[20] potential added cost.
[21] A: Certainly.
[22] Q: Okay. Unocal was expressing here the
[23] concern that you not add another specification.
[24] A: Oh, that's correct.
[25] Q: Okay. And the statement that you're saying

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[1] is fraudulent or deceptive on page 60 is which
[2] statement, sir?
[3] A: It — it's this last — last paragraph
[4] basically where cost is once again — they're making
[5] a point about this would be just difficult and
[6] expensive to control in commercial fuel, and once
[7] again by omission there's no mention or — of the —
[8] of the pending patent and the benefit that they will
[9] gain.
[10] Q: Mike Kulakowski told you that Unocal saw
[11] adding another specification for multisubstituted
[12] aromatics as an expensive and difficult thing to add,
[13] correct?
[14] A: And that's correct.
[15] Q: Okay. Anything else on this —
[16] A: But it's the error of omission again.
[17] Q: Anything else in this document?
[18] A: Yes. I think on the next page, let's see,
[19] one, two, three — the fourth paragraph, let me just
[20] read it. It says, "NOW, UNOCAL WANTS TO BELIEVE THAT
[21] THE TERMS 'FUEL NEUTRAL' AND 'LEVEL PLAYING FIELD'
[22] ARE MORE THAN JUST BUZZWORDS AND REQUESTS THAT THE
[23] BOARD ONLY APPROVE CERT SPECS THAT COMPLETELY SUPPORT
[24] THESE CONCEPTS."
[25] Q: Okay. Are you —

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[1] Is that the statement you're referring to?
[2] A: That's correct.
[3] Q: Now that statement was made in regard to
[4] the low emissions vehicle clean fuels regulations;
[5] correct?
[6] A: Correct.
[7] Q: And Mr. Kulakowski was telling you that he
[8] saw CARB starting to tilt the playing field in terms
[9] of giving alternative fuels an advantage; correct?
[10] A: No. I think in respect here it had to
[11] do —
[12] Q: Before you answer, why don't you look at
[13] the line —
[14] A: Yes.
[15] Q: — right above it where it states,
[16] "HOWEVER, THE SPECIFICATIONS" —
[17] A: Oh.
[18] Q: — "BEING CONSIDERED TODAY SLIGHTLY TILT
[19] THE PLAYING FIELD IN FAVOR OF THE ALTERNATIVE FUELS."
[20] A: That — that's correct.
[21] Q: The sentence immediately preceding the one
[22] that you said —
[23] A: No.
[24] Q: — was deceptive or fraudulent; correct?
[25] A: That — that is correct.

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[1] Q: So that's the context of Mr. Kulakowski's
[2] remarks; —
[3] A: Yes.
[4] Q: — correct? Okay.
[5] Is there anything else in this document?
[6] A: Well may I explain why I feel this is of
[7] concern?
[8] Q: I think you already have, but go ahead.
[9] A: No. I — I would like to. I mean the term
[10] "level playing field," it's to us deceptive and
[11] misrepresentative to talk about and encourage us to
[12] make sure we keep the playing field level when
[13] they're withholding from us information that would
[14] certainly tilt that playing field.
[15] Q: He was talking about a level playing field
[16] with alternative fuels; wasn't he, sir?
[17] A: Yes, he was.
[18] Q: Okay. Is there any other statements in
[19] this document that are fraudulent or deceptive?
[20] A: On the next page, the second paragraph —
[21] Q: Page 62 now, sir?
[22] A: I'm sorry, 63 is the page.
[23] Q: Okay, 63.
[24] A: We've talked about this. Let me just point
[25] it out. Here's — here's again Mr. Kulakowski —

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[1] Q: Why don't you point out the statement for
[2] me.
[3] A: Sure. It's the third — actually the
[4] second full paragraph. Would you like me to read it?
[5] Q: Is it the entire paragraph that you're
[6] referring to?
[7] A: Yes.
[8] Q: Sure. Go ahead and read it.
[9] A: Sure. "NOW WE ESTIMATE. BASED ON
[10] PRELIMINARY MODELS THAT HAVE BEEN DEVELOPED. THAT THE
[11] LACK OF A PREDICTIVE MODEL TO USE IN CAPITAL PLANNING
[12] WILL COST UNOCAL MORE THAN 10 MILLION IN CAPITAL FOR
[13] PHASE 2 COMPLIANCE. THIS RESULTS FROM OUR INABILITY
[14] TO TAKE ADVANTAGE OF LOW SULFUR AND LOW OLEFINS THAT
[15] OCCUR AT ONE OF OUR REFINERIES AS A RESULT OF
[16] EQUIPMENT CURRENTLY IN PLACE."
[17] Q: Okay. Let me ask you some statements —
[18] questions about that statement. This relates again
[19] to Unocal's advocacy of you want go to — of
[20] wanting — let me withdraw that.
[21] A: Certainly.
[22] Q: This relates again to Unocal's wanting you
[23] to approve a predictive model as soon as possible:
[24] correct?
[25] A: Correct.

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[1] Q: And their belief that if you would do that,
[2] then they could adjust their planning with those
[3] potential cost savings in mind.
[4] A: Correct.
[5] Q: Okay. And what they're pointing out to you
[6] here is a belief that if a predictive model has low
[7] sulfur and low olefins as part of it, that could save
[8] them a lot of money because they have low sulfur and
[9] low olefins at their San Francisco refinery: correct?
[10] A: That is correct.
[11] Q: Was that false?
[12] A: Yes. And can I — can I explain to you why
[13] I believe this is false and misleading?
[14] Q: Sure.
[15] A: You know, in many of this you have to step
[16] away from the specific facts —
[17] Q: Yeah, but I'm asking —
[18] A: — and the specific point.
[19] Q: I'm going to let you explain it, —
[20] A: Okay.
[21] Q: — I just want to understand what —
[22] Were the actual words here —
[23] MR. ROBERTSON: Objection. —
[24] Q: — false?
[25] MR. ROBERTSON: — let the witness answer

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[1] the question.
[2] MR. BEEHLER: Yeah. Well he didn't answer
[3] my first question.
[4] MR. ROBERTSON: You cut him off. I object
[5] to counsel cutting off the witness.
[6] Q: I'm going to let you answer —
[7] A: Certainly.
[8] Q: — or I'm going to let you make your
[9] statement then. Okay. I just want to know: Were
[10] these words false in and of themselves?
[11] A: In and of themselves? No.
[12] Q: Okay. What, now, is false —
[13] A: Okay.
[14] Q: — or fraudulent or deceptive about them?
[15] A: There are basically two things. One, you
[16] have to appreciate this was a hearing where we were
[17] talking about specifications for certification fuels,
[18] the fuels that motor vehicle manufacturers would use
[19] in the certified vehicles. it was not about the Phase
[20] 2 regulations.
[21] Q: This was about low emission vehicle
[22] regulations?
[23] A: Yeah. Well it was about fuels — it was
[24] about what — the — I'm sorry, the quality of the
[25] fuel that the auto manufacturers had to use when they

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[1] do their certification tests to verify that they're
[2] meeting the standards. We actually set
[3] specifications. Like for gasoline we said, okay,
[4] when you certify your car, GM, Ford, whatever, this
[5] is the gasoline spec you have to use. If you re
[6] going to do it with other fuels, here are — here are
[7] the specs. So this was a hearing to adopt those
[8] specifications. And what — what's important here
[9] is — well Unocal is providing some technical comment
[10] on that topic, they chose this hearing where the
[11] predictive model, where Phase 2 wasn't the subject
[12] to — once again took — took this opportunity to
[13] once again say, hey, you know, we could save 10
[14] million dollars, they're pushing us to get this model
[15] done, and the rest of the story isn't being told.
[16] Q: The date of this is August 1992: correct?
[17] A: Yes.
[18] Q: So it's approximately 10 months — nine to
[19] 10 months after you had adopted the '91
[20] specifications.
[21] A: Correct.
[22] Q: Unocal was already upset with CARB staff
[23] for not moving more quickly on the predictive model:
[24] weren't they?
[25] A: I wouldn't characterize it as upset. I

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[1] mean we — we were working very hard with all the
[2] companies on the technical aspects of the predictive
[3] model and Unocal was very involved in that — that
[4] whole process. And I wouldn't characterize it as
[5] upset, I think it was they — they — they were
[6] disappointed, they were pushing, they wanted —
[7] I think what they wanted to do, my
[8] characterization, and — and everybody, is they
[9] wanted to make sure we were putting maximum effort
[10] forward to get this thing done. And that's fair.
[11] Q: Perhaps my term, then, was wrong as — as
[12] CARB being upset, but Unocal understood that staff
[13] had committed to developing a predictive model within
[14] one year of the — of 1991.
[15] A: Yeah. In fact I think we even said we were
[16] going to try to do it by mid of '92, which, hey, we
[17] missed.
[18] Q: That time had come and gone at this point.
[19] A: That's correct.
[20] Q: Okay. So you weren't surprised that Unocal
[21] even at a different hearing would bring up that
[22] concern: were you?
[23] A: Not necessarily surprised, but it's — I
[24] wanted to point out that, you know, cost issues were
[25] something that were paramount with Unocal. Even at

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[1] hearings where we didn't talk about the predictive
[2] model, where we didn't talk about the Phase 2
[3] regulation, they wanted to use that as an opportunity
[4] to tell our board, you know, we don't have the model
[5] yet, it's going to cost us 10 million dollars, and
[6] where is the rest of the story? That's why I believe
[7] it's deceptive and misleading.
[8] Q: Anything else in this Exhibit 40 that's
[9] deceptive or misleading or fraudulent?
[10] A: That's it.
[11] MR. BEEHLER: All right. Do you want to
[12] take a short break after we mark this next exhibit?
[13] THE WITNESS: That's fine.
[14] (Respondent's Exhibit 41 was
[15] marked for identification.)
[16] THE REPORTER: Off the record, please.
[17] (Recess taken.)
[18] BY MR. BEEHLER:
[19] Q: Mr. Venturini, looking at Respondent's
[20] Exhibit 41, this appears to be the final statement of
[21] reasons for the hearing that you were just describing
[22] to me on the specifications for a gasoline
[23] certification fuel in 1992: is that correct?
[24] A: Correct.
[25] Q: And is the fraudulent or deceptive conduct

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[1] by Unocal contained in this document the same
[2] comments which you just described to me in the — in
[3] the previous exhibits?
[4] A: Yes. And I can specifically indicate the
[5] page if you'd like.
[6] Q: Is it page eight that you're referring to?
[7] A: It's page eight.
[8] Q: And it would be comment numbered nine?
[9] A: Comment number nine.
[10] Q: And there the statements that you were just
[11] talking with me about from Mike Kulakowski are set
[12] out.
[13] A: That — that's correct.
[14] Q: Is there anything different to add?
[15] A: Well I — I just reiterate once again, it's
[16] again this issue of — of omission and the fact
[17] that — of the benefits that would be reaped by — by
[18] Unocal and the disbenefit to other refiners and
[19] basically the — the consumers.
[20] Q: And again, the comment expressly describes
[21] Unocal's concern as potentially starting to creep
[22] into allowing additional specifications and a concern
[23] with the expense of controlling such specifications.
[24] A: Yeah, their concern about additional costs
[25] to the regulation, and as I've said before, not

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[1] telling us about another significant cost that would
[2] be very disruptive.
[3] Q: Anything else on that exhibit?
[4] A: That's it.
[5] (Respondent's Exhibit 42 was
[6] marked for identification.)
[7] BY MR. BEEHLER:
[8] Q: Looking at Exhibit 42, sir, it is a letter
[9] from Dick Stegemeier to the California Air Resources
[10] Board dated September 4, 1992; correct?
[11] A: Correct.
[12] Q: And in this document Mr. Stegemeier is
[13] commenting on proposed revisions relating to the
[14] small refiner exemption —
[15] A: Uh-huh.
[16] Q: — again; correct?
[17] A: Correct.
[18] Q: Also expressing some concern with a
[19] regulation on splash blending of oxygenates; correct?
[20] A: Correct.
[21] Q: And then again bringing to your attention
[22] the concerns which we've, I think, already discussed
[23] about getting the predictive model in place and
[24] delaying compliance if you weren't going to get it in
[25] place; correct?

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[1] A: That's — that's correct.
[2] Q: Okay. Now given that context, sir, what —
[3] what statements in this document are reflective of
[4] fraud or deception?
[5] A: Okay. In Mr. Stegemeier's testimony, the
[6] thing I think that I wanted to point out is they went
[7] to great length here on page two in the discussion of
[8] the predictive model to basically reiterate their
[9] concerns from prior testimony, and it's the same
[10] concerns that, you know, we have talked about.
[11] Q: The predictive model concerns?
[12] A: The predictive model concerns about getting
[13] it done quickly and the opportunity to use the
[14] predictive model for capital complanning — capital
[15] planning. I'm sorry. And —
[16] Q: And you believe, then, that they should
[17] have brought up the patent because that could
[18] potentially impact costs.
[19] A: That's correct. This is misleading because
[20] it — it leaves out the rest of the story, a
[21] significant cost that would benefit Unocal, be a
[22] disbenefit to the rest of the industry and the
[23] public.
[24] Q: Anything else?
[25] A: That's all

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[1] (Respondent's Exhibit 43 was
[2] marked for identification.)
[3] BY MR. BEEHLER:
[4] Q: Respondent's Exhibit 43, do you have it in
[5] front of you, sir?
[6] A: Yes.
[7] Q: Respondent's Exhibit 43 is a letter dated
[8] June 3, 1994 to the California Air Resources Board
[9] from Denny Lamb; correct?
[10] A: That's correct.
[11] Q: Now June 3, 1994, that puts us right about
[12] the time, then, of the predictive model finally
[13] coming into place and — and being approved.
[14] A: Correct.
[15] Q: And so Mr. Lamb's comments, I take it, in
[16] this exhibit are directed towards that issue.
[17] A: Correct.
[18] Q: Okay. Would you please tell me what's
[19] fraudulent or deceptive as shown in this exhibit.
[20] A: I want to — if you'd allow me just to
[21] point out a couple of things. In the first
[22] paragraph, down around the middle, they point out
[23] that they continue to work with us directly and
[24] through WSPA to expedite model development and assure
[25] a smooth implementation of the regulation, and I

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[1] think that's important because it lets you know that
[2] there was a very close interaction with — with
[3] everybody during this process.
[4] Q: Well let's look at the words they used.
[5] A: Sure. Do you want me to read them?
[6] Q: Well you've pointed them out to me so let
[7] me ask you about them. You pointed out that Unocal
[8] is stating that they have attempted to expedite model
[9] development; correct?
[10] A: They —
[11] Q: That's part of it; right?
[12] A: They worked with staff directly and through
[13] WSPA to expedite. All the parties are working to
[14] expedite model development.
[15] Q: Right. Unocal, as you've already shown me,
[16] from the middle of 1992 if not before was pushing to
[17] get the predictive model done quickly because of the
[18] concerns they expressed; right?
[19] A: Right. Correct.
[20] Q: Okay. And so this is reflecting that they
[21] had done — they — they had worked with people to
[22] try and expedite that.
[23] A: Right.
[24] Q: That was true; right?
[25] A: That's true.

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[1] Q: Then also to ensure smooth implementation
[2] of the regulation; correct?
[3] A: Correct.
[4] Q: How did your regulation roll out? It was
[5] smooth; wasn't it?
[6] A: Well we had one hiccup with the refinery
[7] that — that went down in the implementation, but in
[8] terms of —
[9] Q: That wasn't your regulation's fault though.
[10] A: No, but it was an outcome of —
[11] You know, stuff happens sometimes. But
[12] basically I — we felt, with all the work that we
[13] did, that rollout was — was fairly smooth.
[14] Q: Going back then to my original question,
[15] would you point out the statements that are
[16] fraudulent or misleading.
[17] A: I —
[18] Let me go to the last page once again, at
[19] the bottom of the — prior to the last page and the
[20] last page —
[21] Q: The page marked 7352, sir?
[22] A: That's correct, and 7353. They talk about
[23] basically they're appreciative of the predictive
[24] model, you know, it will permit us to realize
[25] operational flexibility. This is under the averaging

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[1] provisions. Down at the bottom of the page they ask
[2] the board to affirm its intent to allow the
[3] regulation that will emerge from the June 9 hearing
[4] remain in effect long enough — long enough for us to
[5] recover our sizeable investment in facilities to
[6] produce Phase 2 RFG.
[7] Q: Did you understand that comment to be a
[8] reference to what we've earlier discussed, that once
[9] you get certain regulations in place, if people have
[10] built their facilities to a predictive model, for
[11] instance, that you keep that in place then and not
[12] start adding additional specifications?
[13] A: That's true. But it's misleading.
[14] Q: Okay. And misleading because they didn't
[15] tell you about the pending patent application.
[16] A: And the — and the effects that enforcement
[17] of the patent would have on the — on the —
[18] Q: On others?
[19] A: — on the competitors — well on
[20] themselves, on the competitors and on the consumer.
[21] Q: Well the effect that it would have on
[22] themselves, you're talking about revenue?
[23] A: Yeah. It would be a significant windfall
[24] to them.
[25] Q: Did your cost-effectiveness guidelines talk

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[1] about revenue?
[2] A: No. The cost —
[3] When we do cost-effectiveness calculations
[4] we look at the cost of — of the regulation.
[5] Q: Do they talk about revenue?
[6] A: I don't — I don't think so, but I'm not —
[7] Q: Okay.
[8] A: — totally clear on all the — how that's
[9] being interpreted. But I'll — I'll say that at this
[10] point.
[11] Q: Is there anything else, sir?
[12] A: No.
[13] (Respondent's Exhibit 44 was
[14] marked for identification.)
[15] BY MR. BEEHLER:
[16] Q: Looking at Respondent's Exhibit 44, sir,
[17] this appears to be the statement of Denny Lamb, and
[18] although the date's not on it, I take it this is the
[19] June 9, 1994 amendment for the predictive model.
[20] A: That's correct.
[21] Q: Okay. And would you point out here, sir,
[22] which statements are fraudulent or misleading, and
[23] then if we haven't discussed them, —
[24] A: Sure.
[25] Q: — you know, we can decide at that point.

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[1] A: The first paragraph, let's see, the
[2] first — third sentence.
[3] Q: On page one?
[4] A: That's correct. That says, "In June of '91
[5] we shared with staff the vehicle testing research we
[6] completed and the predictive model we developed to
[7] produce and test Reformulated gasoline. That
[8] research has become the single largest independently-
[9] developed body of data in CARB's predictive model."
[10] Q: Now was that true?
[11] A: That's a true statement, but again it's —
[12] it's somewhat misleading because at the same time
[13] that they were urging us to use this data and this
[14] information, they didn't tell us that by doing that
[15] it would give them an advantage because our
[16] regulation would then overlap with their patent.
[17] Q: Let me ask you something about the body of
[18] data in CARB's predictive model. The data contained
[19] from Unocal in CARB's predictive model is from the
[20] 10- and 13-car data set; isn't it?
[21] A: That's the specific test data.
[22] Q: It's not from the one-car test; is it?
[23] A: My recollection it's the 10- and the
[24] 13-car.
[25] Q: And in fact even the 10- and the 13-car

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[1] certain data was deleted by your statistician and by
[2] staff.
[3] A: Well that was a process that —
[4] You know, everyone looked at all the data
[5] that went into the model and there was a technical
[6] process that they went through to satisfy themselves
[7] of which data were appropriate to retain in the
[8] model.
[9] Q: You hired a consultant named David Rocke.
[10] A: That's correct.
[11] Q: He was in charge of developing the
[12] predictive model.
[13] A: Yes. He worked with us very closely.
[14] Q: He was a contractor for CARB.
[15] A: Yes.
[16] Q: The staff of CARB worked with him.
[17] A: Correct.
[18] Q: Together they made the decision to delete
[19] certain data, not only from Unocal but from others,
[20] that they decided were outliers or perhaps not
[21] appropriate for other reasons; correct?
[22] A: Any decisions we made were worked through
[23] the whole group that worked on the predictive model.
[24] We may have came to that conclusion ourselves, but we
[25] would have presented it to the group and say, "Hey,

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[1] this is our perspective," and see if technically the
[2] other folks agreed or not.
[3] Q: I'm not suggesting you didn't present it.
[4] A: Okay.
[5] Q: I'm saying that you folks in consultation
[6] with Dr. David Rocke made that decision.
[7] A: I don't recall specifically, but I won't
[8] deny that. That may have happened.
[9] Q: Okay. It represents, it said, about 10
[10] percent of the 7,700 fuel tests. Is that a correct
[11] statement?
[12] A: I believe that's — that's correct.
[13] Q: Do you have a statistical background at
[14] all?
[15] A: No, not a detailed background.
[16] Q: Do you have enough of a background to be
[17] able to say if it only represents 10 percent, you
[18] know that it's not skewing the rest of the results?
[19] A: Best not to comment on the — on the
[20] statistics. But I — I will say that's a significant
[21] amount of information into the database.
[22] Q: Are you saying that CARB staff has never
[23] sat down and done an analysis of whether the —
[24] A: Oh.
[25] Q: — Unocal data —

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[1] A: Well —
[2] Q: I'm sorry, let me finish my question.
[3] A: I'm sorry.
[4] Q: Are you saying that CARB staff has never
[5] done an analysis to determine whether the Unocal data
[6] skewed the predictive model?
[7] A: Let — let me clarify, please, since I get
[8] a little confused. I'm talking about me rather than
[9] the —
[10] Q: Go ahead.
[11] A: — than the we. I can tell you this with
[12] great confidence, that the CARB staff spent
[13] tremendous amounts of time not only with themselves,
[14] with David Rocke and with the full group of technical
[15] people that we had formed, this working group, to
[16] work on the predictive model, and there was a
[17] tremendous amount of analysis and — and discussion
[18] back and forth about the data and how to treat the
[19] data and — and so forth.
[20] Q: My question's a little bit different. Are
[21] you telling me that CARB staff or any of its
[22] consultants have not attempted to remove the Unocal
[23] data for purposes of analysis and determine whether
[24] the resulting data would lead to the same conclusion?
[25] A: I can't answer that. I don't know the

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[1] details of the intricate analysis that they did.
[2] Q: Isn't it your understanding, sir, that even
[3] if you had removed the 10 percent of the Unocal data,
[4] that the results would be the same in terms of your
[5] predictive model outcome?
[6] MR. ROBERTSON: Objection, foundation.
[7] A: I can't answer that.
[8] Q: Given the fact that it's 10 percent and the
[9] manner in which your predictive model was developed,
[10] don't you believe that to be the case?
[11] MR. ROBERTSON: Objection, foundation.
[12] A: I can't — I can't answer that.
[13] Q: Okay.
[14] A: I don't — that's a staff thing. Okay?
[15] Q: Let's ask it the other way. You certainly
[16] have no information that would suggest that the
[17] inclusion of Unocal data somehow skews the model; do
[18] you?
[19] MR. ROBERTSON: Objection, foundation.
[20] A: I — I — I — I really can't answer that.
[21] I — I think the thing that's important here as I
[22] look at this is they seem to feel very proud of that
[23] work going into the model, and for some reason that's
[24] theirs, they wanted to make a point that their data
[25] represented 10 percent of the tests that were in

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[1] the — in the model.
[2] Q: Well let's look at the point they were
[3] making. Mr. Lamb follows directly by pointing out
[4] again that they had wanted staff to act earlier and
[5] they feel now that they have lost an opportunity for
[6] that capital-investment advantage; right?
[7] A: To use the — yes.
[8] Q: Okay. Can you refer to the next statement?
[9] A: Yeah. Down toward the bottom of the page,
[10] and actually it gets to your point as well. Denny
[11] says, "Unfortunately, it is now June...and any
[12] opportunity to save capital investment has expired.
[13] We are now in the process of building facilities that
[14] it now appears could have been less expensive if the
[15] model was promulgated earlier. Fortunately, there is
[16] still time to benefit from operational savings." And
[17] "...the delay did allow the model to become more
[18] robust."
[19] Q: Okay. Let's talk about this operational
[20] savings. Is it your understanding that the
[21] predictive model that is being described here by
[22] Unocal would give them more flexibility in terms of
[23] being able to create different fuels?
[24] A: Correct.
[25] Q: And Unocal was telling you that that

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[1] flexibility would allow them to have some operational
[2] savings in the future.
[3] A: Correct.
[4] Q: What else here is fraudulent and —
[5] A: And I just have to indicate, once again, by
[6] talking about operational savings they also did not
[7] mention — and it's the omission issue again — about
[8] the operational benefits by not telling us about the
[9] patent.
[10] Q: You believe the patent provides an
[11] operational benefit?
[12] A: Well it would be — there would be
[13] operational cost savings or there would be — there
[14] would be income derived from that.
[15] Q: We've already discussed, though, that
[16] revenue isn't part of your cost-effectiveness
[17] analysis; is it?
[18] A: Excuse me. My point I was trying to make,
[19] what they did not tell us about is the patent, the
[20] fact that if the patent's awarded they were going to
[21] enforce it by seeking fees. That's income. And, you
[22] know, whenever they talked to us about costs and so
[23] forth, they failed to mention a factor that's very
[24] important on the cost, that, you know, that — no —
[25] no question that the granting of the patent to them

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[1] is a significant benefit to them and a disbenefit to
[2] others. And that's the only point I'm trying to make
[3] here.
[4] Q: Is there anything else in this document?
[5] A: That's all in this document.
[6] (Respondent's Exhibit 45 was
[7] marked for identification.)
[8] BY MR. BEEHLER:
[9] Q: Would you please describe what Respondent's
[10] Exhibit 45 is.
[11] A: Okay. Well we're on —
[12] Q: I'm sorry, do you have a document that —
[13] let me —
[14] A: No. I think it's the order. It's a little
[15] different. Do you mind, would it be okay to change?
[16] Q: Why don't you just tell me the document you
[17] have in front of you that's marked as Exhibit 45.
[18] A: These are notes —
[19] Q: I'm sorry to interrupt. Just for purposes
[20] of identification to make sure I have the same
[21] document, does it say "1/31/95 on the top?
[22] A: Yes, it does.
[23] Q: Okay. Go ahead.
[24] MR. ROBERTSON: Is this 10076 on the
[25] bottom?

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[1] MR. BEEHLER: Correct, counsel.
[2] THE WITNESS: Right.
[3] MR. ROBERTSON: To make sure I have the
[4] correct one.
[5] Q: Exhibit 45, would you please identify that
[6] document.
[7] A: Okay. This document is notes apparently
[8] of — of a discussion that Denny Lamb had with Mike
[9] Scheible.
[10] Q: I'm sorry. Whose notes are these?
[11] A: I believe these may be Tom Jennings' notes,
[12] but I'm not certain.
[13] Q: Okay. You don't know whose notes they are
[14] for sure, but you think from the handwriting that it
[15] might be Tom Jennings'.
[16] A: That's correct.
[17] Q: Tom Jennings is a lawyer within CARB.
[18] A: Correct.
[19] Q: And do you understand these notes to
[20] reflect some type of conversation with Denny Lamb and
[21] Tom Jennings?
[22] A: No, with Denny Lamb —
[23] What it says is Denny Lamb talked to Mike
[24] Scheible.
[25] Q: Okay.

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[1] A: So what —
[2] I don't know if Tom was in the meeting or
[3] if this was a discussion afterwards.
[4] Q: Did you talk with Tom Jennings about what
[5] these notes meant?
[6] A: Not in the last week or two.
[7] Q: Have you ever talked to Tom Jennings about
[8] what his notes meant?
[9] A: Not specifically.
[10] Q: Because you don't even know for sure if
[11] this is Tom Jennings' notes; right?
[12] A: I'm not certain.
[13] Q: Was this a meeting that you attended?
[14] A: I don't think so.
[15] Q: Was it even a meeting?
[16] A: It was a phone call.
[17] Q: But you're only getting that from looking
[18] at the docum... it itself.
[19] A: Correct.
[20] Q: Okay. Would you please tell me what
[21] statements here — or what is reflected here as being
[22] fraudulent or deceptive by Unocal.
[23] A: Well this is basically the time that Unocal
[24] informed us that — basically alerting us to the fact
[25] they were issuing a press release regarding the

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patent and the discussion that — that was had at — at that time.
Q: Is there something fraudulent or misleading in this document?
A: In the document itself. I — I think what the — the importance of this, it — it shows —
Q: Could we answer the first question first.
A: Yeah.
Q: Is there something that's fraudulent or misleading as reflected in this document?
A: I would have to say no.
Q: Okay. Now let's make sure that we have the — the next exhibit, because I think you had a different one ready to go.
A: Yeah, different in order.
Q: And I'm not sure you had that in our court reporter's pile, because I thought you pulled out a document that appears to be marked CARB 512, the last three digits. —
A: Yeah, it's —
Q: — as — as the next exhibit.
A: — just an order, order issue.
MR. BEEHLER: I'm not sure that you put a copy in his file there, counsel.
THE REPORTER: Let's go off the record a

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moment, please.
(Discussion off the record.)
(Respondent's Exhibit 46 was marked for identification.)
BY MR. BEEHLER:
Q: Sir, looking at Respondent's Exhibit 46, it appears to be a document dated June 9, 1994. Would you identify it.
A: Yes. These are June 9, '94 notes that were taken at the predictive model hearing.
Q: Whose notes are they?
A: I believe these are Bob Fletcher's again.
Q: Let me ask you the standard questions. Did you discuss these notes with Bob Fletcher?
A: No.
Q: Are you certain they are Bob Fletcher's notes?
A: I believe they're Bob Fletcher's notes.
Q: You were at this predictive model hearing, weren't you, sir?
A: Yes, I was.
Q: Did you take notes from this meeting?
A: I probably took — took some notes.
Q: Have you brought them with today?
A: I — I don't know if I have those notes.

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Q: Okay. In any event, this is from a hearing that was transcribed; correct?
A: Correct.
Q: Wouldn't you agree that the transcript would be a better indicator of what was said than handwritten notes?
MR. GOLDMAN: Argumentative.
A: Certainly the transcript is a — you know, a full documentation, but that doesn't mean that the notes don't — would not accurately reflect some of the things that occurred.
Q: Okay. Looking at Exhibit 46, sir, would you point out to me what's fraudulent or deceptive.
A: What I want to point out is this is, one — we already discussed this — the mention of the largest independent study.
Q: Didn't we just look at those written statements?
A: Yes, we did. Okay. And then on page 514, once again there's a — this is our executive officer responding. I don't know who he responded to, but it's an indication that there's a recognition of our need — of the need for stability in the regulations. This goes to the — the certainty issue.
Q: On page 514 of Exhibit 46 there's a

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reflection that Jim Boyd, who was your then executive director, recognized the need for stability; correct?
A: Yes.
Q: That's what you're referring to.
A: Yeah. And that's the certainty issue we've already discussed.
Q: And that's reflective of deception or fraud by Unocal.
A: Well because Unocal was one of the parties that, you know, felt very strongly about certainty and stability.
Q: Is there anything else on this document, sir?
A: That's all.
(Respondent's Exhibit 47 was marked for identification.)
BY MR. BEEHLER:
Q: Respondent's Exhibit 47 is a letter from James Boyd to Roger Beach of Unocal dated February 17, 1995; is that right?
A: That's correct.
Q: And in fact Mr. Boyd is indicating to Mr. Beach that he has read about the Unocal reformulated gasoline patent and he's asking for a meeting; correct?

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A: Correct.
Q: What in this document reflects fraud or deception by Unocal?
A: What it reflects in my view is that three and a half years went by before we were notified.
Q: Does it reflect any — anything else about fraud or deception?
A: No.
Q: Mr. Boyd does not tell Unocal here that he feels Unocal has defrauded CARB; does he?
A: No, not — not specifically.
Q: He doesn't say that Unocal has deceived CARB; does he?
MR. ROBERTSON: Objection, argumentative.
A: That's not in the letter.
Q: Okay.
(Respondent's Exhibit 48 was marked for identification.)
BY MR. BEEHLER:
Q: Looking at Respondent's Exhibit 48, sir, it's another handwritten document bearing a date — it looks like 3/17/1994; is that right?
A: That is correct.
Q: And it has attached to it a letter —
A: Correct.

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Q: — to The Honorable Governor Pete Wilson from Roger Beach of Unocal; correct?
A: Uh-huh.
Q: I need a verbal —
A: Oh. Yes.
Q: And attached to that are some additional documents running through page 10075; correct?
A: Correct.
Q: Okay. Let's start at the beginning. Looking at the front page of Exhibit 48, whose notes are these?
A: I'm not certain. I think again these may be Tom Jennings' notes.
Q: You haven't talked with Tom Jennings to confirm that they are his notes?
A: No.
Q: Was there a meeting, as you understand it, on March 17, 1995 with Unocal?
A: Yes.
Q: Were you present?
A: I believe I was.
Q: Did you take notes?
A: I don't recall if I took notes.
Q: If you took notes, is it fair to say that you no longer have them?

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[1] A: I — I don't think I have them. I'm in the
[2] process now of going through, you know, the — the
[3] discovery, so I'm going through my boxes. I only did
[4] them once, you know, five years ago. But I don't
[5] think I have notes.
[6] MR. GOLDMAN: Okay. For the — for the
[7] record I just want to make it clear that Mr. Beehler
[8] had emphasized to me his desire to take the
[9] depositions of the persons most knowledgeable at CARB
[10] as soon as possible and he was willing to schedule
[11] these depositions that we're now undertaking prior to
[12] the production by CARB of documents responsive to the
[13] document subpoena that was procured from the FTC. So
[14] I just want that clear.
[15] MR. BEEHLER: That's absolutely true. My
[16] question still went to whether he's kept the notes.
[17] MR. GOLDMAN: Oh, I understand.
[18] MR. BEEHLER: Okay.
[19] MR. GOLDMAN: But he indicated —
[20] THE WITNESS: Yeah.
[21] MR. GOLDMAN: — he was looking through his
[22] files for documents that are responsive to the
[23] subpoena, so that's what he's doing.
[24] MR. BEEHLER: I didn't understand — I just
[25] didn't understand the comment. I'm sorry. But what

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[1] you said was true.
[2] BY MR. BEEHLER:
[3] Q: Okay. Mr. Venturini, back to you, sir.
[4] What is reflected in Exhibit 48 as being fraudulent
[5] or deceptive by Unocal?
[6] A: The March 17 letter.
[7] Q: Okay. Let's — let's go through this then.
[8] The first couple of pages of notes that you, I guess
[9] it's fair to say, assume are Tom Jennings', —
[10] A: Yes.
[11] Q: — they don't reflect anything fraudulent
[12] or deceptive by Unocal: is that fair?
[13] A: That's fair.
[14] Q: But we get to the March 17, 1995 letter and
[15] that's what you want to talk to me about.
[16] A: Yes.
[17] Q: Okay. First of all, how did CARB come into
[18] the possession of this letter?
[19] A: It was probably —
[20] It could have been given to us by Unocal at
[21] the meeting, could have been transmitted —
[22] Q: No. I'm asking at this point not for what
[23] could have happened. —
[24] A: Oh.
[25] Q: — do you know how it is that CARB came

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[1] into possession of this letter?
[2] A: I can tell you the way I think. I can't
[3] be —
[4] Q: Do you know?
[5] A: Not for certain.
[6] Q: Okay. Do you have a belief?
[7] A: Yes.
[8] Q: Would you tell me what that belief is.
[9] A: Belief is that was handed to us at this
[10] meeting.
[11] Q: Okay. At the March —
[12] A: Seventeen meeting.
[13] Q: Okay. Very good. Now what is deceptive in
[14] this letter, or fraudulent?
[15] A: If you look at the third paragraph, you
[16] know, it — it's a statement here, "Further, as I
[17] reminded you, it is very much in our interest to have
[18] as many companies as possible sell gasolines covered
[19] by our patent. Our aim is to license our patented
[20] gasoline to gasoline suppliers." And — and what —
[21] what that is indicative of, you know, the whole
[22] history and the — the whole time period Unocal knew
[23] they were going to license this gasoline and they did
[24] not inform us throughout this whole period of the
[25] patent and so forth.

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[1] Q: Okay.
[2] A: So just a confirmation of that.
[3] Q: Let's look at the statement that you're
[4] referring to to Governor Wilson.
[5] A: Uh-huh.
[6] Q: The statement is being made on March 17,
[7] comma, 1995; right?
[8] A: Right.
[9] Q: The patent has now issued; correct?
[10] A: Yes. I think it was issued in 1994.
[11] Q: Correct. So this is a year later
[12] A: Yes.
[13] Q: And Roger Beach is telling the Governor of
[14] California that it is in Unocal's interest to have as
[15] many companies as possible sell gasolines covered by
[16] the patent; correct?
[17] A: Correct.
[18] Q: Is he saying that that was their past
[19] intent, or is he saying that that is in their
[20] interest now?
[21] A: Saying it's in their interest. Well I
[22] don't know what it says about —
[23] I can't infer what it might say about the
[24] past.
[25] Q: All right. And then the next point is.

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[1] "Our aim is to license our future" — I'm sorry.
[2] "Our aim is to license our patented gasoline to
[3] gasoline suppliers." That spoke to the future aim of
[4] Unocal; right?
[5] A: Correct.
[6] Q: Is there something else in this document
[7] that reflects fraud or deception?
[8] A: No.
[9] (Respondent's Exhibit 49 was
[10] marked for identification.)
[11] BY MR. BEEHLER:
[12] Q: Looking at Respondent's Exhibit 49, sir, it
[13] appears to be a letter dated April 10, 1995 from
[14] General Counsel Dennis Codon of Unocal to CARB's
[15] chief executive, Chief Executive Officer Jim Boyd;
[16] right?
[17] A: Correct.
[18] Q: What is fraudulent or deceptive in this
[19] letter, if anything?
[20] A: One of the things that —
[21] Q: Could we look — could we look at the
[22] statement?
[23] A: Yeah. Let's go to the second paragraph.
[24] Q: Okay.
[25] A: And this is —

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[1] We were in the process of obtaining some
[2] test fuel from Phillips and concerned that —
[3] Phillips was very concerned about making this fuel
[4] because of the patent, and Unocal basically told us
[5] they wouldn't seek an injunction, they basically said
[6] it was okay to go ahead and make that — that — that
[7] test fuel.
[8] Q: Okay. Let's put that a little bit in
[9] context —
[10] A: Sure.
[11] Q: — because I think it might have been
[12] broken up a little bit in your testimony.
[13] CARB finds out about the patent; correct?
[14] A: Yes.
[15] Q: And CARB is in the process of doing some
[16] testing on fuels that would comply with the RFG 2
[17] regulations; correct?
[18] A: Correct.
[19] Q: And that was for various reasons, to
[20] alleviate some concerns that had been raised by
[21] people as to mileage or safety factors or how it
[22] would affect vehicles; correct?
[23] A: Yeah. It was a test program to assure that
[24] the — in the real world the fuel would perform fine
[25] without having adverse effects on vehicles.

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Q: And the discussion occurred with Unocal as to if gasoline that CARB was in fact buying from Phillips to do this testing program fell within the claims. CARB didn't want to be charged with infringement of that; right?
A: Yes.
Q: And what Unocal said was you know what, go ahead, we are not going to charge you with infringing for your test programs; right?
A: Correct.
Q: And that this is what that letter is expressing to your chief executive officer.
A: That's correct.
Q: Okay. What is fraudulent or deceptive here?
A: Well it's — it's also an indication again of the fact that there is this whole time period that went on from '91 to this time where there was some significant information that was not shared — shared with us.
Q: Anything else?
A: No.
(Respondent's Exhibit 50 was marked for identification.)

BY MR. BEEHLER:

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Q: Looking at Respondent's Exhibit 50, sir, this is a letter to Larry Higby, H-i-g-b-y, 76 Products Company, from your chief executive officer, Jim Boyd; right?
A: Correct.
Q: And it's dated April 13, 1995; right?
A: That's correct.
Q: And in fact this is the request by CARB that it not be charged with infringement for doing this test program of gasoline; correct?
A: Correct.
Q: Okay. So does this document reflect any fraud or deception?
A: Not in and of itself. What it does show and why I think it's important, if I may, is that it — it's indicative of the type of disruption that occurred within our organization when we learned about — about the patent. I mean immediately, you know, our executive officer calls for a meeting and immediately we have this issue with some test fuel that we're trying to proceed with the performance test program.
Q: And Unocal quickly accommodated that concern; right?
A: They did.

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Q: Unocal did not allow their patent to in any way impact on your rollout of the gasoline in 1996; correct?
A: That's correct, because they wanted as much gasoline made that came under their patent as possible.
Q: Did — did Unocal —
I just want an answer to my question. Did Unocal allow their patent in any way to impact or disrupt the rollout of your gasoline in 1996?
MR. ROBERTSON: Objection, form.
MR. BEEHLER: That's probably a fair objection, counsel. Let me rephrase it.
Q: You earlier told me that your rollout went smoothly with the exception of a refinery that had a little bit of a problem; right?
A: Yes. Correct.
Q: Okay. Anything else —
A: That's all.
Q: — about this exhibit?
A: That's all.
THE WITNESS: Could I ask that we take — take a short break? I need to wash my hands, if you don't mind.
MR. BEEHLER: Sure. Go ahead.

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THE REPORTER: Off the record, please.
(Recess taken.)
(Respondent's Exhibit 51 was marked for identification.)
MR. BEEHLER: Mr. Venturini, we've just marked Respondent's Exhibit 51, but in order to make things a little bit more logical, we've reordered the remainder of the exhibits that you brought with you, and so we're going to put off our discussion on Exhibit 51 for a little bit and we'll start with the next exhibit. Okay?
THE WITNESS: Yes. Yes. Thank you.
(Respondent's Exhibit 52 was marked for identification.)

BY MR. BEEHLER:

Q: Looking at Respondent's Exhibit 52, sir, this is the staff report that was sent out to, I guess, a lot of folks as you described it on or about October 4, 1991; right?
A: Correct.
Q: Now this is something that the staff itself put out.
A: That's correct. This is our staff report.
Q: Does this staff report reflect fraudulent conduct or deceptive conduct by Unocal?

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A: It — it — there —
It contains information that was provided by Unocal which is misleading.
Q: Would you show me those sections.
A: Sure. And — and I want to show you on page one, at the — at the bottom of the page, the last sentence, we're talking about the goals of the program, and it says, "A further objective is to meet these emission reduction goals in a manner that provides flexibility for fuel producers to provide the 'cleanest' possible gasoline at the least cost to the consumer."
Q: Just a minute, please. Give me one moment. Would you turn to page five.
A: Certainly.
Q: And your — your comment had just gone to saying that a further objective is to provide the cleanest possible gasoline at the least cost to the consumer. On page five you state that "The proposed specifications are designed to result in the 'cleanest' burning gasoline possible to give the maximum reduction in emissions of criteria and toxic air pollutants from the existing fleet of vehicles;" don't you?
A: That's — yes.

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Q: Okay. What else in this statement, sir?
A: But that — but that doesn't mean —
We're still very concerned about cost, and — and the reason I wanted to point that out is to highlight, you know, how cost was very important in our — in our minds throughout this whole thing. And I think yesterday I — I discussed with you how, through the development of this regulation and based on comments we received, we actually made changes at — at the hearing, we proposed changes, there were some additional changes where we were able to preserve 95 percent of the benefits at 85 percent of the cost.
Q: And I promise you we are going to get into that.
A: Okay.
Q: And we're going to get into the cost effectiveness as well. So I appreciate you showing me that, but let's — let's see —
A: Okay.
Q: — if we can confine ourselves to the question again.
Looking at this document, sir, what's reflected here that shows Unocal was engaged in fraud or deceptive conduct?

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A: Okay. Throughout this document, I'll give you —
Q: Why don't you show me where the sections are.
A: Page eight in "What is the estimated cost of the proposal?" third paragraph says, "If the entire cost is passed on to the consumer, the cost of gasoline to the consumer could increase by 14 to 20 cents per gallon."
Q: Okay.
A: You know, Unocal knew how important cost was to us, and it's the omission; they never informed us of the fact that they were seeking a patent and the effect that would have, give us an opportunity to evaluate that impact open our regulations.
Q: Okay. What's the next one?
A: Give me a moment. The next — the next one is on — actually I need to go back here. I'm sorry. It's on page 28, —
Q: Yes, sir.
A: — third paragraph, and it talks about T50. It points out the Auto/Oil did not consider effects of T50, said both Toyota and Unocal conducted studies, then further down it said, "The Unocal results indicate that a 10 degree reduction in

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T50..." So it's a nine percent decrease in VOC emissions and a five percent decrease in carbon monoxide emissions. I think this is important because it indicates our reliance on the information provided by Unocal into the issue that I've expressed previously about not giving us the whole story when they provided the results of their testing program.
Q: Do you remember yesterday when I asked you whether in fact you attributed any benefits for purposes of your cost-effective analysis to T50? Do you remember that?
A: Yes.
Q: And you did not; did you?
A: What I recall saying is that we looked at the regulation and the specifications as a whole in doing the analysis.
Q: I'm talking about your cost-effectiveness analysis, sir.
A: Yes.
Q: Okay. And didn't you confirm last night or this morning that in fact you did not attribute any benefits to T50?
A: No, I —
Q: Okay. We'll get into that later. —
A: Okay.

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Q: — I promise.
A: Okay.
Q: Why don't you —
A: But — but my point here is that we relied on the information, it's an indication of a reliance on information from Unocal of our positions, and they did not present us with the rest of the information that we believe was material to our decision-making.
Q: What's your next section that you've got marked?
A: On page 41, talks about the predictive model and we indicate the studies that will form the basis of the analysis, and just want to point out that the Unocal parametric studies included there in the same perspective that, you know, we were relying on the Unocal information, we're going to use that information that they presented to us.
Q: What you're saying here is that we are committed to developing a predictive model and we are — intend to put Unocal data into that predictive model along with these other studies; correct?
A: Their information, that's correct.
Q: Their data, sir.
A: Their data.
Q: Unocal's equations didn't go into the

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predictive model; did they?
A: No, their data went into the actual model.
Q: Okay. What's your next statement, sir?
A: Okay. On page 65, talks about "ECONOMIC IMPACTS OF THE PROPOSED REGULATIONS."
Q: Yes.
A: The last paragraph, "In developing the cost estimates for this chapter, staff has generally relied on information presented to us by the refiners." Once again, Unocal did not present us with any information, and it was the omission not only — and it's not the information of the refiner, but that they withheld information from us about the patent.
Q: Okay, let's — let's be clear. We mentioned this a little bit yesterday.
A: Uh-huh.
Q: I want to make sure that your testimony hasn't changed or that I misunderstood. You state here that staff has generally relied on information presented to you by the refiners; correct?
A: Correct.
Q: Six refiners presented you information about their refinery costs; correct?
A: I believe that's the correct number.

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Q: And that was not Unocal.
A: No, I don't believe Unocal did provide us information.
Q: Do you have another section in this exhibit, sir, marked?
A: Yeah, on page 66.
Q: Yes.
A: At the bottom of the page we talk about our analysis of the cost per gallon of gasoline produced.
Q: Based on those six California refiners it says right there.
A: Yes, based on the analysis we did. But — but my point is once again we were — did — were not told of a cost that was material to our regulation by Unocal.
Q: And I'm just clarifying that this page 66 is devoted to, quote, "Estimated Cost of Compliance for Six California Refineries," end quote. Do you see that?
A: Yes.
Q: Okay. Is there anything else in this —
A: No.
Q: — document?
The next document should be Respondent's Exhibit 5, sir, and you can go ahead and look at your

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copy if you want, but it has already been marked.
A: Okay.
Q: Okay. Would you let me identify it. Respondent's Exhibit 5 is the technical support document which went out at the same time as the staff report that we just looked at; correct?
A: Correct.
Q: Okay. Would you identify for me which sections of this document reflect deceptive or fraudulent conduct by Unocal.
A: On page 23 —
Q: Yes. There's a discussion here about the Toyota data and then sensitivity of emissions to T50 changes that staff did using the Unocal regression equation.
A: Correct. And what I wanted to point out here is the fact that we did use the Unocal information, and if you go to page 26 and page 27, those are the actual charts from the presentation Unocal made — made to us.
Q: Let's be precise here. On page 23, this reflects that you used the Unocal equation; correct?
A: That's —
Q: Correct?
MR. ROBERTSON: Objection, misleading.

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A: I m — I m just — just reading to refresh my memory.
In the second paragraph we talk about the extensive test program which included T50 as one parameter and the conclusion of that study in terms of the resulting reductions in VOC and carbon monoxide emissions, which are in the subsequent figures. And —
Q: We're going to get to those —
A: Okay.
Q: — in a minute. My question, though, is page 23 reflects that you used the Unocal equation.
A: Well to evaluate the sensitivity of emissions to T50 changes.
Q: You used the Unocal equation to do that.
A: Correct.
Q: And page 26 and 27 are copies of two pages of the presentation that Unocal showed you in June of 1991 —
A: That s correct.
Q: — that were marked confidential.
A: And subsequently —
Q: That were marked —
A: — in the public domain.
Q: That were marked confidential: correct?

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A: That s — that s correct.
Q: And you ve already told me that you considered that the presentation slides were released by virtue of the August 1991 letter.
A: That whole package, yes.
Q: Okay. Does it say on — here on these pages that you used the Unocal data for any of your analyses?
MR. ROBERTSON: Objection, misleading.
A: Oh, it says we used the Unocal regression equations. I —
Q: And the slides.
A: And these slides.
Q: Is there a next section that you would like to point out?
A: Just to point out in Appendix 11, which I think we covered this yesterday —
Q: That s where the regression equations are from Unocal.
A: Correct.
Q: Anything else in this document?
A: No.
Q: The next document has previously been marked as Respondent's Exhibit 10. It s the final statement of reasons put out in October 1992:

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correct?
A: Correct.
Q: Would you tell me which sections here reflect deceptive or fraudulent conduct by Unocal? And as to your understanding please go ahead and answer that, because I think we may have covered virtually all or — if not all through your previous testimony, but let s make sure that we get the sections pointed out here. Okay?
A: On — on page seven we — we talk about the changes that were made to the regulations. And also on — on page eight, and I want to go to the paragraph on page eight that starts, "The Board made..." It s the paragraph right above section two, "Treatment of Small Refiners." And it just iterates why we made the modifications, to provide greater flexibility, opportunity to reduce compliance costs, and that we felt that was worthwhile to — because there was a slight loss to emission reductions. But here is another case where we were very concerned about cost, and as I indicated before, you know, very significant costs had not been shared with us.
Q: And as I promised, we re going to —
A: Okay.
Q: — discuss that board proposal and your

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modifications and how it resulted in — in some detail a little bit later on.
A: On — on page nine, at the bottom, you know, this is a section dealing with small refiners and our rationale for the small refiners but —
Q: That s something that you want to point out is fraudulent and deceptive by Unocal here?
A: Well it s — it goes to this issue of concern again about — about costs and so forth, and you know, costs weren t shared.
If you just bear with me just a moment. down at the bottom of the page we say, "We have concluded that it is preferable to tailor our regulations in a way to minimize the likelihood that they will put a number of companies out of the business, especially when the regulatory economic costs are higher for these companies than for the rest of the — the industry." And, you know, it s once again an indication that, you know, some very material information, basically that Unocal s patent and the impacts of that, were not available to us to — to consider.
Q: That section relates to the small refiners exemption that we already discussed: correct?
A: Correct.

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Q: That all the major refiners opposed, correct?
A: That's correct.
Q: And which recommendation you rejected for the reasons stated.
A: Correct. But, you know, one of the concerns that we did address, small refiners, we basically wanted to give them an opportunity to compete, and, you know, without the information that wasn t provided to us, we couldn t make appropriate assessments.
Q: Okay. What's your next section?
A: This is on page 21, comment nine. This was a comment made by Wickland Oil, and in our response at the last sentence we say, "We expect that the costs of meeting Phase 2 standards will ultimately be borne by the consumers of gasoline in California and therefore all gasoline imported and produced in the state should be treated equally." And then unfortunately, here again it s the omission comment that I made — made before.
Q: Wickland Industries opposed your regulations: didn't they?
A: Yes, I believe — believe so. I haven't reviewed all of their stuff, but I believe so.

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Q: In fact Wickland argued to you that ARCO was being given a distinct advantage because of your regulations for a couple of reasons. Do you remember that?
A: I don't specifically.
Q: Do you recall that Wickland Industries argued that ARCO had a huge competitive advantage because their crude oil came from Alaska?
A: I don t recall. They may have. I don't deny they may have made those points.
Q: Do you — do you remember Wickland arguing, in fact with others, that ARCO was being given a huge advantage because the specifications you were adopting were in fact a mirror image of ARCO EC-X, a fuel already developed by ARCO? Do you remember that argument being raised?
A: No. I don t. I — well I — I don t recall the specific details of it.
Q: In any event, the response that you re pointing out here is in response to a criticism by Wickland as to how to treat gasoline coming into the state from outside of California: right?
A: Yes. They were concerned about the neatness of the specification. They were an importer and concerned about being able to continue to import.

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Q: They were arguing that they should perhaps get different treatment under the regulations as an importer: correct?
A: Correct.
Q: And your response is we're going to treat the gasoline, whether it's made in California or — or outside of California, the same.
A: Yeah. There would be one gasoline for California.
Q: What's the next section, sir?
A: And that the costs would be ultimately borne by the consumer.
Q: And that cost you estimated in October to be up to 20 cents a gallon with the fuel penalty analysis thrown in.
A: I believe it was 14 to 20, if I recall correctly.
A moment.
Q: That's all right, sir.
A: I'm trying to —
Q: No. I appreciate it.
A: I just want to —
On page 69 —
Q: Yes.
A: — at the top of the page, the last

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sentence in the agency response says, "In fact, Unocal has evaluated effects of T50, and it is the results from this study that form the basis for the T50 specification." And one — once again I mention that because, you know, it was the information provided by Unocal that did form the basis for the T50 specification, and yet in our view they did not tell us, as I've said before, the whole story.
Q: I planned — I had planned on getting into that a little bit later but —
A: Okay.
Q: And I probably will as well, but let's just clear — clear it up right now. Here you state that it is the Unocal results that form the basis for the specification. You do state that.
A: Yes, that's what it says.
Q: You've previously testified that in fact there were several things that led you to conclude that the T50 should be adopted. Do you remember that?
MR. ROBERTSON: Objection, misleading.
Q: I'll withdraw it.
A: Well —
Q: Do you remember staff elsewhere in this document describing that in fact it was Toyota

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Unocal, even making reference to Auto/Oil, in fact making reference to GM/WSPA/ARB studies, all which supported the T50 specification, do you remember that?
A: I — I remember that, but it's very clear to us that for this regulation, that the basis was the Unocal data. We were aware of the Toyota information, and as we discussed yesterday a lot of their focus was on drive — driveability. And — and so, you know, that — that was fine from our perspective, that provided some confirmation, but it was really Unocal that had that — you know, that extensive test program which really provided and convinced us of the — you know, T50 would be appropriate to put in the regulations. Yes, there were these other things out there.
Q: All I'm pointing out, sir, in this portion that you just identified, —
A: Uh-huh.
Q: — you simply make reference to Unocal. In other portions of the same exhibit — and we'll get into it later — you recall that you attributed other studies as well as a basis and justification for T50.
A: Well I — I would like to clarify. I — the —

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The primary basis for including the T50 specification was Unocal information. The other stuff was reported on and was — in our view is confirmatory, but as we said here, we relied on the Unocal —
Q: Okay.
A: — information.
On page 156 —
Q: Yes, sir.
A: — there's a comment by Unocal, and we have — have discussed this, about the assumption that one half of the total capital spent would be operating expenses.
Q: You've already testified as to why you think this is fraudulent or misleading; haven't you?
A: I — I have. I just wanted to reiterate here another — another instance.
Q: No, that's exactly what I want you to do. set out the section. If we've already discussed it, we'll move on.
A: Okay. On the next page, 83, item two —
Q: Eighty-three, sir?
A: Correct.
Q: What was the last page you referenced?
A: Eighty-two.

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Q: Okay. I believe you had said page 156, and that's why I wanted you to correct it.
A: Oh, I'm sorry. That was comment 156.
Q: Thank you for that correction.
A: I apologize.
I'm now on page 83, comment 159, and we've discussed this before and it —
This is basically a statement by a number of companies, Unocal included, of being opposed to measures which are not cost effective.
Q: Okay.
A: And — and once again, you —
Q: If we've already discussed it, let's move on, unless there's an additional point.
A: It's the same points I've raised about being misleading and not telling us the whole story.
Q: Okay. What's the next section?
A: Okay. On page 85, third paragraph, here's where we talk about changes we made to the regulation, achieving 95 percent of the benefits, about 85 percent of the — of the — of the costs, and I point that out just to assure you that costs were very high in our mind and, you know, it — that fact of a very important cost was not told to us, potential cost.

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Q: All right. What is the next section?
A: Let's see. On page 105, comment 190.
Unocal is indicating we did not consider other cost-effectiveness options and so forth, and once again it's the same issue.
Q: This is a comment you attributed to Unocal and WSPA.
A: And WSPA, that's correct.
Q: Okay. And this is a criticism of staff for not considering other options such as the I&M program.
A: Correct.
Q: And what's the I&M program?
A: Enhanced I&M, inspection and maintenance program.
Q: And what you said is, "No other measures can provide the dramatic emissions benefits provided by Phase 2 RFG."
A: Correct.
Q: All right. What's the next section?
A: And just — just for clarity, the point here is here the cost effectiveness was talked about, and we had not been apprised of a major factor that would affect things.
Q: I'm sorry, sir. In the sentence that I

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[1] just read it doesn't say anything about cost
[2] effectiveness: does it? It says. "No other measures
[3] can provide the dramatic emissions benefits provided
[4] by Phase 2 RFG. period." Right?
[5] A: Correct. I m referring to the comment
[6] about cost effectiveness from Unocal and others —
[7] Q: Okay
[8] A: — at the bottom of the page. And I'll go
[9] fairly — because we have talked about this — this
[10] before. On comment 200. the fourth paragraph. this
[11] is the Unocal comment regarding that we only
[12] considered the impact on jobbers.
[13] Q: And we ve discussed that one before.
[14] A: We did discuss this one. and the cost to
[15] consumers. and they did not apprise us of the patent
[16] and the implications that would have.
[17] I'll try to — I m trying to — let s see.
[18] We addressed that one.
[19] On page 180. comment 33". —
[20] Q: Yes. sir.
[21] A: — the top of the page. this is a comment
[22] by Unocal: it s again the small refiners.
[23] Q: Just a minute. You re confusing me.
[24] A: Oh.
[25] Q: On the top of which page?

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[1] A: 181.
[2] Q: Okay.
[3] A: Sorry. "It is likely that small refiners
[4] will receive an economic windfall as a result of the
[5] exemption."
[6] Q: That s a comment that you've already
[7] discussed before in terms of what Unocal was
[8] complaining about in terms of a small refiners
[9] exemption.
[10] A: Correct. And that that was misleading to
[11] us because there s certainly another economic
[12] windfall that they did not disclose to us. I think
[13] that s —
[14] The other things we — we pretty much
[15] discussed.
[16] Q: Now we have the April 22. 1994 staff
[17] report: correct? Or am I wrong?
[18] A: That s correct. That s the predictive
[19] model staff report.
[20] MR. BEEHLER: Let s go off the record once.
[21] THE REPORTER: Let s go off the record.
[22] please.
[23] (Respondent s Exhibit 53 was
[24] marked for identification.)
[25] BY MR. BEEHLER:

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[1] Q: Looking at Respondent s Exhibit 53. sir.
[2] the staff report for the predictive model dated April
[3] 22. 1994: correct?
[4] A: Correct.
[5] Q: Would you point out the sections here that
[6] involve fraudulent or deceptive conduct by Unocal.
[7] A: Go to page one. And this goes to. once
[8] again. our concern about costs. The basis for the
[9] predictive model. it s — let s see. the last
[10] paragraph on the page. "We expect this additional
[11] flexibility will allow producers to make more
[12] gasoline at a lower cost. This. in turn. will lower
[13] the expected cost to the consumers and minimize the
[14] potential for — for disruptions..." And here again.
[15] you know. we were very concerned about cost
[16] throughout this whole period and we were never
[17] apprised of — of a material item that would have
[18] affected the cost of the program.
[19] Q: Were you present at a hearing in 1999 in
[20] which Phase 3 proposals were being discussed?
[21] A: "Proposals." you mean our proposed
[22] regulation?
[23] Q: Yes.
[24] A: Yes.
[25] Q: You were present at that hearing in 1999?

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[1] If you don't re —
[2] A: Well the reason I — because there were
[3] some hearings once in a while that I wouldn t make
[4] Q: Okay.
[5] A: So —
[6] Q: Well —
[7] A: — the truthful answer would be I don t
[8] recall specifically
[9] Q: Okay. We'll move on with it later then.
[10] A: That s fine
[11] Q: What s the next section. sir?
[12] A: On page 26. Table 4. basically a listing of
[13] all the test studies that — that were used. and just
[14] to point out once again that we did rely very heavily
[15] on the Unocal information.
[16] Q: And this Table 4 says "Database doesn t
[17] it?
[18] A: "Working." the — "the Working Database."
[19] yes.
[20] Q: And it contains the data that s collected
[21] from the various tests
[22] A: Various studies. that s correct.
[23] Q: And looking down at these studies. there s
[24] a listing of fuel properties examined: isn't there?
[25] A: Correct.

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[1] Q: And if you look at number 11. one of the
[2] properties studied was T50: correct?
[3] A: That — that s correct.
[4] Q: If you look at number 12. one of the
[5] properties studied was T50: correct?
[6] A: Yes. that s correct.
[7] Q: If you look at number 13. of course that's
[8] Unocal and it studied T50: correct?
[9] A: Correct.
[10] Q: You look down at 16. that was ARCO and that
[11] studied T50: correct?
[12] A: Correct.
[13] Q: Number 17 is an ARCO study devoted to T50
[14] and T90: correct?
[15] A: Correct.
[16] Q: You look down at number 20. and that s your
[17] study in conjunction with General Motors. and that
[18] studied T50: correct?
[19] A: Correct.
[20] Q: What s the next section?
[21] By the way. did all those studies conclude
[22] that lowering T50 lowered emissions?
[23] A: Oh. I don t — don't recall.
[24] Q: Certainly putting the data together in your
[25] database and the predictive model you developed led

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[1] to that conclusion
[2] A: Well yeah. I think the predictive model
[3] would say yes. T50 has an effect on — on emissions.
[4] absolutely.
[5] Q: What s the next section?
[6] A: Page 49. —
[7] Q: Yes. sir.
[8] A: — section five. "Costs to Consumers." and
[9] once again we re talking about. you know. the — the
[10] predictive model should reduce costs to consumers.
[11] lower the production costs to produce increased
[12] supply and so forth. and this is another case where.
[13] you know. we hadn t been apprised of another cost —
[14] cost impact.
[15] Q: Anything else?
[16] A: That s all for that.
[17] (Respondent s Exhibit 54 was
[18] marked for identification.)
[19] BY MR. BEEHLER:
[20] Q: Looking at Respondent s Exhibit 54. sir.
[21] this is the final statement of reasons for the
[22] predictive model that came out in April of 1995: is
[23] that right?
[24] A: That s correct.
[25] Q: What sections here reflect fraud or

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[1] deceptive conduct by Unocal?
[2] A: I just want to go to page 17, comment 16,
[3] and this again is the — basically reiterates
[4] Unocal's comment that any opportunity to save capital
[5] had expired and so forth.
[6] Q: This relates to Unocal's continuing
[7] complaint, which you've already talked to me about,
[8] about not getting the predictive model done more
[9] quickly; correct?
[10] A: Correct.
[11] Q: And you point out that you had actually
[12] thought you'd get it done in a matter of a few months
[13] and it turned into, I guess, a few years.
[14] A: Well April '94, yes.
[15] Q: Is there anything else in this document?
[16] A: No.
[17] (Respondent's Exhibit 55 was
[18] marked for identification.)
[19] BY MR. BEEHLER:
[20] Q: Looking at Respondent's Exhibit 55, sir,
[21] this is October 22, 1999 Proposed Phase 3
[22] Reformulated Gasoline Regulations; correct?
[23] A: That's correct.
[24] Q: What sections here reflect fraudulent or
[25] deceptive conduct by Unocal?

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[1] A: Give me a moment here to review.
[2] If you go to page vii in the executive
[3] summary, —
[4] Q: Yes, sir.
[5] A: — you know, what I want to point out again
[6] is on — well let me be specific. The last paragraph
[7] where we mention the specifications — the last
[8] paragraph, "The proposed specifications are designed
[9] to preserve existing air quality benefits, improve
[10] refiner's ability to make complying gasoline without
[11] the use of MTBE and to obtain modest additional
[12] cost-effective emissions benefits for California."
[13] once again to just say — to reiterate our concern
[14] throughout this whole period of time about our fuel
[15] regulations, the importance that cost played in our
[16] regulations.
[17] Q: CARB staff is saying here that what you're
[18] proposing in 1999 will continue to provide this
[19] balance of the additional flexibility that they've
[20] already provided; right?
[21] A: Preserve the existing air quality benefits
[22] of the program.
[23] Q: And the additional flexibility; correct?
[24] You use those words.
[25] A: Oh, "...improve refiner's ability" —

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[1] Q: I'm sorry.
[2] A: — "to make complying gasoline..."
[3] Q: You state, "The proposed gasoline
[4] specifications provide a balance between additional
[5] flexibility for refiners..."
[6] A: Oh, I see. Yes.
[7] Q: And then preserving the benefits that you
[8] talked about; correct?
[9] A: Correct.
[10] Q: You made that statement in 1999 about
[11] flexibility; correct?
[12] A: Correct.
[13] Q: Now that's four years after you know about
[14] the Unocal patent; correct?
[15] A: Correct.
[16] Q: It's four years after you know Unocal was
[17] enforcing and seeking royalty for its patent;
[18] correct?
[19] A: Correct.
[20] Q: You didn't mean to mislead by talking about
[21] flexibility here; did you, sir?
[22] MR. GOLDMAN: Objection, argumentative.
[23] A: No. The whole purpose of pointing this out
[24] is there — since we initiated the development of
[25] these regulations back in the late '80s, that cost

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[1] has always been a very significant concern to us, and
[2] it continues to be a concern.
[3] Q: Okay. Anything else?
[4] A: And that's the main point.
[5] Q: What else is there in this document, if
[6] anything?
[7] A: I think that covers it for this.
[8] (Respondent's Exhibit 56 was
[9] marked for identification.)
[10] BY MR. BEEHLER:
[11] Q: Looking at Respondent's Exhibit 56, sir,
[12] it's the proposed follow-up amendments for your Phase
[13] 3 reformulated gasoline from September 29, 2000;
[14] right?
[15] A: That's correct.
[16] Q: There are sections in here that you feel
[17] reflect fraud or deceptive conduct by Unocal?
[18] A: On page — page little b, it's in the
[19] right-hand side, at the top of the page —
[20] Q: The little b is in the lower right-hand
[21] bottom?
[22] A: Yes. And I just — just — just very
[23] briefly indicate at the top of the page. —
[24] Q: Yes, sir.
[25] A: — indicates the additional steps we were

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[1] taking in the Phase 3 regulations, and once again we
[2] were concerned with, you know, facilitating
[3] production and doing whatever we can to basically
[4] make the regu — compliance with these regulations as
[5] flexible as possible to, you know, keep — keep costs
[6] down.
[7] Q: Okay. I — I understand. —
[8] A: Yeah.
[9] Q: — but how does that reflect fraud or
[10] deception by Unocal?
[11] A: Well it's as I said earlier, it's the —
[12] the whole emphasis that we had and to make clear that
[13] costs were a very significant concern to us
[14] throughout this whole process and why we really feel
[15] we were really misled back in 1991, because we have
[16] been very concerned about costs.
[17] Q: September 29, 2000, it's five years after
[18] you heard about the Unocal patent and in fact the
[19] jury has already come back and awarded Unocal a
[20] royalty and found infringement; right?
[21] A: Correct.
[22] Q: You didn't consider the Unocal patent as
[23] part of these regulations; did you, sir?
[24] A: Well at that — that time it was my —
[25] Q: Did you consider the Unocal patent as part

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[1] of the Phase 3 regulations?
[2] A: No.
[3] Q: Okay.
[4] A: Can I explain —
[5] Q: With the — with the finding of
[6] infringement and a royalty amount, you didn't
[7] consider it. Why?
[8] A: Basically because it was still in our view
[9] in a state of flux; there was continuing litigation
[10] and — and issues
[11] Q: When you said it's in a state of flux, in
[12] fact CARB took the position that the patent was not
[13] valid; didn't they?
[14] A: Yeah, we — we believed that there were
[15] concerns with the validity of the patent.
[16] Q: Right. In fact you came to testify in
[17] connection with the refiners as a witness to convince
[18] the jury that the patent was not valid; didn't you?
[19] A: Yes.
[20] Q: And CARB itself, through its counsel,
[21] including outside counsel, took positions before the
[22] United States Supreme Court attempting to convince
[23] them to hold the patent invalid; correct?
[24] MR. ROBERTSON: Objection, foundation.
[25] Q: Correct?

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A: I — I — I presume so, yeah. There was a lot of activity.
Q: You know they did that. You know that they filed briefs asking the U.S. Supreme Court to do that.
A: In all honesty, I don't recall. We probably did.
Q: Okay.
A: But I'm just being honest. If I'm not certain, I will just tell you I don't — don't recall.
Q: And it was because of that belief of, as you said, "in flux," but perhaps let's — let's — let's call it for what it is, was it a belief that the patent was invalid that you decided not to consider the cost for your Phase 3 regulations?
A: No. I don't — I don't think so. I think the basic reason is it was still in litigation, there were activities going on in terms of litigation, so nothing had been finalized.
Q: So you wanted to make sure that there was a final determination of validity before — and infringement before you considered the cost; is that right? Am I right?
A: Could you repeat the question, please?

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Q: You wanted to make sure that there was a final determination of validity and infringement before you considered the cost as part of your regulation; right?
A: I don't know if that's exactly — exactly correct. Keep in mind what we were doing here was looking at the Phase 3 regulations that were over and above the other regulations that we had done, and we were looking at the impact of this — this regulation.
Q: You just testified that, quote, "I think the basic reason is it was still in litigation, there were activities going on in terms of litigation, so nothing had been finalized." Do you remember that?
A: Yes.
Q: Okay.
A: I said that.
Q: And nothing had been finalized in terms of infringement or validity. That's what you meant; correct?
A: Or the outcome of the — of the patent issue.
Q: And it is that reason that you did not consider the cost for Phase 3 regulations; —
MR. ROBERTSON: Objection.

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Q: — right?
MR. ROBERTSON: Asked and answered.
A: I — I think I answered your question, sir.
Q: Isn't that the reason you —
Because that was not finalized, that's why you didn't consider it for your Phase 3 regulations.
MR. ROBERTSON: Objection, asked and answered. You're badgering the witness.
MR. BEEHLER: Go ahead.
A: Well I think I did answer the question. I'll answer again. It's because there was still ongoing litigation and legal — legal proceedings in process.
Q: Okay. Anything else on that exhibit?
A: No.
Q: And then we go back to Exhibit 51, sir.
A: Okay. I think this one will be real quick.
Q: And is there anything in addition here that you would like to add? This is, just to identify it, the proposed amendments to the California Phase 3 reformulated gasoline regulations, the initial statement of reasons; right?
A: Correct. I — I just included this because I wanted to have available this table —
Q: On page —

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A: — on page six in case we had to refer to — oh, I'm sorry, it's page six probably in the Appendix A, page six. It is just the — the regulation, and it included a table of all the specifications.
Q: Just for further purposes, the — the report itself is only about 35 pages, so you quickly get to this Appendix A; correct?
A: Correct.
Q: And on page six of that appendix is an appendix showing — oh, the new Phase 3 proposal?
A: Well no, the —
Yes, basically in the report here. But my purpose is just having this as a reference in case — as a reference in case we got into questions, what are the limits and so forth. I could just refer to this.
Q: Okay. Have we now discussed all of the documents which you brought with pursuant to paragraph one of that notice of deposition as documents reflecting any fraudulent conduct by Unocal?
A: Yes.
MR. BEEHLER: Okay. Why don't we take a lunch break, sir.

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THE WITNESS: Okay.
THE REPORTER: Off the record, please.
(Luncheon recess taken.)

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AFTERNOON SESSION
BY MR. BEEHLER:
Q: Mr. Venturini, looking back now at the communications you had with Unocal during '91 and '92 and after when they had this patent application pending, do you believe that their communications and their conduct in that period was deceptive?
A: Yes.
Q: Does answering that question make you speculate?
A: No.
Q: Would you turn to page 146 of your deposition, sir. Were you asked the following question and did you give the following response beginning at line three:
"Looking back now at the communications you had with Unocal during '91 and '92 and after when they had this patent application pending, do you believe that their communications and their conduct in that period was deceptive?"
I objected.
Your counsel, Mr. Ryden, states: "I think that calls upon you to speculate."
Your answer: "Yeah, it's — I — I can't speculate on that."

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[1] That's the answer you gave: correct, sir?
[2] A: Yes. Absolutely.
[3] Q: What has occurred since your deposition in
[4] 1996 that has led you to change your answer to the
[5] identical question posed then?
[6] A: What's come into much clearer focus in
[7] reviewing the documents and so forth and the issue
[8] that we're addressing at this — at this time has to
[9] do with — with the fraud and not apprising us that
[10] it became very clear to me that, yes, their actions
[11] back in 1991 were — were deceptive and misleading,
[12] because they — they should have told us about the
[13] patent.
[14] Q: The facts that you described today and
[15] yesterday in your deposition, they were known to you
[16] prior to your deposition in 1996: weren't they?
[17] A: Some of the same facts, yes.
[18] Q: What additional facts have occurred that
[19] you weren't aware of in 1996 that has led you to
[20] change your answer to the identical question?
[21] A: Certainly. I think where my perspective
[22] and my clarification at — at this point is is that
[23] in — in reviewing the documents I was able to
[24] provide myself a much better perspective of the
[25] sequence of events that occurred, and also there's —

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[1] the — the subject is a little different here. The
[2] subject here has to do with fraud and misleading.
[3] The subject back then had to do basically with the
[4] validity of the — of the patent.
[5] Q: My question was what additional facts have
[6] occurred to you that you weren't aware of in 1996
[7] that has led you to change your answer to the
[8] identical question.
[9] A: I think I've answered that question, Mr
[10] Beehler.
[11] Q: In your answer you have not indicated to me
[12] any additional facts. Are there any additional facts
[13] which have occurred since 1996?
[14] MR. GOLDMAN: Objection, that misstates his
[15] testimony. He indicated that he reviewed his
[16] documents prior to being designated as the person
[17] most knowledgeable on behalf of CARB.
[18] Q: What additional facts are there, sir?
[19] A: I provided my answer. The review of the
[20] documents and going through and giving me an
[21] opportunity to basically refresh my memory of events,
[22] and in going through the documents, it brought other
[23] things, made — helped me remember other things
[24] and — and so forth that occurred, and the fact that
[25] I was looking at these — these documents with the

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[1] perspective of the issue at hand here.
[2] Q: Is that your best description of the
[3] additional facts that you are aware of since the time
[4] of your deposition?
[5] A: Yes. I believe that's a fair
[6] characterization.
[7] Q: Sir, are you aware of any regulations that
[8] allow a patent to be held confidential while it is
[9] pending?
[10] A: Not specifically.
[11] Q: No one's ever informed you that there are
[12] regulations or a statute that allow a patent holder
[13] to keep his or her patent application confidential?
[14] MR. ROBERTSON: Objection, misleading.
[15] A: I will say I'm not aware of specific —
[16] don't know specific regulations, but it's my
[17] understanding that, yes, when a patent is applied
[18] for, that the person applying can keep that
[19] confidential.
[20] Q: Are you aware of any company policies that
[21] do not allow disclosure of the patent applications?
[22] Have you ever heard of such a policy?
[23] MR. ROBERTSON: Objection, vague.
[24] A: I —
[25] Can you clarify, be a little more specific?

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[1] Q: Well you were present during the portions
[2] of the trial that occurred in the 1997 case between
[3] Unocal and a bunch of other major refiners: right?
[4] A: Correct.
[5] Q: Were you present during Steve Welstand's
[6] testimony where he discussed Chevron's practice of
[7] not disclosing patent applications?
[8] A: No. I was just there for my testimony and
[9] was not a — didn't have the opportunity to hear any
[10] of the other testimony or witnesses.
[11] Q: Have you ever discussed Dean Simer — with
[12] Dean Simeroth his deposition testimony relating to
[13] what his awareness was of any such policies?
[14] A: I don't recall any specific discussions of
[15] what he — he may have said.
[16] Q: Outside of his deposition, have — have you
[17] ever had such a discussion regarding knowledge by Mr.
[18] Simeroth of such company policies?
[19] A: No. I don't recall such discussion.
[20] Q: Yesterday you mentioned that it was well
[21] understood what cost effectiveness referred to.
[22] Remember using those words?
[23] A: Yeah. I think so. Yes.
[24] (Respondent's Exhibit 57 was
[25] marked for identification.)

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[1] BY MR. BEEHLER:
[2] Q: I want to discuss with you, sir, what CARB
[3] staff's understanding was of that term "cost
[4] effectiveness" and conversations and analyses that
[5] occurred, just for purposes of directing your
[6] attention. Okay?
[7] A: Okay.
[8] Q: Respondent's Exhibit 57 is a letter from
[9] General Motors to James Boyd, copied to you and
[10] others, dated May 20, 1991: correct?
[11] A: Correct.
[12] Q: You would have received this in the
[13] ordinary course of business?
[14] A: Correct.
[15] Q: Now this was prior to the November 1991
[16] regulations being adopted, just for purposes of
[17] putting this into some point of reference: isn't that
[18] right?
[19] A: Correct.
[20] Q: Now if you turn to the second page of this
[21] document — and — and by the way, this is written by
[22] Samuel Leonard.
[23] A: Yes.
[24] Q: Do you know him?
[25] A: Yes. I know of him.

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[1] Q: It says here he's the Director of Auto
[2] Emission — Automotive Emission Control.
[3] A: Correct.
[4] Q: Did he from time to time apparently have
[5] some contact with CARB in connection with your
[6] regulations?
[7] A: I assume he did.
[8] Q: Looking at the second page of this exhibit,
[9] the last paragraph — the last full paragraph, about
[10] midway through, he points out, "The long-run costs of
[11] producing any particular blend or type of blend will
[12] probably vary among refineries," and then goes on to
[13] raise three bullet points, and that's where I want to
[14] direct your attention, over to the top of the next
[15] page. The first bullet point he says is, "What costs
[16] are relevant to definition of a cost-effective
[17] rule — those of the highest-cost producer, the
[18] lowest-cost producer, or some other firm? If mean or
[19] average values are to be used, how will they be
[20] developed?"
[21] Did anybody ever write Jim back and give an
[22] answer to those questions?
[23] A: I do not recall.
[24] Q: Continuing to look down at page three, in
[25] the first full paragraph after the indent he —

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A: I'm sorry, page three?
Q: Yes, sir.
A: Okay.
Q: The page numbered three —
A: Yes.
Q: — that we were right on. He states here, "In particular, we need to know how the mandate in section 43018 to require the 'maximum possible control' at the earliest practicable' date is to be reconciled with the statutory requirements that new regulations regarding vehicular emissions (including fuel specifications) be 'necessary' and 'cost-effective,' and be 'the most cost-effective combination of control measures' available to the Board." You see he raises that point?
A: Yes.
Q: And then he gets to the nub of the question here in the next paragraph. "We believe the statute requires the Board to determine the maximum feasible control technologies for fuels, and to require them if the costs to the public are (1) comparable to those of last year's — last September's vehicle rules, or" — underlined "or" — "necessary to achieve the 'maximum emissions reductions' at the earliest practicable date'"

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He says, then, "If the staff takes a different view of the nonattainment situation, we would like to be advised of the basis for the conclusion as soon as possible."
Did anybody write him back and tell him he was wrong?
MR. ROBERTSON: Objection, asked and answered.
A: I don't recall a written response.
Q: Okay.
A: And if I — if I can clarify because I — I think just to say that my — my answer might be viewed as possibly inappropriate, you have to recall this was a time when we were deeply in the process of developing the regulations. Clearly General Motors and the other auto manufacturers wanted to see very — I'll use aggressive specifications for — for gasoline and they were — they wanted to make sure and were interested that, you know, there would be an opportunity to take a look at the analyses we did and so forth. And, you know, it's a matter of our course to share with everybody, you know, how we do our analyses and — and so forth. In fact I recall that we put out — my recollection is we actually put out a document to tell people how we were going to do our

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analyses, our emissions analyses and — and I believe even our cost analyses. But yeah, as I said yesterday, our — our purpose in — in developing regulations is to share as much as we can with people, and there's — there's a reason why this is ingrained in the Air Resources Board's philosophy: We want as much input as possible, we want as much dialogue as possible because it helps us to have the best regulations possible. And so this — I mean this — this letter is fine. They're expressing their view. They're very concerned that — on how we do the cost analysis and so forth. So —
Q: Are you finished with your statement?
A: Yes.
Q: My question, though, went back to your statement that it was very well understood during this time period what cost effectiveness was. This letter in May of 1991, right before Unocal and you met, is expressing a view of what your statutory mandate is and how your cost effectiveness is supposed to be done: correct?
A: I think there's a distinction, and let me explain. In terms of everybody knowing what cost effectiveness is, that's a pretty standard calculation, it's the cost of compliance divided by

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the emissions benefits. What I think this goes to is now, once you do that calculation, how do you measure it against these requirements that are in the Health and Safety Code?
Q: That's how you understand what Mr. Leonard is saying in the final paragraph here on page three? Isn't he saying, sir, that the statute requires you to determine the maximum feasible control technologies and require them in either of two instances, one, if they're comparable to last year's rules, or two, if it's necessary to achieve maximum emissions reductions? Only the first point would require cost-effectiveness analysis under his view, right?
A: Well that — that's his view.
Q: Okay. And my point is you don't know if anybody ever wrote him back and to tell him that he was wrong: do you?
MR. ROBERTSON: Asked and answered.
A: I — I answered that there was — I don't have a recollection of a written response to Mr. Leonard's letter.
(Respondent's Exhibit 58 was marked for identification.)
BY MR. BEEHLER:

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Q: Sir, Respondent's Exhibit 58 is selected pages from something that I think you'll recognize and that you occasionally refer to as your Blue Book: is that right?
A: Correct.
Q: And if you would turn to the second-to-the-last page, to the very statute — or regulations that General Motors was discussing, section 43018, do you see that?
A: Yes.
Q: And section 43018 has three subparts, doesn't it, (a), (b) and (c)?
A: Correct.
Q: Let's look at these for a moment. Section (a) states that "The state board shall endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state standards at the earliest practicable date:" correct?
A: Correct.
MR. ROBERTSON: Are you asking this gentleman in his personal capacity all these questions about the statute, or not?
MR. BEEHLER: No, sir. This goes right to the expectations and allegations of cost

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effectiveness and flexibility.
MR. ROBERTSON: Well objection, beyond the scope.
Q: Okay, sir. That's what the statute says: right?
A: Correct.
Q: You consider that a separate mandate to the staff and board: don't you?
MR. ROBERTSON: Objection, beyond the scope.
A: You know, I — I view the — Well we view this as basically an indication that, you know, we're to strive to accomplish attainment of the standards as quickly as possible.
Q: There's three sections here.
A: Right. Well you were just asking about the first section.
Q: The first section that I'm referring to is (a). Do you consider section (a) of 43018 to be a separate mandate?
MR. ROBERTSON: Objection, beyond the scope.
MR. GOLDMAN: Objection to the extent it calls for a legal conclusion. Feel free to answer

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based on your understanding as to how you in your capacity as division chief interpret rules and regulations that you may apply or statutes under which you may operate, but don't play lawyer and don't get into —

Q: No. I'm not asking for your legal capacity. I'm asking you for the positions that staff and CARB have taken publicly about that separate subsection. Do you consider it to be a separate mandate?

MR. ROBERTSON: Objection, beyond the scope, calls for a legal conclusion.

MR. GOLDMAN: Join in the objections.

A: You know, I — what — What's troublesome is you're — I feel like you're getting — asking me to get into some legal interpretation of these statutes and how one section relates to another section, and I don't believe that's what I was here to get into the interpretation of statutes and — and what those — what those relate to.

Q: My question relates to how you view cost effectiveness under this statute. There are sections (b) and (c) which may relate to cost effectiveness. I'm now asking you about (a). Does section (a) — I'm sorry, let me withdraw that.

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Is section (a) viewed as a separate mandate by CARB staff and CARB?

MR. ROBERTSON: Same objections.

A: I really think that takes a legal interpretation because of the interrelationship between the various sections.

Q: Did CARB staff or CARB, separate and apart from a cost-effectiveness analysis, view subsection (a) here as an expression of legislative intent to separately justify CARB regulations?

MR. ROBERTSON: Same objections.

MR. GOLDMAN: Objection to the extent it calls for a legal conclusion.

A: Same — same response. I think you're getting into an area of legal interpretation of how you interpret statutes and — and so forth.

Q: Would you take out the final statement of reasons, sir, that we previously marked as Exhibit No. 10, and would you turn to what your staff had to say in response to comment 78. It's on page 47.

A: Page —

Q: Page 47.

A: Correct.

Q: And again Respondent's Exhibit 10 is the final statement of reasons, the document you approved

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and reviewed; correct?

A: Correct.

Q: In this agency response you state, "Both section 43" —

A: Could you tell me where you're reading, please?

Q: From the agency response to comment 78.

A: Thank you.

Q: "Both section 43018(a)" — That's the one we were just looking at; right?

A: (Nodding).

Q: — "and section 43018(b) impose mandates on the Board. Even if the regulations may not be necessary to meet the specific emission reductions identified in section (b), the regulations would still be necessary to meet the requirement in section (a) that the Board endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources and in order to accomplish attainment of the state ambient air quality standards at the earliest practicable date." That's what you said; didn't you?

A: That's what the ARB said, yes.

Q: Does that separate mandate say anything

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about cost effectiveness, the words that I just read to you?

MR. ROBERTSON: Same objections.

A: Yeah. I — I think once again you're asking me to get into some legal interpretations of what — what this means and so forth, and —

Well I understand this, but also there was attorneys that worked on this document, too.

Q: You approved —

A: Yes.

Q: — this language, sir.

A: Yes. I did, and I relied in many cases on our attorneys in writing up appropriate parts of — of this as well.

Q: The agency response section that I just read to you, does it say anything about cost effectiveness in connection with section 43018(a)?

MR. ROBERTSON: Objection, same objection plus argumentative.

A: I think I've responded, Mr. Beehler. I don't think it's appropriate for me to get into legal interpretations of how to interpret the statutes and so forth.

Q: Would you turn in this same document to page 87 and your agency's response to comment 161.

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It's over on page 87, it's the last full paragraph, and read with me, if you would, quote, "While we have considered the economic impacts, we must also be responsive to the mandates in Health and Safety Code section 43018, enacted by the California Clean Air Act of 1988. Section 43018(a) directs the Board to endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state standards at the earliest practicable date."

Then you go on to describe what (d) is; don't you?

A: Yes.

Q: And you say that that section provides for "...the most cost-effective combination of control measures, including but not limited to four specified areas of measures..." And you detail those; right?

A: Well it just says four, one of which is vehicular fuel composition.

Q: And remember your testimony from yesterday where you described for me what "control measures" means, it means different regulations, and you gave me the detail of those; right?

A: Correct.

Q: So here you're saying that subsection (d)

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when it's talking about cost effectiveness, is talking about comparisons to other control measures; right?

MR. ROBERTSON: Same objections.

Q: Right?

A: You're —

I'm sorry. Can you repeat the question, please?

Q: So here you're saying that subsection (d), where it's talking about cost effectiveness, is talking about comparisons to other control measures; correct?

MR. ROBERTSON: Same objection.

Q: It's combination of those

A: Well it says the most cost-effective combination of control measures.

Q: Exactly.

A: That's what the words say.

Q: On this same point, and just on the next page, in response to comment 163 —

A: Uh-huh.

Q: — you state that: "In order to achieve the mandates set forth by the California Clean Air Act" —

That's the section that we were just

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[1] talking about: right? Correct?
[2] A: Well the California Clean Air Act has a lot
[3] in it, so I can t say specifically which sections of
[4] the act this is referring to. I interpret that as
[5] the whole Clean Air Act.
[6] Q: — "all possible control measures must be
[7] considered," is what you say: right?
[8] A: Correct.
[9] MR. ROBERTSON: Same objections.
[10] Q: If you turn to page 152, sir —
[11] MR. ROBERTSON: 152?
[12] MR. BEEHLER: Yes.
[13] THE WITNESS: I think some pages are out of
[14] order here.
[15] MR. BEEHLER: And you'll note the documents
[16] that were provided me — I m not suggesting it was
[17] intentional — I say when they were provided you can
[18] see that they are consecutively numbered by Bates
[19] number but you have to kind of turn back and forth
[20] because I think they were miss-photocopied. Do you
[21] see that? So are you with me on 152?
[22] MR. ROBERTSON: Can you give me a clue as
[23] to which Bates number we re on?
[24] MR. BEEHLER: Yes, 436.
[25] Q: And here I m looking right above the

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[1] comment to 290, so it's the agency response to
[2] comment 289, and you say, "The Board is required by
[3] Health and Safety Code section 43018(a) to endeavor
[4] to achieve the maximum degree of emission reduction
[5] possible from mobile sources in order to attain the
[6] state standards for ozone and other pollutants at the
[7] earliest practicable date. Even with these
[8] regulations and other planned measures, statewide
[9] attainment of the state ozone standard cannot be
[10] projected. The regulations are therefore necessary."
[11] Those are the words that you use: right?
[12] MR. ROBERTSON: Same objections.
[13] A: These are the words.
[14] Q: You mentioned that you thought you had some
[15] guidelines that you put out or that you used.
[16] (Respondent s Exhibit 59 was
[17] marked for identification.)
[18] BY MR. BEEHLER:
[19] Q: Is this the guideline that you were
[20] referring to?
[21] A: No, it isn't. What I was referring to is
[22] a — a — and I m not clear on this, but is a
[23] specific document related to the Phase 2 regulations
[24] that identified how we would go about addressing
[25] costs.

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[1] Q: You made reference of this specific
[2] document, Exhibit 59, in your rulemaking for Phase 2:
[3] didn't you?
[4] A: Well this — this would be a part of that.
[5] Q: Okay. Are these —
[6] This is entitled "CALIFORNIA CLEAN ACT —
[7] AIR ACT COST-EFFECTIVE GUIDANCE," correct?
[8] A: Correct.
[9] Q: This is the document that you used to help
[10] you in your cost-effectiveness analysis: correct?
[11] A: To help us, yes.
[12] Q: Okay. Did you have some other cost-
[13] effectiveness guidance document?
[14] A: What I was referring to earlier, let — let
[15] me clarify: —
[16] Q: Thanks.
[17] A: — is that my recollection is — and I'll
[18] be honest, I m not certain, but that we put something
[19] out to advise how we were going to go about in
[20] calculating and determining costs of the regulation.
[21] Okay?
[22] Q: You re saying that you might have put
[23] something out to the public or to participants —
[24] A: Correct.
[25] Q: — describing it. Okay. With that, let s

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[1] look at Exhibit 59. Is this the cost-effectiveness
[2] guidance document that CARB staff used in developing
[3] the proposed Phase 2 regulations?
[4] MR. ROBERTSON: Objection, beyond the
[5] scope.
[6] A: I can't — my memory doesn't —
[7] Can t re — recall it specifically, but I
[8] will tell you my — my sense is yes, this is some
[9] guidance that we prepared and we probably consulted
[10] this guidance in — in our work.
[11] Q: Now if you turn to the page — the second
[12] page, but it s marked three on mine, starts off by
[13] talking about section 43013; doesn't it?
[14] A: Correct.
[15] Q: Then in the next paragraph it discusses
[16] section 43018 —
[17] A: Uh-huh.
[18] Q: — correct?
[19] A: Uh-huh.
[20] Q: I need a verbal —
[21] THE REPORTER: Your answer?
[22] THE WITNESS: Oh, I m sorry.
[23] A: Yes.
[24] Q: Now this is a cost-effectiveness guidance
[25] document, it mentions section 43018, and does it go

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[1] directly to subdivision (a)?
[2] MR. ROBERTSON: Objection, calls for a
[3] legal conclusion, beyond the scope.
[4] A: Yeah, I —
[5] Q: I m just asking you, sir, does it go
[6] directly to subdivision (a)?
[7] MR. ROBERTSON: Same objections.
[8] A: If you look at the words here, it doesn't
[9] say subdivision (a).
[10] Q: No, it goes to subdivision (b) and then to
[11] (c) —
[12] MR. ROBERTSON: Same objections.
[13] Q: — doesn't it?
[14] A: And I don't want to get argumentative, and
[15] I really — really don't feel comfortable talking
[16] about the interpretation of the regulations and so
[17] forth. And so, you know, how you interpret these
[18] various sections, what they mean and — and so forth
[19] is really something that's really a legal-
[20] interpretation issue.
[21] MR. GOLDMAN: Well for the record, topic
[22] two, for which Michael Kenny has been designated as
[23] the CARB person most knowledgeable.
[24] MR. BEEHLER: No, I — I completely
[25] disagree with you, counsel, and — and I don't want

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[1] to get into explanations, but I'll give you this one
[2] just to satisfy and let you — everyone know where
[3] I m coming from. This witness has just testified
[4] about cost effectiveness and the analysis that CARB
[5] staff did, how it was well known and why Unocal
[6] defrauded and misled people. I am now talking to
[7] this witness as the manager of this operation about a
[8] document which is internally used to determine cost
[9] effectiveness. It is very much a part of topic one.
[10] MR. GOLDMAN: Let — let me state I do not
[11] disagree with you that you have a right to question
[12] this witness —
[13] MR. BEEHLER: Okay.
[14] MR. GOLDMAN: — about cost effectiveness
[15] as he and his division understood it and in light of
[16] their view that Unocal s failure to disclose all
[17] material information constituted fraud upon CARB,
[18] however, to the extent that you get into parsing
[19] subsections of statutes and regulations, that goes to
[20] topic two in your notice of deposition which reads,
[21] quote, "With respect to the Phase 2 rulemaking on
[22] reformulated gasoline, the statutory and/or
[23] regulatory basis used by CARB and/or CARB staff to
[24] propose and adopt Phase 2 regulations for
[25] reformulated gasoline in 1991 and any later adopted

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[1] amendments to those regulations," end quote. Those
[2] topics — or that large topic is really the province
[3] of Michael Kenny, who is available after Mr.
[4] Venturini. So it's not the broad topic of cost
[5] effectiveness per se that is the subject of my
[6] objection and Mr. Venturini's discomfort, it's rather
[7] the very specific legalesque questions that you're
[8] asking right now.
[9] Q: I'm talking to you about a document right
[10] now, sir, a guideline, and let's look at what it says
[11] for definition of cost effectiveness. Starts out
[12] saying, "In plain English, 'cost effective' means
[13] worth the effort and expense." Do you see that, sir?
[14] A: Yes.
[15] Q: Of course it goes on to say in the next
[16] paragraph that when you're talking about air quality,
[17] that has a very particular meaning. Do you see that
[18] in the next paragraph?
[19] A: Yes.
[20] Q: And this goes to a concept that you were
[21] describing to me yesterday. It says cost
[22] effectiveness is a rate, that it's the dollars per
[23] ton of pollutants reduced or the dollars per unit of
[24] air quality improvement. That's what cost
[25] effectiveness means for purposes of your analysis:

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[1] right?
[2] A: Yeah. Let — let me say it's dollars per
[3] ton or sometimes dollars per pound.
[4] Q: And that's the dollars per unit part.
[5] A: Correct.
[6] Q: Okay. They go on, then, to state at the
[7] bottom of this page that cost-effectiveness, it's a
[8] relative concept, and you will deem a measure to be
[9] cost effective if it reduces — and I'm on the last
[10] line —
[11] A: Yes.
[12] Q: — if it reduces emissions at a cost
[13] comparable to other measures, again on a per-ton
[14] basis. Do you see that?
[15] A: Yes, I do.
[16] Q: And — and over at the top of the next
[17] page, then, it clarifies that the going rate that you
[18] can compare against, it is the upper cost bound for
[19] measures recently adopted or proposed for adoption:
[20] right?
[21] A: Correct. Where are you reading again?
[22] Q: The very top of page four.
[23] A: Okay.
[24] Q: Do you see that it says that?
[25] A: Yes. I'm — I'm reading. Give me a moment.

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[1] please.
[2] Q: Okay. Do you see that it says that?
[3] A: Yes.
[4] Q: And the point being that when you're going
[5] to say something is cost effective or not where they
[6] are needed to attain or maintain standards, measures
[7] below the going rate, which they've just said is that
[8] upper cost bound, those are said to be cost
[9] effective: correct?
[10] A: Correct.
[11] Q: And that's the analysis that you used when
[12] you were doing your cost-effectiveness analysis for
[13] Phase 2 RFG: correct?
[14] A: Yeah, the actual analysis.
[15] Q: Now —
[16] A: Can I —
[17] Q: — on the —
[18] A: I think there's a couple things here
[19] that — that's important to keep in mind, is this —
[20] this is a general guidance document to basically
[21] let — let the world know overall how we, the ARB,
[22] viewed cost effectiveness, how we tend to use those
[23] calculations. You know, we wanted everyone to know
[24] how we did this exercise.
[25] Q: Well you're confusing —

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[1] I don't mean to interrupt, but you're
[2] confusing me a little bit now.
[3] A: Sure.
[4] Q: I thought you told me that this was an
[5] internal document. Let's — let's clear this up. Is
[6] this the document that you sent out to the public?
[7] A: I believe this was a public document.
[8] Q: Okay. And it's the internal document you
[9] used as well, to the best of your knowledge.
[10] A: I don't recall mentioning an internal
[11] document.
[12] Q: Is this the document that you used for your
[13] analysis. —
[14] MR. ROBERTSON: Objection.
[15] Q: — just to clarify this?
[16] MR. ROBERTSON: Mischaracterizes the
[17] witness's previous testimony.
[18] A: I — I think what I said earlier, that this
[19] document provides basically an overall framework of
[20] how the ARB does cost effectiveness, and I did
[21] acknowledge — you mentioned this was referenced in
[22] the report, and I've acknowledged that we then did
[23] use that. And what I was referring to was my
[24] recollection, and I may not be correct on this, that
[25] with specifics to the Phase 2 regulation, I think we

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[1] provided another document that said how we were going
[2] to go about calculating the cost. That's all —
[3] Q: Okay.
[4] A: — I was trying to iterate there.
[5] Q: But see, there's my uncertainty. I'm just
[6] trying to clarify your testimony here, sir. Was this
[7] document made public?
[8] A: I believe it was.
[9] MR. ROBERTSON: Objection, asked and
[10] answered.
[11] A: Yeah.
[12] Q: In the 1991 timeframe or before?
[13] A: It says September 1990.
[14] Q: Did you make some other document public on
[15] cost-effective guidelines?
[16] A: I'm not aware of anything else.
[17] Q: Okay. Okay.
[18] A: And — and you're separating cost
[19] effectiveness in general from the work that was done
[20] on the regulation, I presume?
[21] Q: I'm talking about this document which is
[22] entitled "COST-EFFECTIVENESS GUIDANCE."
[23] A: "CALIFORNIA CLEAN AIR ACT COST-
[24] EFFECTIVENESS GUIDANCE."
[25] Q: Yes. And — and I'm confused at the

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[1] moment, so let's try one more time.
[2] A: Okay.
[3] Q: Is there some other California Clean Air
[4] Act cost-effectiveness guidance document that you're
[5] aware of that was made public other than Exhibit 59?
[6] MR. ROBERTSON: Objection, misleading.
[7] A: I'm not aware of another document intending
[8] to provide California Clean Air Act
[9] cost-effectiveness guidance.
[10] Q: Okay. Let's turn to page five then.
[11] Remember, we'd just gone through what this document
[12] says about cost effectiveness —
[13] A: Uh-huh.
[14] Q: — and now on page five there's a couple of
[15] headings and things are clarified. You see the first
[16] heading, "Cost-Effectiveness Versus Cost-benefit
[17] Analyses?"
[18] A: Yes.
[19] Q: And here it says cost effectiveness is
[20] different than cost/benefit: isn't it?
[21] A: Correct.
[22] Q: In fact cost effectiveness is much more
[23] limited in scope: correct?
[24] A: That's correct.
[25] Q: Cost effectiveness addresses just the

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[1] direct cost or savings of a measure, and then it
[2] gives examples: right?
[3] A: Correct.
[4] Q: For example, planning, research and
[5] development, installation, engineering, equipment,
[6] and other materials, operations and maintenance. Do
[7] you see that?
[8] A: Correct.
[9] Q: Doesn't say there patents: does it?
[10] MR. ROBERTSON: Objection, argumentative,
[11] misleading.
[12] A: It doesn't, but this is guidance, and I
[13] don't think that word is meant to be all-inclusive.
[14] Q: It doesn't say there competition: does it?
[15] A: No.
[16] MR. ROBERTSON: Same objections.
[17] Q: Doesn't say concerns about a monopoly: does
[18] it?
[19] MR. ROBERTSON: Same objections.
[20] A: No. And I wouldn't expect this guidance to
[21] go into that.
[22] Q: It goes on in the next paragraph to say, "A
[23] cost-benefit analysis attempts to quantify all the
[24] costs and benefits of a control measure, including
[25] social and environmental effects." Do you see that?

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[1] A: Yes.
[2] Q: So a cost/benefit analysis is broader under
[3] this guidance document: correct?
[4] A: Correct.
[5] Q: You did not do a cost/benefit analysis as
[6] part of your reformulated gasoline regulations: did
[7] you?
[8] A: Not as interpreted here. And — and I need
[9] to clarify my understanding of the cost/benefit
[10] analysis. That's when you try to take into
[11] consideration some of the health implications such as
[12] lost — lost workdays, costs of hospitalizations,
[13] reduced, say, soiling and those — those kinds of
[14] things that would tend to get into a cost/benefit.
[15] Q: Let's look down to the next heading, "Cost-
[16] Effectiveness Versus Socio-Economic Impact Analyses."
[17] Do you see that?
[18] A: Correct.
[19] Q: Now it tells you socio-economic impact
[20] analysis is also broader than cost effectiveness:
[21] doesn't it?
[22] A: Yes.
[23] Q: And then they in the next paragraph give
[24] you an example, about midway through, a
[25] socio-economic analysis, it goes several steps

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[1] further. "This type of analysis might examine the
[2] effect of the measure on natural gas availability,
[3] the potential for monopolistic pressures in the
[4] market, changes in fuel oil sales resulting income
[5] and employment effects to fuel oil producers, the
[6] ethnicity of displaced workers, and any other
[7] effects..." Do you see that?
[8] A: Yes.
[9] Q: A socio-economic analysis was not performed
[10] by you during Phase 2 RFG regulations: was it?
[11] A: I — I have to qualify that because I would
[12] view — we would view, you know, when we included in
[13] the document other costs, and you remember dialogue
[14] of the cost to jobbers, that I would view as taking a
[15] look at costs and impacts just beyond the cost
[16] effectiveness. Now it's not a full-blown
[17] socio-economic analysis where — and — but I think
[18] that is going to what impact on others.
[19] Q: If you want to review your documents that
[20] you have in front of you, please feel free, because I
[21] want your accurate answer on this. The economic
[22] analysis that you referred to in your staff report,
[23] in your technical support document, and in your final
[24] statement of reasons was a cost-effectiveness
[25] analysis: correct?

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[1] MR. ROBERTSON: Objection, misleading, and
[2] without a good-faith basis for the question.
[3] Q: That's what it was entitled.
[4] A: Yes. But we also included a section of
[5] economic impacts, and that's where we talked about
[6] impacts on jobbers, and that would have not been in
[7] the cost-effectiveness calculation.
[8] Q: Did you have a section called
[9] socio-economic impact analysis?
[10] A: I don't recall. We can take a look.
[11] Q: Why don't you.
[12] A: I don't — I don't —
[13] We may not have, but — but —
[14] Q: Just look.
[15] A: Let me see the report.
[16] Q: Just asking you whether you did.
[17] MR. GOLDMAN: What do you want?
[18] THE WITNESS: The Phase 1 report.
[19] Q: And as you look, remember my question: Did
[20] you have a section called socio-economic impact
[21] analysis?
[22] A: There's no specific section socio impact
[23] analysis, but — but I have — I don't want to be
[24] mis — misleading. We did look at other impacts of
[25] the regulation beyond the cost effectiveness, we —

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[1] we did impacts on other businesses and so forth, so
[2] you have to understand that to us is providing some
[3] socio-economic analysis. What this is referring to
[4] is using the — basically the so-called socio impact
[5] models that — that are developed and — and so
[6] forth.
[7] Q: Okay. Now —
[8] A: We talked about impacts, effects on small
[9] businesses. So — so there's a distinction. This is
[10] talking about a different type of — of analysis.
[11] Q: This cost effectiveness that you said was
[12] so well understood, isn't that the cost-effectiveness
[13] analysis that you're talking about as evidenced in
[14] this guidance document?
[15] A: I'm — I'm not clear. What I — what I
[16] said was well understood was what we mean by cost
[17] effectiveness: it's the dollars per pound or dollars
[18] per ton, which I think this document reflects.
[19] Q: Okay. Would you turn, please —
[20] Oh, I think I better give you the document
[21] first.
[22] MR. BEEHLER: I need the November 1991
[23] transcript, please.
[24] (Respondent's Exhibit 60 was
[25] marked for identification.)

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[1] BY MR. BEEHLER:
[2] Q: Showing you Respondent's Exhibit 60, a
[3] document produced to me by complaint counsel from
[4] your files, it's the transcript from the November 21,
[5] 1991 meeting where the California Air Resource Board
[6] adopted the 1991 regulations: correct?
[7] A: Correct.
[8] Q: Would you turn to page 311 in this
[9] document. And of course it includes both days, so
[10] it's the first 311 that you come to. And you might
[11] take a moment to just acquaint yourself with who's
[12] talking there to confirm that it is Robert Fletcher
[13] who's talking at that point.
[14] A: Where are we reading, which page?
[15] Q: Page 311.
[16] A: Can you direct me? I —
[17] This looks like Mr. Lents' comments.
[18] Q: Oh.
[19] A: Am I missing something?
[20] Q: Who's Mr. Lents?
[21] A: He was the executive officer of the South
[22] Coast Air Quality Management District at that time.
[23] Q: Somehow my notes were mislabeled there.
[24] A: Okay.
[25] Q: Okay. So it's Mr. Lents, and how do we

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[1] spell that?
[2] A: L-e-n-t-s. Actually it's Dr. Lents.
[3] Q: Now do you have an understanding of what
[4] Dr. Lents does as the executive officer of the South
[5] Coast Air Traffic Management Industry?
[6] A: Air Quality Management District.
[7] Q: Air Quality Management District. Okay.
[8] A: Yes.
[9] Q: Would you tell me what he does?
[10] A: He's the executive officer. He — he runs
[11] the organization.
[12] Q: And was he stating here or providing to the
[13] board on page 311 various examples of control
[14] measures and the cost effectiveness per ton? That's
[15] what's occurring on this page?
[16] A: Well could I have a moment to kind of
[17] review —
[18] Q: Absolutely.
[19] A: — review this —
[20] Q: Of course.
[21] A: — so I can sort of put it in context? I
[22] would appreciate that.
[23] Q: And I want you to be comfortable with where
[24] you're at. I just wanted you to know that for
[25] purposes of my question it's going to be discussing

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[1] the figures on page 311 and the relationship between
[2] his district and your agency —
[3] A: Okay.
[4] Q: — on that. Otherwise you might get so
[5] engrossed that you will want to read it till the end.
[6] A: Okay.
[7] Q: Okay. Turning then back to page 311, let
[8] me ask you a couple of questions about Mr. Lents.
[9] What is the relationship now between the South Coast
[10] Air Quality District that — that he was from and
[11] your agency?
[12] A: South Coast District is an independent air
[13] quality agency. They have primary responsibility for
[14] addressing air pollution issues within their
[15] district, particularly with respect to stationary
[16] sources.
[17] Q: And using the cost-effectiveness guidance
[18] document that we looked at, your agency is free to
[19] consider in cost-effectiveness — cost-effectiveness
[20] analysis control measures that they have adopted and
[21] look at what — and look at what that has cost;
[22] right?
[23] A: I'm — I'm sorry.
[24] Q: Let me try it again.
[25] A: It wasn't —

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[1] Yes, please do.
[2] Q: Mr. Lents here is describing various
[3] control measures that his district had adopted or
[4] that ARB had adopted?
[5] A: Well it says we are adopting, so it's
[6] probably they're in the process of — I interpret
[7] that as they are in the process of adopting regs,
[8] developing regs, getting them ready to go to their
[9] board.
[10] Q: And he's giving you —
[11] A: And some — some he says they did adopt,
[12] so —
[13] Q: And he's giving you the cost-effectiveness
[14] figures for those various proposals; correct?
[15] A: Those proposals or for those they had
[16] adopted.
[17] Q: And you understood the reason that he was
[18] presenting this to the board was to give them a
[19] touchstone for their cost-effectiveness analysis in
[20] looking at measures recently adopted or proposed for
[21] adoption; correct?
[22] A: Correct.
[23] Q: And he states here that Rule 1134 for
[24] turbines, that was 12,000 a ton?
[25] A: Correct.

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[1] Q: Rule 1146 for commercial boilers was
[2] $19,000 a ton?
[3] A: Correct.
[4] Q: And by the way, just to clarify here, when
[5] we're doing this, this is referring to the tons of
[6] pollution removed and the cost of doing that; right?
[7] A: Correct.
[8] Q: Rule 1110 for IC engines was $23,000 a ton,
[9] correct?
[10] A: Yes.
[11] Q: Utility boilers, 17,000 a ton.
[12] A: Yes.
[13] Q: Just two more here. Auto assembly coatings
[14] was $19,000 a ton; correct?
[15] A: Yes.
[16] Q: And then flue gas desulfurization, 20 — it
[17] appears he means 20,000 to 50,000 dollars a ton; is
[18] that correct?
[19] A: Correct. And he also mentioned the metal
[20] degreasing rule varied from 3,000 up to 25,000.
[21] Q: I missed one.
[22] A: So wide — wide range of cost-effectiveness
[23] values.
[24] Q: But up to $50,000 a ton in looking at the
[25] flue gas desulfurization one.

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[1] A: Correct.
[2] Q: Now would you take out your technical
[3] support document which we earlier marked as Exhibit
[4] 5.
[5] A: Just a moment. Here we go. The Phase 2
[6] technical support document.
[7] Q: Correct.
[8] A: Exhibit 5. Okay.
[9] Q: And if you would turn to page 145. —
[10] A: Yes.
[11] Q: — CARB staff itself set out a table
[12] entitled "Comparison of Cost-Effectiveness of the
[13] Proposed Phase 2 Gasoline Specifications with Cost-
[14] Effectiveness of Other Control Measures;" didn't you?
[15] A: Correct.
[16] Q: And included amongst those are the aromatic
[17] content for diesel fuels of $14,000 per ton.
[18] A: Correct.
[19] Q: The low emission vehicle/clean fuels, that
[20] has a range from 10,000 up to 32,000 dollars per ton;
[21] correct?
[22] A: Correct.
[23] Q: And then the Rule 1135, power plants, is
[24] 24,000 to 30,000 dollars a ton; correct?
[25] A: Correct. And the light-duty gasoline was

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[1] 1300 per ton and the heavy-duty diesel exhaust
[2] standards was 6400.
[3] Q: Okay. Let me ask you something about that
[4] Rule 1135. Is that the South Coast Air Quality
[5] Management District power plants?
[6] A: Yes. That's what SCAQMD refers to.
[7] Q: So this verifies that in fact something
[8] that you put up as a comparison of cost effectiveness
[9] was — was something that the South Coast District
[10] had passed itself; is that fair?
[11] A: Well the purpose of this table was
[12] basically to provide an indication that the Phase 2
[13] gasoline measures, the cost effectiveness of that
[14] measure was within the range of other control
[15] measures adopted throughout the state, and as you can
[16] see, there's — there's a wide, wide range.
[17] Q: My question, I think, was pretty specific
[18] though. A comparison that you made of a control
[19] measure was included from the South Coast Air Quality
[20] Management District. You folks included that in your
[21] table here; correct?
[22] A: Yes, two of their measures.
[23] Q: Okay. And that one that we just referred
[24] to, Rule 1135, was 24,000 to 30,000 dollars a ton;
[25] correct?

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A: Correct.
Q: And that's the cost effectiveness that you contemporaneously were thinking about in terms of the 1991 regulations.
A: I don't know what you mean by contemporaneous. What we were — let me reiterate What —
Q: Well let — let me rephrase it then. You illustrated the comparison of cost effectiveness using the standards set forth on page 145 as part of your 1991 regulations.
A: Correct. Yeah.
MR. BEEHLER: Why don't we take a break.
THE WITNESS: Sure.
THE REPORTER: Off the record, please.
(Recess taken.)

BY MR. BEEHLER:

Q: In 1991 did CARB staff view a one-thousand-dollar-a-ton increase as having a significant impact on its cost-effectiveness analysis?
A: I m sorry. I don't understand.
Q: In 1991 did CARB staff view a one-thousand-dollar-a-ton increase as having a significant impact on its cost-effectiveness

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analysis?
A: I can't — that —
That to me is — is very vague. Could you — and — and the reason I say that, Mr. Beehler, is the cost effectiveness, as you saw from the table we just discussed, the numbers range — you know, have significant ranges depending on what you re doing, and our purpose in doing that analysis, one is to take a look at what — the cost effectiveness of any specific action and compare it to other actions to determine whether or not we re — we re in the ballpark. And that doesn't mean that's where we stay, but that s kind of a guide that we use.
Q: Would you turn to page 51 of Respondent's Exhibit 60, that large transcript that we were just looking at.
A: Number one — oh, okay.
Q: To page 51, sir.
A: Fifty-one?
Q: Yes. And now we know why my notes said Bob Fletcher at one point.
And if you look at page 51, you see that Mr. Fletcher spoke at this meeting: correct?
A: Correct.
Q: And Mr. Fletcher was giving part of the

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presentation on behalf of the CARB staff to the board: correct?
A: Correct.
Q: Now look at that last paragraph there on page 51. Mr. Fletcher states, "We have looked at attributing the carbon monoxide benefits only to the winter months. We have found that it doesn't have a significant impact on the cost-effectiveness if we do that." Then he goes on to state what he means, "For example, our cost-effectiveness would go from the projected to eight to 12,000 per ton up to nine to — about nine to 13,000 dollars a ton." Do you see that?
A: Yes.
Q: Now your predicted cost did not go to the upper bounds of cost effectiveness like was described in that guidance docume. it did they?
A: Oh, I — I don't recall the —
The Clean Air Act guidance document?
Q: Yeah. Let me pull you back. Remember how —
A: Yes.
Q: — we looked at the section that said cost effectiveness is defined at the upper bound of those other measures? Remember that?

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A: Correct.
Q: So my question now is: Your predicted cost for the 1991 regulations, they did not go to the upper bounds of cost effectiveness for the — some of the control measures that you compared, did they?
A: In the — this document, in the staff report?
Q: Correct.
A: No.
Q: Now I believe you testified earlier that the cost as approved was 12 to 1" cents per gallon.
A: No, the cost —
That was our estimate of the cost of production. The cost effectiveness, remember, is that dollar-per-ton figure
Q: Okay.
A: And then we translated that to, you know, cost per — cost of production, the 12 to 1"
Q: Just to confirm for me so that I don t assume how you do that translation — I think it s pretty straightforward but I want you to do it — when you have a cost-effectiveness figure and then you translate it to a cost that went from 12 to 1" cents, would you describe for me how you do that?
A: Yeah. It's basically taking the — the

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cost figures, which are an annualized cost, and then apportion that over the estimate of the gallons of gasoline produced.
Q: So could you describe for me, then, what the cost effectiveness was that you predicted for the reformulated gasoline regulations and how you translated that to — as a cost of 12 — of 12 to 1" cents?
A: That s what I just indicated
Q: Give me it one more time if you would be so kind.
A: Okay. Take the annualized costs.
Q: And what — what was that? That s what I m trying to get at
A: Oh. Well we'd have to go back, but it s basically the numerator in the cost-effectiveness calculation, and you basically take that value, and that s the annualized cost of the — of the action, and then you — then you divide that by the number of — of gallons, do the appropriate math, you get cents per gallon, and that s —
Q: When you say "the number of gallons" —
A: Of gasoline.
Q: Per what?
A: Per year, because it's on an annualized

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basis.
Q: And where do you determine the number of gallons per year from?
A: Oh, from data from the Board of Equalization, other, you know, sales data that are available to us.
Q: And is that data that is statewide gallonage, or do you try and limit that to certain portions of the state?
A: Since this is a statewide regulation, we would do it statewide.
Q: And would you do the — and would you do the gallons on a year-long basis or just during the summer months when these particular regulations were applied?
A: Now that I —
I'd have to go back and check whether we did that year-around or just for the summer months, but the — the key is we would do the calculation based on the appropriate time period for that — for that regulation.
Q: Okay. I m not trying to tie you down. I m just trying —
A: Okay.
Q: — to get clarification here. Do you have

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any belief or recollection as to whether you applied the — the gallonage on a year-long basis or during the portion of time that your regulations would be applied, the summertime in other words?

A: My recollection, since this is a year-around regulation, that we did it year-around, but we may have made a distinction. It's been a long time.

Q: And this is the reason for my confusion, because I do — I have seen in your final statement of reasons I think it may have been one of your other reports. —

A: Uh-huh.

Q: — a reference to this being a year-long regulation, and you have to help me out here a little bit because that confuses me.

The Phase 2 regulations that you approved in 1991 specifically applied during specific months of the year only; right?

A: Let me try to clarify it. The regulations applied basically year-around, but in the winter months there were some adjustments because we had basically the RVP season and so forth, so there are certain periods of the year in the winter months where refiners had flexibility on RVP.

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Q: Sometimes we hope for clarification and I dig a —

A: Yeah.

Q: — deeper hole, but let's — let's try it this way: The regulations that are reflected, for instance, in your final statement of reasons marked as —

A: Yes.

Q: — Respondent's Exhibit 10, do those regulations apply year-around?

A: Yes, that's — that's my recollection. But — but understanding when we say "the regulations," there's a winter period, so the regulations probably make a distinction. In the winter months refiners aren't constrained to RVP. Okay?

Q: Okay.

A: I mean maybe I'm getting — splitting hairs here, but I'm just trying to be as correct as I can.

Q: So on that basis you believe that you probably used the entire year for determining the gallonage; correct?

A: That — that's my belief.

Q: I earlier asked you about a hearing in 1999, and I'll pull it out if — if you need to

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confirm it, but do you remember Michael Kenny saying that the costs for reformulated gasoline in 1999 were now estimated to be two to four cents a gallon? Do you remember that?

A: I believe that was the additional cost for the Phase 3 regulations.

Q: Okay. Well let's look at it.

A: Let's take a look at it.

MR. BEEHLER: Mr. Hoppa, if I could have the November — I'm sorry, the December 1999 transcript for counsel.

(Respondent's Exhibit 61 was marked for identification.)

BY MR. BEEHLER:

Q: Sir, Respondent's Exhibit 61 is another document provided to me by complaint counsel from your files, and it contains what appears to be selected pages from a board hearing on December 9, 1999 in front of CARB. Do you see that?

A: I'm sorry, let me catch up with you. What page?

Q: Let's just start over again. I know you were looking at another document there. In front of you is Respondent's —

Let me direct your attention to Exhibit 61

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so I don't have to do it again.

A: Certainly.

Q: Respondent's Exhibit 61 is a transcript of selected pages from a hearing that occurred on December 9, 1999. Do you see that?

A: Yes.

Q: And I say "selected" because once you get through the original index, it seems to start around at page 50. So if you would turn to page 62 —

A: Six two?

Q: Sixty-two. And if you have to look back at the index, just to let you know what's going on here, this was the public hearing to consider adoption of Phase 3 gasoline standards. Do you see that?

A: Yes.

Q: And on page 62, just confirm for me that the person speaking is Mr. Michael Kenny. You'll see that by looking back on page 60. Do you see him get introduced there by Mr. Brisby?

A: No, it's Mr. Kenny and then Mr. Brisby says, "Thank you, Mr. Kenny."

Q: So is it Mr —

Now who is Mr. Brisby?

A: Steve Brisby is a manager in my division.

Q: Okay. Sometimes it's difficult to tell who

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is speaking. So at this point it's Steve Brisby who is speaking.

A: Correct.

Q: Okay. Thank you for that. Tell me what Mr. Brisby is generally responsible for such that he would be giving some talk at this hearing.

A: He's the manager of fuels section and his responsibility is development, and he worked on this regulation, and he's making a staff presentation.

Q: Okay. And looking at page 62, sir, Mr. Brisby says, "Further, the cost of the Phase 2 gasoline program proved to be significantly lower than the staff's original estimate." Are — are you with me? Looking at lines seven through nine right now on page 62.

A: I have to use a pointer.

Q: No, that's fine.

A: Where — where are you?

Q: Okay. Page 62. —

A: Yes.

Q: — sir, of Exhibit 61, starting at line seven.

A: Yes.

Q: Mr. Brisby states, "Further, the cost of

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the Phase 2 gasoline program proved to be significantly lower than the staff's original estimate. Originally the staff estimated the cost of production to be between 5 and 15 cents per gallon." Do you see where he says that?

A: Correct.

Q: Actually originally the staff estimated the cost to be a little bit higher than that; didn't they?

A: That's — that's correct.

Q: That was the 12 to 17 cents and then up to 20 cents if you included the fuel penalty — penalty part; right?

A: That's correct.

Q: He goes on, though, to state that in 1996 the California Energy Commission estimated that the price associated with Phase 2 was five to eight cents per gallon more; right?

A: Correct.

Q: And then he states, "November of this year, a report prepared for the State Attorney General's office, estimated the price increase for Phase 2 to be about 4 cents a gallon." Do you see where he said that?

A: Yes.

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Q: Is it — is it your understanding that that is the most current estimate, or is there even a more-current estimate of what the price for Phase 2 gasoline ended up being?
A: That — can I — Can I give a clarification?
Q: Please.
A: There's a very important distinction and we need to distinguish between the cost of production versus the price in the marketplace, and it's extremely difficult for anybody to predict accurately what the price is in the marketplace. What you have here is basically the Energy Commission in '96 doing their best estimate of the price and then the Attorney General's office giving their best estimate of the price.
Q: But I thought you told me that you assumed that the costs would be passed on to the consumer and then said that this would be the increase in price to the consumer.
MR. ROBERTSON: Objection, misleading.
MR. BEEHLER: I'm asking for clarification.
A: Let me say if these costs are passed on to the consumer, this is what it would translate to.
Q: Okay.

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A: Because I know we've been very careful to try to talk about cost of production because we know — I mean you see how gasoline prices vary all over the place. The easiest thing and probably the best thing we can do is look at the cost of production, and yes, I say if we translate that, if you assume it's all passed on to the consumer, then here is what it means. What actually is going to happen, sometimes it can be less, sometimes it can be more. There are so many factors that affect the price of gasoline in the marketplace that some — you know. So I think what I'm saying, you need to be — You know, just point of interest is there's a distinction between cost of production and price that you and I pay.
Q: In 1991 did staff assume that the costs of production would be passed on to the consumer?
A: We assumed that costs would be passed on. We made an estimate that if the full costs were passed on, this is what it would be. But in reality it's depending on the marketplace, it's depending on what happens. There are many factors which — which dictate what the actual price is going to be. That's just kind of the reality of — of the — of the marketplace.

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Q: You can't be sure whether those costs are going to be passed on to the consumer for a number of different reasons.
MR. ROBERTSON: Objection, foundation.
Q: Is that right?
A: Well I think — I — I want to be very clear. I think ultimately the consumer will pay the cost. The — the question becomes, you know, the timeframe, how — how quickly, what other forces are affecting their — that's —
That's why the refiners were very concerned about some stability and certainty in this program.
Q: So when Mr. Brisby is talking about the price increase being four cents a gallon, that is not a reflection of what staff or anyone else thinks the costs are of Phase 2 RFG?
A: Cost of production. This is the Attorney General's estimate of the price increase associated with Phase 2 at that point in time.
Q: What's the latest estimate from staff about the cost of production for Phase 2 RFG?
A: What do you mean by "latest?"
Q: The most recent.
A: I'm not aware of —

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I think the most — most recent is what we indicated in our report on the Phase 3.
Q: Which is how much?
A: Well in —
This is document 55. It's the initial statement of reasons.
Q: Yes. And you're referring to a particular page?
A: Yes, page xv.
Q: Yes.
A: Okay. And it says, "Based on discussions with California refiners, pipeline distributors, and CEC staff, and using reports prepared by the CEC and others, the staff estimates that the first year costs of the Phase 3 program will be four to seven cents per gallon..."
Q: Okay. That's Phase 3 though. Perhaps we're —
A: Correct.
Q: — miscommunicating. Now you're talking about Phase 3. I'm asking you what was the most recent estimate of the cost of production for Phase 2.
A: Oh, I — I'd have to say the one I recall is the five to 15.

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Q: Did you ever make a narrower determination than that?
A: Pardon me?
Q: Did you ever make a narrower determination of that cost?
A: Not to my recollection.
Q: Okay. As long as we have this transcript open, look back at page 61. Mr. Brisby is stating, beginning around line nine, that all the gasoline — almost all the gasoline for sale in California uses the predictive model.
A: Correct.
Q: And goes on to say, in reference to this predictive model compliance option, quote, "This increases the refiner's flexibility to produce complying gasoline by allowing the refiner to trade off emissions straight off increases — trade off emissions" — let's see, let me read this.
He states, quote, "This increases the refiner's flexibility to produce complying gasoline by allowing the refiner to trade off emissions," and it says "straight," but I believe it means "trade off increases in some fuel parameters for decreases in others, while remaining emissions equivalent with the flat limit specifications."

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And then he states, "This increases production flexibility and reduces cost of production." Do you see that?
A: Correct.
Q: That statement was made by a staff member of CARB in 1999; correct?
A: Correct.
Q: That's after staff learned about the Unocal patent and after the jury verdict; correct?
MR. ROBERTSON: Objection, argumentative.
Q: Correct?
A: That's correct.
Q: You don't think that Mr. Brisby was trying to mislead someone there by the manner in which he discussed flexibility and reduction of cost of production; do you?
MR. ROBERTSON: Objection, argumentative.
A: Mr. Brisby was basically stating the fact of the flexibility that is provided in the predictive model to refiners in blending gasoline, and that the predictive model in and of itself provides some flexibility to the refiners which should reduce their production costs. There's no other inference that should be taken from that.
Q: As CARB staff, do you have the authority to

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[1] force individual refiners to give you information?
[2] A: Yes, we do.
[3] Q: Do you have subpoena power? Is that how
[4] you would exercise it?
[5] A: What we basically do is if we need
[6] information, we will request information of people
[7] and — you know, I don't recall — and —
[8] And basically people are responsive.
[9] Q: Okay.
[10] A: Yeah.
[11] Q: I'm asking a little bit different question
[12] though.
[13] A: All right.
[14] Q: I understand that from time to time. —
[15] A: Sure.
[16] Q: — for instance with the cost information,
[17] you send out a survey. And not everybody responded,
[18] but there were apparently six refiners who gave you
[19] information.
[20] A: Uh-huh.
[21] Q: Right? Right?
[22] A: Correct.
[23] Q: Yeah. I'm asking a little bit different
[24] question.
[25] A: Okay.

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[1] Q: If you have an understanding, do you — you
[2] have the ability to actually force someone, a
[3] refiner, to give you information that you want?
[4] A: Yes, there — there are provisions in the
[5] Health and Safety Code regarding our ability to
[6] request information, and I — I haven't reviewed that
[7] for a long time so I can't go into the specifics.
[8] Q: Fair enough. But it's your understanding,
[9] though, that that power is limited to particular
[10] types of information.
[11] MR. ROBERTSON: Objection.
[12] Q: Or not?
[13] A: I —
[14] MR. ROBERTSON: Objection, beyond the scope
[15] and lack of foundation.
[16] MR. BEEHLER: Just asking.
[17] A: Yeah. I'd have to review the statute.
[18] Q: Okay. CARB staff never did a cost-
[19] effectiveness study on individual parameters of its
[20] specifications: did it?
[21] MR. ROBERTSON: Objection, asked and
[22] answered several times.
[23] MR. BEEHLER: I don't believe it has been.
[24] A: Well I — I —
[25] Q: You never did a cost-effectiveness study on

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[1] the individual parameters of your specification: did
[2] you?
[3] MR. ROBERTSON: Same objection.
[4] A: I believe I did answer — answer that, and
[5] basically that we looked at — at the whole set of
[6] specifications.
[7] Q: In fact you found that it was not
[8] appropriate to do individual specifications, that it
[9] was most appropriate to view them as a whole: is that
[10] right?
[11] A: I don't know how we would do it
[12] individually because of the interrelationship of all
[13] the parameters.
[14] Q: You felt, on behalf of staff in adopting
[15] your regulations, you cannot analyze the effects of
[16] each specification separately because of what you've
[17] just mentioned, it's all interrelated: right?
[18] A: The specifications are interrelated, that's
[19] correct.
[20] Q: Okay. Want to direct your attention to the
[21] third topic of the notice — of the subpoena where I
[22] asked CARB or CARB staff to produce someone to talk
[23] about the actions that staff or CARB would or would
[24] not have taken from '91 to '94 if the fraudulent acts
[25] that you have previously identified had not occurred.

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[1] Okay? Just for clarification, that's where we're
[2] moving on to.
[3] A: Correct.
[4] Q: If Unocal had never talked to staff at all
[5] and never showed them anything, would you agree that
[6] there would be no fraud?
[7] MR. ROBERTSON: Objection, calls for legal
[8] conclusion.
[9] A: I think that's — that's a — that's a
[10] legal question.
[11] Q: If Unocal had never talked to staff and
[12] never showed them anything, how would your
[13] regulations be different?
[14] A: If they'd never spoken to us?
[15] Q: (Nodding.)
[16] A: Well what immediately comes to mind is
[17] there probably would never have been a T50
[18] specification, because we did rely on Unocal's
[19] information for the T50 specification.
[20] Q: Now you mentioned earlier that Toyota told
[21] you about T50.
[22] A: That's correct.
[23] Q: Would that have led you to investigate it,
[24] the effects of T50?
[25] A: Yeah, it may have been, but Unocal came in

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[1] with their data and information —
[2] Q: But right now — but right now I'm going
[3] into this world where we're discussing, in so many
[4] better words, the what if's. Okay? So right now
[5] we're talking about if Unocal had never talked with
[6] staff at all.
[7] MR. GOLDMAN: With who? I'm sorry.
[8] MR. BEEHLER: With staff at all.
[9] Q: Would the Toyota document with its
[10] assertion that T50 reduced hydrocarbon and carbon
[11] monoxide emissions have led you to investigate it?
[12] A: I — I'd have to say may or — or may not.
[13] It's really not a "yes" or a "no" answer.
[14] Q: Do you have the final statement of reasons
[15] handy, previously marked as Exhibit 10?
[16] A: Oh, final statement?
[17] Q: Final statement of reasons for the 1991
[18] regulations that came out in October 1992.
[19] A: Yes. Number 10.
[20] Q: Yes, sir.
[21] A: Okay.
[22] Q: Would you turn to page 69, and this is one
[23] of those pages where 68 is on the following page and
[24] you have to flip back.
[25] A: Oh.

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[1] Q: Do you see that? And I'm looking in
[2] particular at the response to comment 133 which
[3] appears at the top of page 69.
[4] A: Okay.
[5] Q: Now here is where you've pointed out to me
[6] before that in fact Unocal has evaluated the effects
[7] of T50 and it's the results from this study that form
[8] the basis for the T50 specification: right?
[9] A: Correct.
[10] Q: If you look down at 134, the comment, the
[11] final sentence, you say, "The Unocal study was used
[12] in the discussion of the effect of T50 on emissions
[13] because it is the only study that evaluated T50 and
[14] provided a statistical analysis." Right?
[15] A: Correct.
[16] Q: Now I want you to turn to your staff
[17] report, which has been previously marked as
[18] Respondent's Exhibit 52: correct?
[19] A: Yes.
[20] Q: Would you turn to page 28 of that staff
[21] report. And just to gain a little context here, if
[22] you want to look at page 27, you can see that here
[23] you're discussing distillation temperatures: right?
[24] A: Correct.
[25] Q: And distillation temperatures included a

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[1] discussion of both the T50 and the T90 as part of
[2] your regulations: right? Sir?
[3] A: Yes.
[4] Q: Okay. On the middle of page 28 you note
[5] that the Auto/Oil study did not consider the effects
[6] of lowering T50, and then you point out that Toyota
[7] and Unocal had both conducted studies showing that
[8] reducing T50 results in a decrease in emissions of
[9] VOC and carbon monoxide: right?
[10] A: Correct.
[11] Q: You go on to state that Unocal results
[12] indicate that a 10-degree reduction in T50 results in
[13] a nine percent decrease in VOC and a five percent
[14] decrease in carbon monoxide: right?
[15] A: Correct.
[16] Q: In the following paragraph, though, you
[17] mention that GM/WSPA/CARB volatility study: don't
[18] you?
[19] A: The preliminary results of that volatility
[20] study.
[21] Q: And look at what you say in the last
[22] sentence of that paragraph. "The staff estimates
[23] that the T50 of gasoline should be in the range of
[24] 180 to 210 degrees to minimize both evaporative and
[25] exhaust emissions of VOC and exhaust emissions of

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[1] carbon monoxide." Right?
[2] A: That's what it says, yes.
[3] Q: So the range that staff was suggesting here
[4] was in part based upon the evaporative emissions as
[5] stated: right?
[6] A: Well I think what it's indicating, that if
[7] you go too low on T50 you could have a problem with
[8] evaporative emissions. The staff was saying it looks
[9] like to avoid that you have to stay within the 180 to
[10] 210 range.
[11] Q: The Unocal study never studied evaporative
[12] emissions: did it?
[13] A: I don't believe so.
[14] Q: Back to this technical support document
[15] now. And I appreciate your kind of moving these
[16] documents around as we look at these issues. That's
[17] previously been marked as Exhibit 5. Would you turn
[18] to page 23 of this document.
[19] A: Twenty-three?
[20] Q: Yes, sir. We looked at this page before in
[21] reference to where you talk about the Unocal
[22] regression equation. I want to go up to where you
[23] are discussing Toyota. You state there, about
[24] mid-paragraph on page 23, "Although the Toyota data
[25] indicate that reducing T50 below 212 degrees does not

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[1] have significant benefits in throttle response time,
[2] the emissions test data collected by the same program
[3] indicate decreases in VOC emissions as T50 is reduced
[4] down to about 190 degrees;" correct?
[5] A: Correct.
[6] Q: So Toyota's study showed you a range of
[7] down to 190 degrees: right?
[8] A: That's correct. And — and I just want
[9] to —
[10] That was an experimental setup, as the
[11] beginning of that paragraph indicated, so it
[12] wasn't — in our view it wasn't as definitive a study
[13] as was provided by Unocal, and that is why we relied
[14] on Unocal's study for the regulation, as we indicated
[15] in the final statement of reasons.
[16] Q: I'm just talking about what you said about
[17] the Toyota part right now though.
[18] A: Okay.
[19] Q: And — and — and my —
[20] Just to get the phrase of the question back
[21] here, you said the Toyota data showed decreases in
[22] emissions down to about 190 degrees: correct?
[23] A: Correct.
[24] Q: Do you remember that Toyota specifically
[25] argued to you in comments to you that that should be

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[1] your range?
[2] A: Should be our what?
[3] Q: That that should be your range, the T50
[4] specification.
[5] A: Should be down at 190? They may have. I
[6] don't specifically recall that.
[7] Q: Would you turn to page 28 in this same
[8] document.
[9] A: Uh-huh.
[10] Q: Now where the text begins, you're
[11] discussing the sensitivity analysis of a few pages
[12] earlier that staff performed. Do you see that?
[13] A: Yes.
[14] Q: Would you describe for me what was the
[15] sensitivity analysis that was done.
[16] A: This was basically analysis of the effect
[17] on emissions of just varying T50 to see what effects
[18] on emissions using the Unocal regressions would have
[19] at different temperatures.
[20] Q: I probably deserve that answer because I
[21] don't think I was being specific enough.
[22] A: Okay.
[23] Q: I understand that you had — that staff had
[24] in front of you the Unocal regression equation.
[25] A: Uh-huh.

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[1] Q: What is the sensitivity analysis? Is it a
[2] separate analysis determination? What — what is it?
[3] A: Well it's very simple. You've got eight
[4] properties. You hold — you know, you hold —
[5] Basically what it is it's — it's you hold
[6] other properties constant and you vary just one of
[7] them.
[8] Q: Uh-huh.
[9] A: And so that's what was conducted here.
[10] Q: Is that written down in a worksheet
[11] somewhere, this sensitivity analysis?
[12] A: Well that's — that's generally what is
[13] understood amongst technical folks. In this case
[14] what we call this is a sensitivity analysis. We were
[15] looking at the sensitivity of T50 to emissions at
[16] different temperatures to help us decide where we
[17] wanted to be in terms of a proposal.
[18] Q: And how did you perform that calculation?
[19] A: Well I think I just indicated that.
[20] Q: That's what I'm not understanding. Did you
[21] use the Unocal equations to do that?
[22] A: Said using the Unocal regression, yes.
[23] Q: Okay. How —
[24] What was the analysis that was done using
[25] that Unocal equation in order to create the

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[1] sensitivity analysis apparently shown in Table II-11
[2] here?
[3] A: Okay, let me take a quick look at this.
[4] I think if we go to the next page — prior
[5] page, on page 23, I think it clarifies that.
[6] Q: Thank you.
[7] A: "In order to evaluate the sensity —
[8] sensitivity of emissions to T50 changes, staff used
[9] the Unocal regression equation and assumed a baseline
[10] fuel as Phase 1 properties. That fuel was evaluated
[11] against Phase 2 gasoline with different T50 values."
[12] So that indicates to me that we held all the
[13] properties constant, varied T50, because we wanted to
[14] see how basically sensitive T50 was in terms of
[15] temperature. It's basically kind of like this —
[16] this curve here, that's what this is in some respect.
[17] And —
[18] Q: And what you did then, looking at page
[19] 28. —
[20] A: Yes.
[21] Q: — is to propose a cap on T50 at the
[22] current average level of T50: didn't you?
[23] A: Let me — let me read this.
[24] MR. ROBERTSON: Objection, misleading.
[25] Q: Look at the second sentence on page 28.

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A: Okay. Give me a second to catch up, please.
Well it says the proposed standard can be viewed as a cap on the T50 value at the current average level.
Q: And by that you mean the current average level of T50 of gasoline being made: correct?
A: I — I assume that's — that's the — and — and —
And the reason for that is one of the things we have to consider in these regulations and the testing is what's the reproducibility of the testing, and — and if you look further on it said the staff expects the refiners would have to consider the reproducibility of the test method and therefore have to produce a fuel that has a T50 of about 200 in order to meet the standards. So although the specification was set at 210, because of the reproducibility of the test method, they would probably have to produce a 200 to make sure they were in compliance. And therefore you go to this chart and at 200 we expect would be about 10 — 10 — 10 percent for VOC and about six percent for CO. You know staff — it was rounded. Then we say an argument can be made of having a standard of about

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200, but if we did so, that would result in actual value of 190 because of this reproducibility, but we didn't do that, although we could have gained additional benefits. Because as we further state, that it would make the front end of the gasoline more volatile, make it more difficult and expensive for refineries to meet the RVP limit. So that's kind of a —
Q: Precisely.
A: This is the rationale for picking the —
Q: The figures that you did.
A: — the proposal that we did.
Q: And — and they related to a lot of different things as you just pointed out. Let's ask a couple of things about them. You say — you state that the argument could be made that you could have a standard of 200 which would result in making T50s of about 190: right?
A: Correct.
Q: Now that's what Toyota was actually proposing and which you characterized their study as showing emissions benefits down to; right?
A: Well I think even this — this sensitivity analysis shows if you went all the way down to 180 you could get benefits. But — but there's

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trade-offs in all of these things.
Q: Exactly right. I'm just — Let's see if we can just answer the questions I'm posing.
A: Sure.
Q: This —
You state that this argument can be made wherein you'd result with the T50 down to 190 degrees —
That's the same figure that Toyota was arguing for: right?
A: Okay.
Q: — but that you decided that that would not be the right range because of Reid vapor pressure considerations: correct?
A: And cost considerations. We make it clear it would be more expensive for the refineries to meet the RVP limit. So our — our decision on where we set that considered both, you know, the test method that would have to be used, the emission benefits, and the costs it would impose on the refineries.
Q: As well as evaporative emissions which we earlier looked at: right?
A: Yeah. Well it talks about RVP here, that's evap emissions. And — and I think this also shows

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that we did, you know, rely very heavily on the Unocal information to set the T50 limit. We used their regression to do that sensitivity analysis to help us decide on the regulation.
Q: Well the statement that you just made, are you — are you trying to —
Didn't you just describe for me when we talked about the various matters that came into your consideration for T50 the Reid vapor pressure, evaporative considerations, what would happen if you went down that far, whether there were additional benefits received or increased if you went down that far, weren't those all part of those considerations as — as you just described?
MR. ROBERTSON: Objection, misleading.
A: Yes, but it was all based on Unocal's information.
Q: Well I thought we went through this before Unocal didn't do an evaporative emissions model; did they?
A: No. I'm talking —
Let me be real clear. What I'm talking about here is that this table two two to us shows that we relied very heavily on the Unocal work to set the T50 limit. This — this table says this used the

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regression equation. This discussion below the table is basically referring to these data and saying, hey, you know, we looked and we decided that we'd go with the 210 because that would basically make people produce at 200. And there's about a — well it's 11 percent in the table, we rounded to 10 percent HC reduction and about a six percent CO reduction.
Q: The Table II-11 that you just referred to has a source right underneath it; doesn't it?
A: Yes.
Q: And it says "Source: ARB/SSD."
A: Correct.
Q: What does that mean?
A: It means we did this calculation using the Unocal regression.
Q: Right. You performed your own sensitivity analysis, as you've already described, by deciding to use a Phase 1 baseline fuel; correct?
A: Using the Unocal regression.
Q: And — and you did your own sensitivity analysis: right?
A: Yes, using the Unocal regression equations.
Q: And based upon that sensitivity analysis, which says "Source: ARB," you concluded that a range for T50 would be appropriate as you proposed.

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A: Correct. And we used the Unocal regression equations to get us there.
MR. BEEHLER: Okay. Should we take another short break?
MR. GOLDMAN: Sure.
THE WITNESS: Sure. If you'd like to. That's great.
THE REPORTER: Off the record, please.
(Recess taken.)

BY MR. BEEHLER:

Q: Looking at your technical support document marked as Respondent's Exhibit 5, sir, on page 53, this is where you have a discussion about how you calculated reductions in exhaust emissions, and we've had a couple of points — we've had a couple of points in our discussion here where we touched on the issue of how you actually calculated reductions in exhaust emissions, and so I thought this was a good point to confirm what you actually did.
Do you see here that you state that "The range of exhaust emission reductions from the Phase 2 reformulated gasoline specifications have been estimated using the results of various test programs." Do you see that?
A: Correct.

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Q: And then you go on to describe the two areas that you did on page 53 and then over on 55. Take a moment and confirm that.
A: Okay. Give me a moment, please.
And what page did you want me to focus on?
Q: Sir — okay. Let's just go back to my point. Starting on page 53 of your technical support document you describe how you calculated reductions in exhaust emissions: correct?
A: Correct.
Q: And the first thing that staff did was to use the regression equations developed from the Auto/Oil study: correct?
A: That's correct.
Q: And that did not include T50 in the regression equations: correct?
A: That is correct.
Q: The second thing that you did in determining reductions in exhaust emissions is reflected beginning on page 55 under Roman numeral II, "Emission Testing Programs:" correct?
A: Correct.
Q: And under this program you start off by saying that there are three test programs that were conducted by ARCO, Ford, and an Auto/Oil study:

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correct?
A: Correct.
Q: If you go on to page 59 —
A: Just a moment, please. Okay. Page 59?
Q: Yes.
A: Okay.
Q: It states that "These data can be used to estimate the emission reductions that can be a used — that can be achieved by using Phase 2 reformulated gasoline..." Right?
A: Correct.
Q: Using the Auto/Oil regressions with respect to those fuel studies that we just identified: right?
A: Yeah, with some — some corrections made as discussed further.
Q: In fact you point out then that the ARCO EC-X data was used for the 1986 to 1995 vehicle class: right?
A: Correct.
Q: Okay. Does this help you, then, confirm for me that the emissions reductions analysis that you did did not use T50 in determining emissions reductions?
A: Well it does say here — let me see, something here that indicated some of the fuels were

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close to the Phase 2.
Q: Given your answer, I think that you — we may not be communicating here —
A: Oh.
Q: — on this question. Let me see if I can rephrase it differently.
Do you remember, sir, that there were various studies done on behalf of WSPA submitted to you/to give you the industry's own cost-effectiveness analysis? Do you remember that?
A: Correct.
Q: There was the DRI study, there was the Turner Mason study: correct?
A: Correct.
Q: And there was the Sierra Research study. Do you remember that?
A: Not specifically. But yes, they did some work.
Q: Now do you remember that none of those studies ever said anything about T50?
A: I don't recall that specifically. That may be the case.
Q: I'm trying to refresh your recollection —
A: Okay.
Q: — here to — and I —

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A: Okay.
Q: I had hoped that this would do this, and so let's go through it again.
A: Yeah.
Q: Sir, what's described here is how you calculated your reductions in emissions, and you used the Auto/Oil regression analysis, which we know doesn't have T50 —
A: That's correct.
Q: — as a — as a factor, and then you actually used these fuels that were pretty close to what you were proposing for Phase 2 regulations right?
A: Correct.
Q: And that's the GM/ARB study, the ARCO study and the Ford study: right?
A: Right.
Q: And you did make some clarification there that you ended up using, for a certain class of vehicles, just the ARCO fuels: right?
A: That's correct.
Q: But then in looking at those fuels you used the Auto/Oil regression analysis to determine the emissions reductions from those fuels: right?
A: Yes, but — and — and I don't mean to be

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argumentative, is it does say — there's — there's two things here, and let me just — it says here on page —
"There have been three fuels tested which approximate the Phase 2 reformulated gasoline specifications."
Q: Right. We've made that point.
A: Right. That means there was T — there was a T50 in those fuels that approximated. That's the only point I'm making there.
Q: Yeah. But I'm asking a very specific point here. When you calculated reductions in emissions analysis, the parameters that you determined would reduce emissions for purposes of saving, okay, how much are we reducing, those were limited to the Auto/Oil regression analysis: weren't they?
A: Well what I'm reading here and trying to clarify myself on, that's — that's where I am, and maybe I'm going to have to say I don't recall specifically, but what I'm reading here is these data, and that's referring to Auto/Oil and these other studies, can be used to estimate the emission reductions that can be achieved by using Phase 2 reformulated gasoline, modified by using the predictive equations discussed above to reflect

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differences in gasoline properties.
Q: And those predictive equations that they're talking about are the Auto/Oil regression equations: right?
A: Well what's the modified —
See, this was done using the Auto/Oil regressions and comparing the nationwide industry average fuel to the California average fuel.
"Additional corrections were made to account for differences between the test fuel and the Phase 2 reformulated gasoline." So I think the best response I — I can give you, yes, it was the Auto/Oil regressions, but with some corrections accounting for these other fuels to account for differences between the test fuel and the Phase 2 properties.
Q: Right. But —
A: Okay.
Q: But you did not calculate any specific reductions in emissions because of T50 in doing this, did you?
A: Well in reading this and what — what I'm inferring from this, we did use the Auto/Oil, but we corrected to account for differences in test fuel and the Phase 2 gasoline. I mean —
You're interpreting that as that we were

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[1] using these other studies here which did have — you
[2] know, these other studies that are — that are
[3] mentioned here, ARCO, GM, Ford, and so in some
[4] respect what I'm recalling and what this is
[5] suggests — what this is — is that the Auto/Oil
[6] regressions were the basis and we made some
[7] adjustments using these other studies. That —
[8] that's all I'm saying.
[9] Q: And I understand that, but I just don't
[10] want you to leave any implication here in the record
[11] at all —
[12] Those adjustments didn't include putting
[13] T50 in and using that as a calculation to determine
[14] emissions reduction; did it?
[15] A: I can't say for sure because part of me
[16] thinks that those corrections in using the other
[17] fuels, those other fuels had a T50 spec in them,
[18] so —
[19] Q: Sir, if you take just a moment and think
[20] about this —
[21] A: Certainly.
[22] Q: — do you have any understanding that the
[23] reason that the three cost-effectiveness studies did
[24] not discuss T50 was because your study and your
[25] proposal did not raise T50 in terms of

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[1] cost-effectiveness? Do you have any recollection of
[2] that?
[3] A: Not specifically, no.
[4] Q: In fact, sir, do you have a recollection
[5] that because you had not used T50, you said you know
[6] what, we think we're even going to have a lot more
[7] emissions reductions than we've shown here but we
[8] haven't quantified it? Does that refresh your
[9] recollection?
[10] A: Is that stated here?
[11] Q: I'm asking you if you recall that.
[12] A: No, I don't recall that.
[13] Q: Okay. Let's give it one more shot and then
[14] I'll — I'll move on.
[15] Looking at the calculation of reductions in
[16] exhaust emissions that we just did from 53 to 55, do
[17] you have a basis for telling me that staff used T50
[18] to calculate reduction emissions?
[19] MR. ROBERTSON: Objection, asked and
[20] answered.
[21] A: I think I've answered that, and I probably
[22] have to say I can't recall the specifics.
[23] Q: Fair enough.
[24] A: Sure.
[25] Q: Do you have the final statement of

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[1] reasons —
[2] A: Yes.
[3] Q: — handy? If you would turn to page 41,
[4] looking at the comment 61 and your agency response.
[5] And we've talked just briefly about this comment
[6] before. This is where WSPA is pointing out that you
[7] have not shown any actual test data from the Unocal
[8] predictive model. Do you see that at the very
[9] beginning of comment 61?
[10] A: Yeah, based on —
[11] This is the Unocal predictive model.
[12] Q: Right. And in responding to that comment,
[13] the last thing you say is, "However, the point of
[14] diminishing emission reduction in the Auto/Oil data
[15] (210 degrees to 220 degrees) supports the choice of
[16] limits within that range." And they're referring to
[17] the T50 range there; aren't they?
[18] A: Can I just read this so I can get it into
[19] context? Maybe it will help me.
[20] Okay. And your point once again?
[21] Q: You state here that in relation to T50,
[22] that the point of diminishing emission reduction in
[23] the Auto/Oil data, 210 degrees to 220 degrees,
[24] supports the choice of limits within that range, and
[25] by "that range" you mean the T50 range; don't you?

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[1] MR. ROBERTSON: Objection, misleading.
[2] A: I think what this says is look at the —
[3] the prior sentence. "The Unocal work should provide
[4] a superior estimate of the effect of T50 on
[5] emissions. However, the point of diminishing
[6] emission reduction in the Auto/Oil data (210
[7] degrees...) supports the choice of limits within that
[8] range." So — so that from my pers — from our
[9] perspective reflects that it supports the findings of
[10] Unocal and that our belief was their work was
[11] superior in terms of T50 effect on emissions. I
[12] think that's the proper interpretation.
[13] Q: Turn to the next page there to 43. Look at
[14] comment 66. ARCO was pointing out that there was
[15] considerable pressure being exerted to relax the
[16] specification for T50 and they didn't want that to
[17] happen; is that right?
[18] A: That's what that says.
[19] Q: You look at paragraph — comment, I mean,
[20] 68, and here you have Toyota and Nissan recommending
[21] that the cap for T50 be even lower than what you
[22] ended up proposing; is that right?
[23] A: Okay. Just a moment. I — I need to catch
[24] up with you. You're moving a little too quickly for
[25] me. I want to read the response on item 66.

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[1] Q: Do you want to go back to comment 66 you
[2] said?
[3] A: No, no. I'm fine.
[4] Q: Well since you brought it up, that agency
[5] response says, "The Unocal and Toyota studies both
[6] support the T50 limit as adopted." Right?
[7] MR. ROBERTSON: Objection, asked and
[8] answered.
[9] Q: That's what that comment says, the
[10] response; right?
[11] MR. ROBERTSON: Objection, argumentative.
[12] A: Yes. But as I said earlier and we
[13] discussed earlier, we relied upon the Unocal data in
[14] setting the T50 specification, used their regressions
[15] for our sensitivity analysis which was the basis for
[16] setting the specification, and, you know, the Toyota
[17] information directionally said we were heading in the
[18] right way.
[19] Q: Now if you look at paragraph 68. —
[20] A: Okay.
[21] Q: — here I'm simply asking you, you say
[22] Toyota and Nissan were not only supporting T50, they
[23] were telling you that you should even go lower; isn't
[24] that right?
[25] A: That's correct.

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[1] Q: And if you look at comment 69, General
[2] Motors is saying that you're not forcing technology
[3] enough on this point and they recommend a lower cap
[4] on the T50; is that right?
[5] A: That's correct.
[6] Q: Now you just made a comment about
[7] directionally Toyota going in the right direction as
[8] far as if you reduce T50, it reduces emissions;
[9] right?
[10] A: Correct.
[11] Q: Would you turn to the comment 302 in this
[12] final statement of reasons.
[13] A: Oh, comment 302. Okay.
[14] Q: And I guess not surprisingly it's a Unocal
[15] comment complaining about not having a predictive
[16] model in place yet. Do you see that?
[17] A: Yes. They were very aggressive on the need
[18] for a predictive model.
[19] Q: And they are saying look, if you can
[20] propose standards now, why can't you propose a
[21] predictive model. And then your response comes to
[22] that. Right?
[23] A: Correct.
[24] Q: And in the middle of this response you say,
[25] "Directionally, the emissions effects of fuel

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[1] parameter changes are well enough established by the
[2] test data that fuel parameter standards can be
[3] adopted," right?
[4] A: Correct.
[5] Q: Even without the Unocal study, staff had
[6] enough information to know directionally where T50
[7] would go; is that true?
[8] A: Correct.
[9] Q: And we've previously discussed that by
[10] 1994 —
[11] Do you remember that table that we looked
[12] at, there were —
[13] A: Oh, four or five studies.
[14] Q: — there were four or five different
[15] studies that by the time of your predictive model had
[16] examined T50, do you — do you remember that?
[17] A: Yes. I recall that table.
[18] Q: If Unocal had never talked to CARB staff at
[19] all or given them any information, wouldn't staff
[20] have had those studies conducted in any event?
[21] A: I believe I answered this once before and I
[22] said I wasn't sure. And let — let me explain why.
[23] It's because —
[24] Q: No. I looked up to the air because I don't
[25] think I've asked you that precise question before in

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[1] terms of these studies.
[2] MR. ROBERTSON: Just —
[3] Q: But go ahead.
[4] MR. ROBERTSON: Yeah.
[5] A: When we adopted the T50 specifications —
[6] Actually before that, when Unocal released
[7] all of the information, it's my recollection that it
[8] was that, the sharing of the test program that Unocal
[9] conducted, it's my recollection, that prompted some
[10] of these other studies like what was Auto/Oil Phase 2
[11] to now take a look at an incorporated T50, because
[12] everybody saw the findings that Unocal had found and
[13] so technically people were saying, well let's
[14] incorporate that into, say, Auto/Oil Phase — Phase
[15] 2. And it's my recollection that all those other
[16] studies that we talked about in that Table IV were
[17] after, you know, this — this time in 1991 when those
[18] results came in. So that — that is my recollection
[19] on that.
[20] Q: And you don't mean to include the Toyota
[21] study there. That — that you told me was told to
[22] you before you ever met with Unocal.
[23] A: That's correct.
[24] Q: Okay. If Unocal had used the words "not
[25] confidential" instead of "non-proprietary" in that

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[1] August 1991 letter, what would CARB staff and CARB
[2] have done differently?
[3] A: If they used the word just
[4] "non-confidential?"
[5] Q: Yeah. Let me refresh your recollection.
[6] Remember we looked at this letter —
[7] A: Yes.
[8] Q: — at some length and the reference to the
[9] data no longer being considered proprietary, or I
[10] guess the term was it is considered non-proprietary
[11] with reference to the data. So I'm saying, okay,
[12] let's take that word out. If Unocal had said "not
[13] confidential" in that letter instead of
[14] "non-proprietary," what would CARB staff and CARB
[15] have done differently?
[16] A: We would have released that information
[17] because they were telling us it's in the public
[18] domain, it's — it's available.
[19] Q: You would have used it as you did.
[20] A: Basically. But that doesn't diminish the
[21] fact that that letter — and I think the words are
[22] very important because they chose to use the words
[23] "non-proprietary" in the letter, and I think it's
[24] very important that they did not, once again as we've
[25] discussed before, at that time tell us the rest of

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[1] the story, basically that, oh, by the way, they have
[2] a patent and so forth, and as I characterized
[3] earlier, that there were some strings attached.
[4] Q: Can we go back to my question though?
[5] A: Yes.
[6] Q: If Unocal had said "not confidential" in
[7] that letter instead of "non-proprietary," you would
[8] have used the information, the equations, the data,
[9] the presentation slides as you actually did.
[10] A: Correct.
[11] Q: Okay. If Unocal had said to CARB staff we
[12] have a pending application, but not giving you any
[13] more information, what would you have done?
[14] A: If Unocal had told us there was a pending
[15] patent application, I think the outcome would have
[16] been no regulation.
[17] Q: Okay.
[18] A: We think the outcome would have been no
[19] regulation.
[20] Q: Let's make sure that you understand and are
[21] being very specific in response —
[22] A: Yes.
[23] Q: — to my question. Okay? If Unocal had
[24] said that they had a pending application but nothing
[25] more, what would you have done?

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[1] A: I think I answered that. We would not have
[2] had a Phase 2 regulation in November.
[3] Q: Without seeing the Unocal pending
[4] application, you would have not had any regulations
[5] at all?
[6] A: In November, that's correct.
[7] Q: Weren't you bound by the Clean Air Act to
[8] come up with regulations by the end of 1991?
[9] A: We also had to consider cost effectiveness
[10] in — in whatever we do.
[11] Q: Okay. I'm — I'm just asking this
[12] question: Didn't you understand that you were bound
[13] by the Clean Air Act, the California Clean Air Act,
[14] to come up with regulations by the end of 1991?
[15] MR. ROBERTSON: Objection, misleading.
[16] A: Well the act may have directed us, but that
[17] doesn't mean that you just forget any information and
[18] just proceed ahead.
[19] Q: I'm just trying to understand.
[20] A: I mean the act has a lot of requirements in
[21] it.
[22] Q: Yeah. Weren't you supposed to propose
[23] regulations by the end of 1991?
[24] A: If that's in the act, yes. But I'm telling
[25] you if Unocal had told us they had a patent applied

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[1] for, we would not have taken that regulation to the
[2] board. I'm very confident about that.
[3] Q: Without knowing what the patent even
[4] attempted to claim.
[5] A: That makes it even more reason not to go to
[6] the board.
[7] Q: And how long would you have not gone to the
[8] board?
[9] A: That's really difficult to answer at this
[10] point, but I'm quite certain we would not have taken
[11] a regulation to the board.
[12] Q: You would have never approved a regulation?
[13] A: What we may have —
[14] The only other thing I could — that I'm
[15] confident we may have done was just taken the EPA
[16] regulation, but that's the only thing that I felt we
[17] would have had an op — we would have had an option
[18] for at that time.
[19] Q: Look at final statement of reasons 318,
[20] would you?
[21] A: 318?
[22] Q: Yes. It's on page 172.
[23] A: Thank you. 172.
[24] Q: Wickland Oil specifically asked you to
[25] adopt the EPA negotiated rulemaking; didn't they?

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A: Yes. they did.
Q: And the agency response that you said in reference to whether you would adopt an EPA regulation was as follows: "Because California has the worst air pollution problem in the U.S., the ARB has historically set standards for which there are no federal counterparts or has set more stringent standards than equivalent federal regulations. The Board has concluded that the federal reformulated gasoline regulations are not sufficient to meet the requirements of the California Clean Air Act.
"Implementation of only the federal gasoline standards would leave the state far short of obtaining the emissions reductions needed to meet either the federal or state ambient air quality standards. The result would be a far greater likelihood of sanctions on transportation funds and new source growth, and an imposition of a greater burden onto other California industries to reduce emissions. Also, the federal gasoline regulations are not completely defined. Given the technical feasibility of better control, the ARB has decided that more effective, albeit more expensive, requirements are appropriate."
That's what you said in reference to the

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EPA regulations
A: That is correct. That's what we said in the absence of the knowledge that Unocal had a patent.
Q: What you said is that the EPA regulations will not get the benefits that your RFG 2 benefits would achieve; right?
A: Oh, that — that is correct.
Q: You would have accepted dirtier air rather than accept a patent that you had not seen as a cost; is that —
A: What we would have —
Q: I'm sorry. Can you answer that?
A: Let me finish. Yes. What we would have done is we had — would have had to look elsewhere for the emission reductions needed to achieve our air quality goals.
Q: Well my question right now, though, is in reference to your comment that you would have gone to the EPA regulations, and I've just showed you a statement by your agency as to why those regulations were rejected, so I'm asking you: Given your statement there, you're saying that EPA will not clean up the air as much as California's Clean Air Act requires; right?

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A: That's correct.
Q: And not nearly as much as the RFG 2 regulations predicted; correct?
A: That's correct.
Q: In fact you predicted statewide that your RFG regulations would lead to 50 to 70 percent more emissions reductions statewide than the EPA. Do you remember that?
A: Fifty — the EPA was — oh, the R — there was a significant —
The Phase 2 regulations did result in significant emission reductions beyond the EPA regulations, that — that is correct. But — but what's being missed here, this is all in the context, keep in mind, of the fact that we did not know about the patent, and in fact we think Unocal relied on that, because this program resulted in such tremendous emission reductions that it was in their — their interest for us to adopt these — these regulations and then wait for three and a half years till we were — we were well on the way to compliance, money was being spent, we had committed to certainty, and then a year after the patent was issued tell us, "By the way, we have a patent." So I am very comfortable and confident in saying to you

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today that we would not have adopted these Phase 2 specifications.
Q: And you're saying that on behalf of the board.
A: Yes.
Q: And you have not talked with a single member of the board in preparing for this deposition.
A: I didn't need to on this — on this issue
Q: Okay. Now let's bring you back to the question that I had pending in terms of whether Unocal, if they had just given you the patent — the — let me withdraw that
A: Certainly.
Q: The question of if Unocal had simply said we have a pending application but given you nothing more, what would have happened, would you have asked Unocal to see it?
A: I believe we would have asked them would they — what would they share with us and what their intent was with respect to this patent.
Q: And I guess we asked this earlier: Do you have any understanding as to whether you have the power to actually force a refiner to give you a pending patent application? Have you ever looked into that issue?

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A: No, I haven't. I don't think Mr. Beehler, it's our — it would have been our responsibility. It was their responsibility to tell us that they had this patent because it had a material effect on what we were doing.
Q: Under the hypothetical that I've outlined, would CARB have asked Unocal to give up its patent or limit its royalties in some fashion?
MR. ROBERTSON: Just objection to the extent that it calls for speculation.
A: That is pure speculation.
Q: What if Unocal had disclosed the content of the patent application but told you that it had to be held confidential, would CARB have adopted regulations to avoid the patent?
A: We would still not have adopted a regulation. And — and I can tell — tell you why if you'd like.
Q: Sure.
A: One, if we had to keep this confidential, and our — you know, our process is very open, we would be put in a very difficult position because we would have to make our own determination of what did or did not consider infringement on the patent. We couldn't put it out in the public and say here's some

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specifications we came up with and we tried to design these specifications to avoid the patent, we need your input if we're correct, we could not have done that. And so that — that risk would have been extremely high. So I — once again, I'm very confident in saying we would not have adopted the Phase 2 regulations.
Q: Would you have adopted any regulations?
A: What I said earlier is we maybe would have done the EPA regulations and made them statewide, because the EPA regulations, as you recall, are area-specific.
Q: And so that leads us back to a similar question. Under this hypothetical the EPA regulations, you know, lead to dirtier air than what you have ended up adopting; right?
A: What that means is we would have had —
Q: If you can answer that first.
A: Yes. The EPA regulations would not have achieved the same air quality benefits.
Q: And in fact, you were facing a very serious air pollution problem in 1991; right?
A: Yes.
Q: In fact you still are; aren't you?
A: Correct.

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Q: In fact there's been the latest report that's come out that indicates that a number of your cities are rating an F for air quality. Are you familiar with that?
A: I haven't seen that latest report. They're —
Q: In any event, you know that your work at the California Air Resource Board isn't done; is it?
A: No, it isn't.
Q: You have not obtained the ambient air quality that you need to throughout this state; have you?
A: That's correct.
Q: You need to reduce more emissions yet today.
A: We do.
Q: If Unocal would have disclosed the application and allowed you to disclose that application to others but would not discuss licensing, what would have happened?
A: That — I — I'm not clear. If — if they — if they — can —
Please restate it.
Q: Okay. Let's go back. If you're not clear —

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A: I'm not clear with your question.
Q: If you're not clear, I appreciate —
A: There's multiple pieces in there.
Q: I'll try to not step on you if you won't step on mine. Let me try it again, and I appreciate you asking me to clarify.
So we're moving on to the next hypothetical. So if Unocal tells you that they do have an application, they show you the pending application, they allow you to take that application and disclose it to others but they won't discuss licensing, what happens?
A: Well I don't understand what — what that means. That means they won't discuss licensing. Does that mean they're putting the patent in the public domain?
Q: No. I —
A: Does that mean they're —
Q: I didn't say that, sir. Let me go back. In 1991, I don't know if you've ever been told this or — or if you've looked into it yourself, but at the time of your regulations in 1991 Unocal's patent application was pending. Do you know that?
A: Now I know that.
Q: Okay. And no claims had been even allowed

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at that point in time, and so just in order to clarify let me suggest to you that if Unocal said we're not going to discuss licensing, we don't even have any claims allowed, the patent hasn't issued, just to — for you to understand why they might not discuss licensing, okay, so here they've given you the patent application to review and they said you can share it with others but we — we're not going to discuss licensing. Okay. What would CARB have done?
MR. ROBERTSON: Just objection to the extent it's an incomplete hypothetical.
A: You know, you can speculate about this, you can speculate about that, you can speculate about what if and this. The one thing that is certain, that if Unocal had disclosed to us that they had a patent that had been applied for — and by the way, there were other patents that were applied for, and in 1995 when they met with us and discussed the first patent they didn't tell us there were other patents in the — in the process. So I'm very comfortable, once again, in saying if they had told us there is a patent applied for, there would not have been a regulation in 1991.
Q: And just to make clear the hypothetical that I'm talking about right now, if Unocal would

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have disclosed the application and allowed you to show it to others but would not discuss licensing, you're saying there would not have been a regulation in 1991; right?
A: There would not —
If they had disclosed to us there is a patent, there would not have been a regulation. You can talk about all sorts of hypotheticals and what if's and you get into speculation real fast.
Q: What would have happened in '92?
A: What, if they disclosed to us in '92?
Q: Under the same hypothetical, if they would have disclosed to you —
You said there wouldn't be a regulation in '91. What would CARB staff have done, never adopted a regulation? Or would they have gone to EPA's? Is that your —
A: Well EPA would have happened automatically because it's a federal law. The only option we would have had was extend EPA statewide. I —
You know, it's really difficult to speculate where we would have gone, what discussions what would have occurred, but I think the critical thing is that there wouldn't have been this — this regulation.

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Q: Just because of a pending patent application.
A: Absolutely.
Q: You would have assumed that it was valid even if it was still pending.
A: Well we don't know if it's going to be valid or not, but we would not have done the regulation. We would not have taken that risk that we were adopting a regulation that covered the same space as a patent application and by doing that would have provided one company with — with an extreme opportunity to — an extreme opportunity to increase their profits and jeopardize the recovery of other — the cost to other refineries and also impose that cost on the consumers of California.
Q: You said you would have not taken the risk that you were adopting a regulation that covered the same space as the patent application. Does that mean you would have looked at the patent application to its broadest claim and said whatever that broadest claim is, we can't adopt a regulation within it?
A: At what time?
Q: In 1991, in 1992, in 1993 or in 1994.
A: By the time we heard about the patent —
Q: Okay, you're — I'm sorry.

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A: Okay.
Q: That —
The start of that answer —
A: Okay.
Q: — shows me that it's not going to be responsive.
A: Why don't you ask again.
MR. ROBERTSON: Objection, the question is not clear then.
MR. GOLDMAN: It's also compound to the extent it goes over four years, but —
MR. ROBERTSON: Yeah.
MR. BEEHLER: Well I'm not sure, given his testimony, that that's going to make a difference, and that's what I was trying to go to.
Q: You said that you would not have taken the risk that you were adopting a regulation that covered the same space as the patent application. Does that mean you would have looked at the patent application and its broadest claim and said we simply can't adopt a regulation that would fall within that broadest claim?
A: What I have said — and, you know, you're getting into speculation again — the thing that is certain is if Unocal had informed us in 1991, before

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[1] we adopted this regulation, that there was a patent
[2] pending, there wouldn't have been a regulation. What
[3] happened after that really gets into speculation and
[4] I really — really would be inappropriate to go
[5] there. But there's no question there wouldn't have
[6] been a regulation.
[7] Q: And would you have made that decision
[8] regardless of what the potential infringement rate
[9] would be under that regulation?
[10] A: Yes.
[11] Q: If it was one percent or 99 percent, it
[12] wouldn't make any difference to you.
[13] A: Oh, what do you mean by one percent and 99
[14] percent?
[15] Q: You're saying that you would not approve
[16] any regulation that was covered by a patent
[17] application, and I'm asking you would it have made a
[18] difference to you what the potential infringement
[19] rate was?
[20] A: No.
[21] Q: Would it have made a difference to you as
[22] to what the actual costs of avoiding the patent were?
[23] A: No.
[24] Q: Do you agree that with no experience at
[25] actually avoiding what the patent's claims were, it

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[1] would be a speculative exercise to even discuss what
[2] the infringement — well let me withdraw that.
[3] Has anyone ever indicated to you that the
[4] '393 patent can be avoided at a low cost?
[5] A: I'm not aware of that.
[6] Q: Has anyone ever indicated to you that the
[7] refiners did not attempt to avoid the '393 patent
[8] prior to the 1997 trial?
[9] A: Can you re —
[10] Did not? Can you repeat it again, please?
[11] Q: Has anyone ever indicated to you that the
[12] refiners in California who were involved in that
[13] previous litigation did not attempt to avoid the '393
[14] patent prior to trial?
[15] A: I can't —
[16] MR. ROBERTSON: Objection, misleading.
[17] A: I can't comment on that.
[18] Q: Let me ask you this: If Unocal had
[19] disclosed the application to CARB and allowed CARB to
[20] disclose the application to others and was willing to
[21] discuss potential licenses, what would have happened?
[22] A: I think I answered that already, that if
[23] the patent had been disclosed to us, there would not
[24] have been a regulation.
[25] Q: Regardless of what Unocal would have

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[1] licensed it for?
[2] A: Correct.
[3] Q: Now I'm going to try and give you perfect
[4] omniscience. If Unocal had disclosed the patent
[5] application to you, allowed CARB to disclose it to
[6] others, and you in fact knew the scope of the patent,
[7] how it would ultimately issue, how it would
[8] ultimately be construed by a court for all of its
[9] claim-construction terms, what the jury's royalty-
[10] rate determination would be for the '393, what Unocal
[11] was willing to enter into for licenses, if you had
[12] all that information, what would you have done?
[13] A: Mr. Beehler, you can — we can go through
[14] all sorts of what if's and it's all speculation. The
[15] one thing that I can say on behalf of the Air
[16] Resources Board with great confidence is that if
[17] Unocal had told us about the pending patent, there
[18] would not have been a regulation in 1991, and beyond
[19] that would be pure speculation on my part.
[20] Q: You don't know if you would have adopted
[21] one in '92 or '93 or '94.
[22] A: I do not.
[23] Q: You do know that if you wouldn't have
[24] adopted any regulations, you would not have achieved
[25] the maximum degree of emission reduction possible.

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[1] A: That may be so, but it wouldn't have
[2] changed our — our perspective.
[3] Q: And you do know that air quality was so bad
[4] in 1991 that you said all the programs are needed
[5] A: That's correct. But we'd have to do it
[6] without this program.
[7] THE WITNESS: Should we take a short break
[8] since you're —
[9] MR. BEEHLER: This won't take long.
[10] THE WITNESS: Okay.
[11] MR. BEEHLER: Unless you need one.
[12] THE WITNESS: No, I'm fine.
[13] MR. BEEHLER: You know what, I really hate
[14] it when witnesses ask me for a break and then I try
[15] to talk them out of it. It's silly. Of course, go
[16] ahead and take a short break.
[17] THE WITNESS: Okay.
[18] THE REPORTER: Off the record, please.
[19] (Recess taken.)
[20] (Respondent's Exhibit 62 was
[21] marked for identification.)
[22] BY MR. BEEHLER:
[23] Q: I want to talk with you about what was
[24] actually written by CARB when they did find out about
[25] the patent as far as options, and I have put in front

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[1] of you Respondent's Exhibit 62. Have you seen this
[2] document before?
[3] A: I may have. I don't specifically recall
[4] it, but I — I probably saw it.
[5] Q: Looking at the front of Respondent's
[6] Exhibit 62, do you see that it's a printout of an
[7] e-mail that appears to have been spooled on March 6,
[8] 1995? Do you see that?
[9] A: Yes.
[10] Q: Meaning that the document was drafted on an
[11] e-mail on that date; correct?
[12] MR. ROBERTSON: Objection, foundation.
[13] Q: Or do you know?
[14] A: Well that's when it was spooled. I — I
[15] don't know, but it was around that — that time.
[16] Q: It was put into your system such that it
[17] was spooled on or about March 6, 1995; right?
[18] A: That's — that's fine.
[19] Q: And it's from a lawyer that you've
[20] previously identified, Mr. Ryden.
[21] A: Correct.
[22] Q: And in this document he discusses options
[23] on the first full page of the text and states, "There
[24] are no ready options available to deal with the
[25] effects of the Unocal patent." Do you see that?

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[1] A: I see that.
[2] Q: Then he says, "Historically, the policy of
[3] the Air Resources Board has been to ensure that
[4] regulations do not result in monopolies to single
[5] companies or entities."
[6] Let me ask you something about that one.
[7] Are you aware of any written policy that Mr. Ryden is
[8] referring to there?
[9] A: No. It's — there's no written policy.
[10] Basically our ethic, you might say.
[11] Q: Have you ever expressly communicated that
[12] policy using those type of words publicly prior to
[13] 1995?
[14] A: I think what I can tell you is what has
[15] been communicated.
[16] Q: No, I —
[17] A: Oh.
[18] Q: Let's start here: He says that the policy
[19] has been to ensure that regulations do not result in
[20] monopolies to single companies or entities. Has that
[21] policy as described there —
[22] A: Using those words?
[23] Q: Right.
[24] A: Those specific words?
[25] Q: Sure, let's start there.

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[1] — been communicated?
[2] A: I don't — I don't recall.
[3] Q: Okay.
[4] A: No.
[5] Q: He now states "To continue this policy.
[6] the ARB could rescind its Phase 2 RFG regulations."
[7] Do you see that?
[8] A: Yes.
[9] MR. ROBERTSON: Objection.
[10] MR. BEEHLER: I m sorry.
[11] MR. ROBERTSON: Just — I'm sorry. it's
[12] getting late in the day. I'm just going to make an
[13] objection here.
[14] MR. BEEHLER: Okay.
[15] MR. ROBERTSON: Lack of foundation.
[16] Q: He says that —
[17] MR. ROBERTSON: And I m not — I m not
[18] finished. Excuse me.
[19] MR. BEEHLER: Okay.
[20] MR. ROBERTSON: Also it assumes facts not
[21] in evidence.
[22] Q: In any event. Mr. Ryden here in March of
[23] 1996 uses the words that: "To continue this policy.
[24] the ARB could rescind its Phase 2 RFG regulations."
[25] He — he states that: right?

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[1] MR. ROBERTSON: Objection. same objections.
[2] assumes facts not in evidence. it s misleading. lack
[3] of foundation as well.
[4] MR. BEEHLER: Go ahead and answer.
[5] A: I will say you re reading the words.
[6] Q: He states that.
[7] A: That s what he s written here. that s
[8] correct.
[9] Q: Did you ever discuss with anybody the
[10] mechanism by which CARB could rescind its Phase 2 RFG
[11] regulations?
[12] A: Well I don t think you need to discuss. I
[13] mean if — if the board —
[14] If we wanted to rescind a regulation.
[15] there s a defined process to do that: basically our
[16] regulatory process.
[17] Q: That could be done.
[18] A: Yes.
[19] Q: Mr. Ryden goes on to state. "However. the
[20] clean fuel regulations are an integral part of the
[21] State Implementation Plan designed to achieve clean
[22] air for all Californians. Unfortunately this
[23] approach." meaning rescinding the regulations, "would
[24] result in California not achieving our clean air
[25] goals and cause renewed legal challenges from U.S.

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[1] EPA for failing to abide by our State Implementation
[2] Plan." Those are the words he uses: correct?
[3] A: Those are the words used there.
[4] Q: Okay. Let me ask you something: What is
[5] the State Implementation Plan?
[6] A: That is our plan that identifies the steps
[7] that will be taken to achieve federal ambient air
[8] quality standards.
[9] Q: And the State Implementation Plan. is it
[10] revised from time to time?
[11] A: Yes. it is.
[12] Q: And who is the entity that has the
[13] authority to write it and then modify it?
[14] A: Okay. Well the —
[15] There s two components to the plan.
[16] Q: Please explain.
[17] A: There s a state plan and there s also the
[18] district element. Because as I said. I think we
[19] discussed earlier there s — the districts have
[20] primary responsibility for stationary sources. so
[21] the — the state plan in total is basically an effort
[22] that includes statewide measures. the things we will
[23] do at the ARB that we have authority for. and then as
[24] part of that is the things that individual districts
[25] will do. So there s a plan for the South Coast Air

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[1] Quality Management District. there s a plan for the
[2] San Joaquin Air Quality Management District.
[3] Q: And this is what I m trying to understand.
[4] I understand you have certain authorities and
[5] responsibilities and that there s authority vested in
[6] these individual districts.
[7] A: Correct.
[8] Q: And together a State Implementation Plan is
[9] created: correct?
[10] A: That s a fair representation.
[11] Q: Is that under your authority? Is it under
[12] a hey. we've got to cooperate and put one together?
[13] Who has the authority to actually say this will be
[14] the SIP?
[15] MR. ROBERTSON: Objection. calls for a
[16] legal conclusion. lack of foundation.
[17] A: Yeah. You might want to ask —
[18] There s provisions in the — in state law.
[19] I can just tell you generally we ultimately have to
[20] approve the state plans before they're forwarded to
[21] EPA. As a matter of practice there s a lot of —
[22] there s a lot of process that's involved in
[23] developing those plans.
[24] Q: And just to address complaint counsel s
[25] concern. I m truly not trying to ask for a legal

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[1] analysis here. I'm trying to ask you for your
[2] understanding of how this SIP works. The State —
[3] The State Implementation Plan is something
[4] that's required because of the federal Clean Air Act:
[5] is that right?
[6] A: That s correct.
[7] Q: Okay. And in complying with that federal
[8] Clean Air Act who has decided. to your understanding.
[9] that the California Air Resource Board should have to
[10] approve it?
[11] A: Oh. I think that s — that s in statute.
[12] and we're the — basically the overall air pollution
[13] control agency for the state.
[14] Q: For California.
[15] A: For California. yeah.
[16] Q: Okay. So it s the California — yeah.
[17] It s the California legislature. then. to
[18] your understanding. who decided that you are the
[19] folks at — at the Air Resources Board who should be
[20] in charge of the SIP?
[21] A: Basically. There s a lot of language in
[22] the — in the law. but in simple terms.
[23] Q: Now is the SIP something that is formally
[24] written up?
[25] A: Yes.

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[1] Q: And was there one in place in 1995?
[2] A: Yes. there —
[3] I have to say. just keep in mind there are
[4] multiple plans for different — different areas. and
[5] yes. there was — there were plans in place. and the
[6] most recent one that I recall at that time was the —
[7] the South Coast plan for '94.
[8] Q: Okay. When — and I m not asking you to
[9] speculate here. I m just trying to —
[10] A: Uh-huh.
[11] Q: — figure out — when someone talks about
[12] the State Implementation Plan as Mr. Ryden is here.
[13] is he referring. then. to various documents. or is
[14] there one cohesive plan?
[15] MR. ROBERTSON: Objection. misleading. and
[16] it assumes facts not in evidence.
[17] A: He s using it in the very broadest term.
[18] Q: So there are — there are several aspects
[19] to your State Implementation Plan. and — and where
[20] would those be located?
[21] A: Physically or —
[22] Q: Yes. sir.
[23] A: Oh. At Air Resources Board. at EPA. at the
[24] districts.
[25] Q: And so if one was to look at a specific

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[1] year, like 1995, would it be possible to look at your
[2] records and say I can tell you what our SIP was in
[3] 1995 and I can tell you whether that changed over any
[4] given year?
[5] A: Yes, you could track the plans.
[6] Q: And have there been differences in the
[7] State Implementation Plan, different — let me
[8] withdraw that.
[9] Has the State Implementation Plan changed
[10] since 1995?
[11] A: Yes. It goes through a periodic updating
[12] and review process.
[13] Q: When you adopt like the Phase 3
[14] reformulated gasoline regulations, does that then get
[15] reflected as part of the State Implementation Plan?
[16] A: Yeah, it will move into the — into the
[17] plan.
[18] Q: So every time a district adopts a new
[19] control measure or any time you amend yours, that
[20] becomes part of the State Implementation Plan.
[21] A: Correct. If it's needed to attain the
[22] federal standards, that's one of the things that's
[23] there.
[24] Q: Understood.
[25] (Respondent's Exhibit 63 was

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[1] marked for identification.)
[2] BY MR. BEEHLER:
[3] Q: Looking at Respondent's Exhibit 63, another
[4] document from CARB's files dated that same date as
[5] the one we just looked at from Mr. Kenny to Mr.
[6] Ryden, and it indicates that he's modified the
[7] document apparently sent to him in several places
[8] but then concludes, quote, "The only two viable
[9] options seem to be litigation or concession by
[10] Unocal." Do you see that?
[11] A: Yes, I do.
[12] Q: Did you ever discuss this with him, that
[13] those were the two viable options?
[14] A: I don't recall any specific discussion.
[15] I'm aware of this.
[16] Q: Sir, the — and I'm done with those.
[17] The suggestion has been made that CARB, had
[18] it learned of the pending patent application, might
[19] have either removed certain cap levels or limit
[20] levels or flat limit levels on certain properties, or
[21] changed them. With that direction I'm going to ask
[22] you a few questions.
[23] First of all, as I understand it, you're
[24] saying that's not something you would have done. You
[25] simply wouldn't have approved the regulations. Is

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[1] that right?
[2] A: Oh. To reiterate what I said, if we had
[3] been informed there was a patent had been applied
[4] for, we would not have proposed these regulations to
[5] the board.
[6] Q: And would you have attempted to change
[7] limits, whether those be flat limits or caps or
[8] averaging limits, of your various parameters in
[9] proposed regulations to try and carve around the
[10] potential patent?
[11] A: I think I already answered this once
[12] before, and basically — I mean when you were going
[13] through these different options and scenarios I
[14] basically reiterated then, and I'll reiterate again,
[15] if we had been informed that a patent had been
[16] applied for, we would not have adopted this
[17] regulation.
[18] Q: Okay. But I'm being a little bit more
[19] specific here, sir, and tell me if you don't
[20] understand or if you can't answer it for some reason.
[21] Would you have attempted to change any of the limits,
[22] whether those are flat limits or caps or averaging
[23] limits, of the various parameters to try and carve
[24] around the effects of the patent?
[25] A: It — it —

[1] I can't answer that question because you're
[2] assuming we have — have some knowledge and we have a
[3] picture of things. The bottom line is, and I'll
[4] reiterate that again, if we had been informed of the
[5] patent, we would not have adopted the regulation.
[6] All this — these other questions and these what if's
[7] are pure speculation, and I don't want to speculate.
[8] Q: Okay. So — and perhaps we're finally
[9] getting to, with all due respect, an answer to the
[10] question. Is it speculation for you — for you to
[11] tell me whether you would have tried to have carved
[12] around potential claims of a patent had you been told
[13] about it?
[14] MR. ROBERTSON: Objection, calls for a
[15] legal conclusion.
[16] Q: Is it speculative?
[17] MR. ROBERTSON: Same objection.
[18] A: I think what's speculative is trying to
[19] identify what we may or may not have — have done
[20] considering this option or that option or whatever
[21] option. And I believe I've responded to this
[22] question a number of times already.
[23] Q: Well I'm going to try it one more time,
[24] sir, because it has been suggested to me that this is
[25] something CARB could have done, and so I am allowed

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[1] to inquire whether you are going to testify that
[2] that's something you could have or would have done.
[3] If you had learned of the potential patent
[4] or the pending patent application in 1991 or in 1992
[5] or in 1993 or 1994, before it issued, would CARB
[6] staff or CARB have attempted to change or remove
[7] various limitations to try and carve around the
[8] patent claims, the potential claims?
[9] A: Once again, you could come up with an
[10] infinite list of things that CARB could have done.
[11] What I am telling you today is what we would have
[12] done —
[13] Q: And that —
[14] A: — and that would have been not have a
[15] regulation.
[16] Q: On anything.
[17] A: Well we still had our Phase 1 regulation.
[18] Q: Right. But you would not have approved the
[19] Phase 2 regulations in any form.
[20] A: There would not have been Phase 2
[21] regulations.
[22] Q: And in fact the only thing you can think of
[23] then that would have happened is you would have
[24] defaulted to the federal EPA.
[25] A: That's correct.

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[1] Q: Anything else would be speculation.
[2] A: Yes.
[3] Q: Let me ask you something as long as I
[4] raised these questions about caps and limits. In
[5] your final statement of reasons you made several
[6] different points about why you felt caps —
[7] And I want to use that — I want to use
[8] that term a little bit more generically. Is there a
[9] term that you use to apply both to — to include the
[10] flat limits, the averaging standards and the cap
[11] limits, you know, when you want to refer to all those
[12] limitations together?
[13] A: We'll refer to those as the specifications.
[14] Q: Okay. In your final statement of reasons
[15] you pointed out that there were several reasons for
[16] needing the specifications that you proposed and —
[17] and ended up adopting. Do you remember that?
[18] A: Not specifically, but I'm sure it's in
[19] there.
[20] Q: And one of the big reasons that you
[21] continually and repeatedly raised was that you wanted
[22] those limits for enforcement purposes. Do you
[23] remember that?
[24] A: Cap limits.
[25] Q: Okay. Thanks for the distinguishing point.

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A: Sure.
Q: The cap limits you wanted for enforcement purposes. Would you describe why cap limits were important to be on these various parameters for enforcement purposes?
A: Certainly. By having the cap limits in place, it enabled us to go anywhere in the distribution system to determine whether or not a gallon of gasoline was or was not in compliance, and it's as simple as that.
Q: Another point that you raised in the final statement of reasons is that specifications are important because the timing of production of gasoline might occur at a particularly poor time of air quality. Do you remember that?
A: Oh, yes, there was some discussion of when the regulations were — were introduced. In fact I think our proposal was January, and then based on testing it was moved up to March of '96. Is that what you're referring to?
Q: No, I think we're talking —
A: Oh.
Q: — past each other a little bit. Let me see if I can take another shot of it.
A: Fine

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Q: One of the points that you made as to the importance of specifications on all your properties is if you allowed any property to float or if you didn't have any caps at all, that while you might be able to look back and say, well, we have equivalent emissions for the entire year, that it might be very bad on a particular time of the year when you have poor air quality. Do you remember that?
A: You know, that — and that may be more having to do with — with the averaging limits than the caps, because the caps were purely there to provide enforcement anywhere in the distribution system. Now some of that kind of brings up some of the discussions we had of averaging and why we set the averaging limits where they — where they were.
Q: But the point being that you liked these certain limits on all of the fuel because you didn't want someone to be making a little bit dirtier fuel at a time that might turn out to be poor air quality. Do you remember making that argument?
A: No, but we may have.
Q: Now there was another point raised that the automobile manufacturers —
Who were very involved in these regulations, weren't they?

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A: Yes.
Q: The automobile manufacturers continually talked with you about wanting a uniform fuel; didn't they?
A: Yes.
Q: And —
A: Well maybe you can define for me to make sure I'm interpreting what you mean by "uniformity" —
Q: Okay.
A: — so I'm not guessing.
Q: The — and thank you. The automobile manufacturers didn't like the idea of a fuel that could vary in properties differently because, as they expressed to you, if you could require more of one specific type of fuel continually, then they could really design their engines to reduce emissions so that they could meet their obligations; right?
A: Yeah. From their perspective they would like a very narrowly defined fuel.
Q: That's perhaps a lot better way of saying —
A: Okay.
Q: — uniformity. You wanted a —
They wanted a very narrowly defined fuel.

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and so your — your specifications helped that aspect or that concern from the automobile manufacturers
A: They defined a fuel envelope
Q: And — and my point being your specifications, then, was — that helped address the concern that the automobile manufacturers talked about.
A: I believe so
Q: Now we talked yesterday about the vehicle testing option very briefly. Do you remember that?
A: Yes.
Q: And I asked you a question about whether staff had ever said — I think I characterized it as it's pretty cheap to do it, and I promised you that I'd bring you back to that question. Would you take the final statement of reasons out, and if you would turn to page 167. —
THE WITNESS: Thank you, Matt.
Q: — looking at the agency response to — to comment 305. Okay? And — and let's just look at the comment
A: 305 or 306?
Q: I'm sorry, sir, looking right now at 305 and then onto 306 —
A: Okay.

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Q: — just because you brought it up before. Remember how you told me how Unocal had argued that the vehicle testing option did not provide adequate flexibility? Do you —
A: Yes. They said it provided an illusion of flexibility.
Q: And here that comment is attributed to Unocal and also to WSPA and also to Chevron; right?
A: Yes, that's what this indicates.
Q: And you go on there to talk about that the vehicle testing option in fact has substantial flexibility to change the specifications; right?
A: I was — I was reading. Could you repeat that?
Q: You state in response to that criticism that in your view, the staff's view, the specifications — the alternate specification of vehicle testing. —
A: Uh-huh.
Q: — that that creates substantial flexibility. And then you explain that really the only restriction is that they can't achieve the cap values; right?
A: Yes, that's correct.
Q: Okay. I say that as a — just to get us a

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little bit into this context.
A: Okay.
Q: Now we look at comment 306 and its response. Here the criticism goes specifically to your statistical treatment and the criticism that your statistical treatment is what's going to make the non-workable option. And in responding to that you state that — in the second paragraph — the staff estimates that testing a hundred vehicles would cost about one million dollars, and if one average sized refiner is going to sponsor that test and then were to market that for only seven years, and you say "(the minimum assured period.)" Does that mean if one actually got approved, it would be approved for seven years as a — as a matter of course?
A: I don't know if that's in the regulation or not. I think that may just be the analysis that they did.
Q: But they say "the minimum assured period."
A: Oh. So maybe there's something in the regulation that says that.
Q: Okay.
A: I — I'm not —
I don't recall that specifically.
Q: But they say the cost, then, for doing

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[1] testing of a hundred vehicles at a million dollars,
[2] you get to use the fuel for seven years, the cost
[3] would be .02 cents per gallon: right?
[4] A: Yes.
[5] Q: And the characterization then is that this
[6] figure should be minor compared to the financial
[7] benefit of producing gasoline to alternative
[8] standards which is apt to be measured in pennies per
[9] gallon. Do you see that?
[10] A: Yes.
[11] Q: I had promised you that I would get that
[12] back to you. —
[13] A: Okay.
[14] Q: — so I wanted to make reference to it.
[15] A: Yeah. I have to say a million-dollar test
[16] program is not an inexpensive program.
[17] Q: No. But your staff translated it to .02
[18] cents a gallon: is that right?
[19] A: That's correct.
[20] MR. BEEHLER: You know what, I could start
[21] on the topic four, but it's 10 to 5:00, and I will
[22] finish with you, so why don't we break for the day.
[23] THE WITNESS: That works.
[24] MR. BEEHLER: Thank you.
[25] MR. GOLDMAN: Tomorrow at 9:00.

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[1] THE REPORTER: Off the record, please.
[2] (Deposition recessed.)
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[1] CERTIFICATE
[2] I, Richard G. Stirewalt, hereby certify
[3] that I am qualified as a verbatim shorthand reporter,
[4] that I took in stenographic shorthand the deposition
[5] of PETER D. VENTURINI at the time and place
[6] aforesaid, and that the foregoing transcript is a
[7] true and correct, full and complete transcription of
[8] said shorthand notes, to the best of my ability:
[9] Dated at Minneapolis, Minnesota, this 16th
[10] day of May, 2003.
[11]
[12]
[13]
[14] RICHARD G. STIREWALT
[15] Registered Professional Reporter
[16] Notary Public
[17]
[18]
[19]
[20]
[21]
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[24]
[25]

[1] CERTIFICATE
[2] I, PETER D. VENTURINI, hereby certify that
[3] I have carefully read the foregoing transcript, and
[4] that the same is a true and complete, full and
[5] correct transcription of my deposition, except:
[6]
[7]
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[13]
[14]
[15]
[16]
[17] PETER D. VENTURINI
[18] Deponent
[19]
[20] Signed and sworn to before me this day of
[21] May, 2003.
[22]
[23]
[24]
[25] Notary Public

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In The Matter Of:

Union Oil Company of California
Docket No. 9305

Peter D. Venturini
Vol. 3, May 15, 2003

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
Union Oil Company of California, Docket No. 9305
a corporation.

DEPOSITION OF PETER D. VENTURINI
VOLUME III, PAGES 546 - 648
May 15, 2003

(The following is the continued deposition of PETER D. VENTURINI, taken pursuant to Notice of Taking Deposition, via videotape, at the Hyatt Regency Hotel, Sacramento, California, commencing at approximately 9:01 o'clock a.m., May 15, 2003.)

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EXHIBITS	DESCRIPTION	PAGE MARKED
RX 64	Proposed California Phase 3 Reformulated Gasoline Regulations	585
65	Attachment dated February 7, 2000 "COMPARING THE CALIFORNIA AIR RESOURCES BOARD'S PHASE 3 REFORMATION GASOLINE PREDICTIVE MODEL TO THE U.S. EPA COMPLEX MODEL"	639

PROCEEDINGS

(Witness previously sworn.)

PETER D. VENTURINI

called as a witness, being previously sworn, was examined and testified as follows:

ADVERSE EXAMINATION (cont'd)

BY MR. BEEHLER:

Q: Good morning, Mr. Venturini.

A: Good morning.

MR. BEEHLER: Mr. Robertson, complaint counsel, has left us, and I just wanted to note that Mr. Chong Park I believe now has taken over on behalf of complaint counsel for this deposition.

MR. PARK: That's correct, counsel.

Q: Mr. Venturini, had you been aware during the process of promulgating the Phase 2 specifications that Unocal had a patent application pending that covered gasoline with certain of the properties that you were considering regulating, would that knowledge have been relevant to your ultimate considerations and proposals regarding the Phase 2 specifications?

A: Okay. Could I ask you to repeat the question? It's a very long question. I missed a

couple points. I'm trying to get my mind going here.

Q: Had you been aware during the process of promulgating the Phase 2 specifications that Unocal had a patent application pending that covered gasolines with certain of the properties that you were considering regulating, would that knowledge have been relevant to your ultimate considerations and proposals regarding the Phase 2 specifications?

A: Had we been aware in what timeframe? At any time frame? I'm —

Q: Sure.

A: I'm not clear.

Q: During — let me ask you again.

A: Sure.

Q: Had you been aware during the process of promulgating the Phase 2 —

A: Okay.

Q: — specifications that Unocal had a patent application pending that covered gasoline with certain of the properties that you were considering regulating, would that knowledge have been relevant to your ultimate considerations and proposals regarding the Phase 2 specifications?

MR. PARK: Objection, form, vague as to time.

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A: I think I — I addressed this question yesterday and I indicated yesterday — and my response is the same today — that if we had been informed that Unocal had a patent that was applied for, that we would not have taken the proposed regulation to the board in November of 1991.
Q: So the question that I asked you, does that require you to speculate?
MR. PARK: Objection, form.
A: I'm not speculating. As I said yesterday, I don't have to speculate at all on the fact that we would not have taken the regulation to the board. I'm very confident that that's the action that we would have taken.
Q: Would you pick up your deposition, sir, and turn to page 145, and if you would look at page 145 beginning at line nine, did you give the following answer to the following question:
"Now, had you been aware during the process of promulgating the Phase 2 fuel specifications that Unocal had a patent application pending that covered gasoline with certain of the properties that you were considering regulating, would that knowledge have been relevant to your ultimate considerations and proposals regarding the

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Phase 2 specifications?"
I object. And then the answer, your answer:
"It would require me to speculate. However, I feel comfortable in saying that had I known, I would have taken it in consideration and would have asked my staff to take it into consideration what — basically ask ourselves the question what do we do now."
Is that the answer you gave?
MR. PARK: Objection, form, and misleading.
A: That's absolutely the answer I gave, and basically —
Q: That's the only question I had.
A: Well I — I think I — I need to complete that because I don't want my answer to be misinterpreted.
Q: Okay. Let me — let me get an answer to the question and then I will — I will follow up with you.
MR. PARK: Objection.
Q: Is that the answer you gave?
MR. PARK: Objection. You've cut the witness off. Allow the witness to answer his question first before you interpose another question.

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counsel.
Q: Is that the answer you gave?
MR. PARK: Objection, form. Allow the witness to answer the question first. Object — same objections, form, misleading. And you have omitted the substance of your objection, counsel, from the transcript.
A: I'm more than happy to answer the question, but I need to answer it — you need to allow me to answer it so it's not misconstrued.
Q: Sir, let — let me — let me just go through this again. It's clear to me you want to say something more, but I'm entitled to an answer to this question first. I will then follow up with you.
Is that the answer you gave in your 1996 deposition?
MR. PARK: Objection, asked and answered. Same objections, form, misleading.
A: I think the same —
I'm more than happy to answer your question, but to make sure my answer is not misconstrued I have to say more than just "yes" or "no."
Q: Can you answer the question, "yes" or "no," whether those are the words that you used and

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testified to in your deposition in response to that question?
MR. PARK: Objection, argumentative.
A: I think I've — I've — I've responded to your question. I am more than pleased to answer your question, Mr. Beehler, but it wouldn't be truthful of me to just say "yes" or "no," and I don't want my answer to be misconstrued.
Q: Now then let's move on.
We've been discussing various reasons through this deposition for the proposals and the board's adoption of the various regulations, and I just want to direct your attention now to occurred — to what occurred just before and during the 1991 meeting where — where the regulations were adopted. So to provide a little bit of context, permit me, please, to just ask a couple of background questions.
A: Certainly.
MR. PARK: Well I want to interpose an objection. I don't believe the witness actually provided an answer that he was going to provide before you cut him off, counsel.
Q: CARB had initially estimated the cost of the Phase 2 regulations at 14 to 20 cents per gallon at the retail level, if you included the fuel

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penalty, right?
A: Correct.
Q: And then with respect to CARB's 1991 adoption of the Phase 2 rules, CARB concluded in its final statement of reasons that the regulations would impose a cost of 12 to 17 cents per gallon; is that correct?
A: Correct.
Q: Now —
A: Production costs. —
Q: Yes.
A: — so we get those clear.
Q: Thank you.
Now between October 4, 1991, the time that you put the proposal out, and the board hearing itself on November 21, your staff developed a modified regulatory proposal; didn't — didn't you?
A: Yes.
Q: And under that proposal, if I recall, you said that there would be 90 percent of the benefits of the original proposal and at 70 percent of the cost.
A: It was actually after the completion of the board meeting, because we made a proposal in our presentation that modified the proposal in the

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report.
Q: Okay. And that's what I'm trying — that's — that's the one I'm referring to. I know — I know that you made a proposal and then that the board ended up even modifying that.
A: Correct.
Q: Correct? Okay. So I'm — let's go back and —
A: Okay.
Q: — and set this up then. There was the original proposal that went out in October of 1991.
A: In the staff report.
Q: And then by the time of the November hearing, staff had modified that proposal.
A: Correct.
Q: And was that at the hearing itself or the night before? Can — can you give me a timeframe —
A: Well we —
Q: — when that modification took place?
A: Well, you know, our process is such that we issue a report, there's a 45-day review and comment period, and we were still engaging in dialogue with all the — all the parties, and through that dialogue it became apparent to us that there were some things we could do to our initial proposal that would

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[1] provide some additional flexibility. So — so what
[2] is common in our presentation to the board. we will
[3] tell the board that during the period that this
[4] report was out we have been working with people. we
[5] have a few additional modifications that we'd like to
[6] make — propose to the board to make to the report.
[7] so we present those as part of our presentation.
[8] Q: I'm — I believe I'm understanding. So
[9] the — the actual modification that you proposed took
[10] place at the board meeting itself.
[11] A: Correct. Correct.
[12] Q: Did you give the public or affected parties
[13] some indication. though. that there was going to be a
[14] modification prior to the meeting?
[15] A: Yes.And it's typically our practice to
[16] either prepare new regulatory language that has those
[17] changes. or to let people know here's the changes
[18] we're going to be making.And that is why also we
[19] have this 15-day comment period thing. So what that
[20] is. basically if in fact there are changes made at a
[21] hearing to what the staff has proposed. there's this
[22] other process we go through to ensure that all
[23] parties have ample opportunity to comment upon the
[24] specific changes staff has — the specific changes
[25] that were made to the original proposal.

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[1] Q: What I'm trying to figure out is how you
[2] communicated prior to the meeting what your
[3] modifications were going to be. whether that was a
[4] written document or oral communications. Can you
[5] help me there?
[6] A: Probably a combination. I —
[7] My recollection is that we put together and
[8] it's our common practice to put together at least a
[9] summary of the changes. and sometimes we provide
[10] those before the meeting. the actual hearing to
[11] people. or we make it available to people at — at
[12] the hearing itself.
[13] Q: Well let me — let me ask it this way: I
[14] have searched for and — and I have not yet located
[15] whether there was a — a written notice —
[16] A: Uh-huh.
[17] Q: — that went out. and — and I don't know
[18] if that's an issue with my searching techniques or —
[19] or if one didn't go out. So I — I understand your
[20] testimony that — about what you might do or
[21] sometimes do. If we could try. though. our best to
[22] narrow your answer on — to this 1991 timeframe. you
[23] believe that you gave the affected parties some
[24] notice of what staff intended to propose as a
[25] modification at the hearing prior to the hearing

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[1] itself.
[2] A: Correct.
[3] MR. PARK: Objection. form.
[4] Q: And you think you did that how — how soon
[5] in front of the hearing?
[6] A: I — I can't recall the actual time —
[7] timeframe.
[8] Q: And do you know whether that was in written
[9] form?
[10] A: As I said. I can't recall specifically. I
[11] mean this was quite a few years ago.That's why I
[12] referred to our — our typical process that — that
[13] we use.
[14] Q: Now that proposal you believe would give 90
[15] percent of the benefits at 70 percent of the cost:
[16] correct?
[17] A: No.
[18] Q: Okay.What did your first modification
[19] contemplate. then. as far as benefits and costs?
[20] MR. PARK: Objection. form.
[21] A: Yeah. let me — let me explain it this way
[22] because there's a lot of things going on at this —
[23] this hearing.
[24] Q: Yes.
[25] A: And I think the important thing is I don't

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[1] recall if we indicated with our specific proposal
[2] that we made at the hearing — we knew it was going
[3] to provide additional flexibility. that's — that's
[4] why we did it. but then as you recall there were some
[5] modifications made even at the hearing as a result of
[6] the public testimony. and what's referred to in the
[7] final statement of reasons is the final regulation
[8] that ultimately came out of the hearing.That's the
[9] one we estimated we preserved 95 percent of the
[10] benefits at 85 percent of the cost. I believe those
[11] are the numbers.
[12] Q: That percentage that you just gave me was
[13] what you determined the actual regulations as adopted
[14] would reflect.
[15] A: As —
[16] MR. PARK: Objection. form. misleading.
[17] A: As what the board approved in 1991
[18] Q: Right.You don't recall any discussion
[19] that Board Member Lagarias offered a proposal which
[20] appeared to be in the middle between the staff
[21] proposal and the original staff proposal?
[22] A: Yes. I remember —
[23] Q: Okay.
[24] A: I clearly remember Mr. Lagarias making a
[25] proposal based on the testimony

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[1] Q: So at the time that you made your
[2] modification. prior to the board hearing itself. do
[3] you recall staff giving any percentages as to what
[4] the benefits and cost would be in light of your
[5] modified proposal?
[6] A: The staff modified proposal or what the
[7] board ultimately did?
[8] Q: Okay. Remember I'm talking right at this
[9] point about the staff modified proposal —
[10] A: Okay.
[11] Q: — before the board hearing.
[12] A: Okay. I don't recall if we presented
[13] specific numbers as how it would have affected
[14] things. but we did know it would have provided more
[15] flexibility and. i.e.. should reduce the costs of the
[16] program.And as you recall. that's when. my
[17] recollection. we added some more averaging
[18] provisions.
[19] Q: Yes.
[20] A: And the averaging is — is flexibility
[21] in —
[22] Q: And you're anticipating my question. Did
[23] you conduct an analysis in order to determine what
[24] the percentage reduction in emissions and percentage
[25] cost would be in light of your modified proposal. the

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[1] one that you went into the November '91 hearing with?
[2] A: That's why I say —
[3] I don't recall if we did a specific. but we
[4] did know — and it was based on comments that — in
[5] the discussions we had had up to the hearing — that
[6] by making some additional changes. providing more
[7] flexibility for averaging. that was going to
[8] directionally reduce cost. I don't recall if we did
[9] an actual calculation at that time.
[10] Q: Permit me to — to inquire on a few more
[11] questions on that. though. because I want to — I
[12] want to make sure that I've probed the full extent of
[13] your knowledge on that.
[14] A: Sure.
[15] Q: Was there a specific individual within your
[16] staff in charge of determining such calculations.
[17] percentage reductions and cost of proposals?
[18] A: It was the staff who worked on this — this
[19] program.
[20] Q: There was not. though. a single individual
[21] who was in charge of that.
[22] A: Well I — the question —
[23] We had a number of staff that worked on
[24] this program. so amongst — amongst the staff the
[25] lead technical person was Dean Simeroth. Bob

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1 Fletcher would have been heavily involved. They
2 would have overseen the work. I was involved as
3 overall manager to make sure the work gets done.
4 Q: But I take it that as the overall manager,
5 if someone was putting pen to paper to try to make a
6 determination as to what the percentage reduction in
7 emissions and percentage reduction in cost would be
8 in light of your proposal, that wouldn't have been
9 you, it would have been one of your staff members.
10 A: They would have done the technical work. I
11 would have reviewed it. I would have made sure that
12 I was comfortable with what they were doing, said
13 okay.
14 Q: And as the manager during that time, do you
15 believe that if such calculations were done, that it
16 would have been Dean Simeroth or Bob Fletcher or
17 both?
18 A: They — they worked together and they would
19 have overseen the work. I can't tell you
20 specifically who on the staff did the actual
21 calculations, if we — if we did them.
22 Q: I understand. If such calculations were
23 performed, is there a term that I could use to
24 request them: for instance, "work papers" or
25 "analysis?" Is — is there a term that you use in

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1 your organization to describe such work?
2 A: No. I — I don't follow the question.
3 Q: If Mr. Simeroth and/or Mr. Fletcher oversaw
4 or actually did an analysis as to percentage
5 reductions in cost and emissions in light of the
6 modified proposal, what term would I use to describe
7 those documents?
8 A: Okay. Well — well first of all let me
9 try —
10 The modified proposal did not affect the
11 emission reductions. And, you know, the more we talk
12 about the more I'm thinking that we probably did
13 not — and it's just trying to pull things up out of
14 the memory banks — but we probably did not do a
15 formal recalculation, but we knew that it would
16 certainly directionally reduce the costs.
17 Q: Because you were going to some averaging
18 provisions, you understood from your conversations
19 and based upon your experience that allowing that
20 additional flexibility would reduce costs somewhat,
21 and you could estimate that.
22 A: Well it was based — largely based on the
23 Turner Mason work that was provided to us. I mean,
24 that very dramatically showed us we can provide some
25 additional flexibility through averaging that would

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1 directionally reduce — reduce costs.
2 Q: So did you base your analysis of the cost
3 savings on Turner Mason?
4 A: What's in the Turner Mason —
5 My recollection is the Turner Mason work
6 was presented to us after this report was put out,
7 and it was the Turner Mason work which brought to our
8 attention that by providing some additional
9 flexibility — (clearing throat) excuse me — through
10 the averaging provisions, that we could reduce the
11 impact — cost impact on refiners without affecting
12 the emissions. So we — so we said okay, we accepted
13 that, and at the board meeting we added the averaging
14 provisions that were not in the initial proposal.
15 Q: And for clarification, during your answer
16 you referred over to some documents. You were just
17 referring to the October 1991 proposal and technical
18 support document —
19 A: That's correct.
20 Q: — that you — that you put out; right?
21 A: That's correct.
22 Q: So if — if I'm understanding your
23 testimony, you had the Turner Mason cost-
24 effectiveness study that was submitted to you on
25 behalf of the Western States Petroleum Association

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1 after your original proposal, and you saw that there
2 was apparently a way to save some costs by averaging
3 some of the specifications provisions; correct?
4 MR. PARK: Object — objection, form,
5 compound.
6 Q: Is that correct?
7 A: Yes. Turner — the Turner Mason study
8 showed us — and you know, what I'm —
9 What I'm envisioning in my mind, there are
10 some graphs from that study, and it showed that if
11 you allowed some averaging you can reduce cost. It
12 was a directional indicator.
13 Q: And —
14 A: That doesn't mean we agreed with all the
15 findings and results of Turner Mason, but on some of
16 the technical stuff it made sense.
17 Q: So is it your testimony that while you did
18 not agree with the Turner Mason cost-effectiveness
19 study, in light of that study you did agree to modify
20 some provisions because, even without knowing the
21 precise amount, you could see that it would save some
22 cost?
23 A: That's correct.
24 Q: And you could make those changes without
25 affecting emissions.

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1 A: Correct.
2 Q: So the proposal that you brought to the
3 board, I guess we call it the modified proposal that
4 you actually brought to the board then —
5 A: Okay.
6 Q: — represented a proposal with equal
7 emissions reductions as the original proposal at a
8 lesser cost.
9 A: Correct.
10 Q: And to the best of your recollection there
11 was no detailed analysis done as to how that cost was
12 lower. It was an estimate. Is that true?
13 A: To the best of my recollection, I don't
14 recall a specific quantitative calculation of how
15 that would have reduced costs, but we knew it was
16 very clear directionally it would reduce costs.
17 Q: Now during the hearing itself Board Member
18 Lagarias — am I using —
19 Am I pronouncing his name correctly?
20 A: Yes. It's Jack Lagarias.
21 Q: Board Member Lagarias proposed what is
22 described as a middle ground between the original
23 proposal and the modified staff proposal; is that
24 correct?
25 A: I think what Mr. Lagarias saw was, based on

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1 the testimony, that there were some opportunity to do
2 some fine-tuning.
3 Q: And what fine-tuning occurred?
4 A: Oh. I — I forget the act —
5 We'd have to go back into it to see what
6 the specific details were, but they were some
7 adjustments to several of the parameters. And —
8 and — and I — I think what he saw — and you know,
9 he's a very technical person himself — that there
10 was some opportunity to make some adjustments, which
11 had to be to some of the parameters, and that we
12 could do that in such a way that could — we could
13 virtually preserve the bulk of the emission benefits
14 and sub — and significantly reduce the cost and
15 impacts of the regulation.
16 Q: And now you've described for me why I'm a
17 little bit confused. If your modified proposal did
18 not reflect any emissions reductions and it was at a
19 lower cost, what middle ground was Board Member
20 Lagarias taking so as to make sure emissions benefits
21 were maintained at a higher cost?
22 A: No. At a lower cost.
23 Q: Okay. Let me ask you this: Is it your
24 understanding that the proposal that Board Member
25 Lagarias submitted was in fact a proposal that

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reduced even further the costs suggested by staff proposal?
A: Yes.
Q: Now the modification that CARB adopted resulted in a cost effectiveness at seven to 11 thousand dollars per ton?
A: I believe that's correct.
Q: And a cost increase of 12 to 17 cents per gallon.
A: Production cost. yes.
Q: And the staff's original proposal had been from eight to 12 thousand dollars per ton based on consumer cost.
A: Oh. if doing the — the translation of that production cost. assuming it's all passed through. —
Q: Yes.
A: — I believe those are the correct numbers.
Q: So within a relatively short time period. from October to November. there were three different proposals under consideration: correct? You had your original proposal. then the staff proposal actually brought to the board. and then you had Board Member Lagarias proposal.
A: Well I wouldn't characterize it as three different proposals. There was one proposal we took.

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there was a proposal that was in the staff report. that was modified by staff at the hearing. and then Mr. Lagarias proposed some — I'll call it fine-tuning of — of that proposal.
Q: An original proposal and two modifications within a relatively short period of time were being considered: correct?
A: That's fine.
Q: Did the staff determine that all of those three were cost effective?
A: Well if the initial proposal we felt was cost effective. the two modifications either maintained the benefits or very slightly reduced the benefits and reduced the cost. yes. they would still be cost effective.
Q: Now did CARB ever provide supporting analysis for the ultimate cost-effective statement that it determined. the one for the proposal that was actually adopted?
A: The 95 percent/85 percent?
Q: Yes. sir.
A: I — I don't recall. I know it's mentioned in the technical — well in the final statement of reasons. I don't recall how that analysis was done. but I do recall there was an analysis.

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Q: And that's what I'm looking for now. You do recall that. in determining the 95 percent of the benefits at 85 percent of the cost. there was an actual analysis done.
A: Yes. Someone had to go through and take a look at. okay. this is what the board adopted. and how did that compare with what was originally proposed.
Q: And that should be documented somewhere.
A: It was done. Yeah. I don't know what's happened with the documentation. but it was done.
Q: Who would have custody of that?
A: Well it would be within the staff. I mean staff are right now going through all their documents in response to your request. You know. it may show up there. I don't know.
Q: Now you came into the 1991 hearing with this modified proposal. Did you know how the board was going to vote before they voted?
A: No.
Q: Earlier in your deposition we mentioned a company called Bechtel. B-e-c-h-t-e-l. who. as I understand it. staff had contracted with to do some linear programming models. Do you remember that?
A: Not specifically. but I do know we

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contracted to have some LP work done.
Q: You want to turn to the technical support document. —
A: Sure.
Q: — sir. that's Respondent's Exhibit 5?
A: I don't recall that it was Bechtel. but that's — that's fine. TSD?
Q: Yes. sir. I think it's at page 146. It is. sir. If you look about halfway down the page. do you see. "ARB staff contracted the services of the Bechtel Corporation to develop a series of linear programming refinery models" —
A: Yes.
Q: — "which would simulate actual refinery operations."
A: Yes.
Q: Now do you recall that these linear programming models were not ready in time for the November '91 rulemaking?
A: I don't recall specifically. That may be the case. Mr. Beehler.
Q: Could you turn to the final statement of reasons. —
A: Sure.
Q: — we previously marked it as Respondent's

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Exhibit 10. to page 118. sir. the response to comment 223.
A: 223?
Q: Yes. sir. The response that appears on page 118 right in the middle of it. says. "However. since staff did not complete the models in time for the public hearing. staff conducted" —
A: Oh. right here.
Q: — "another cost analysis based on realistic cost of compliance data received from six California refiners of varying size and capability." Do you see that?
A: Yeah. If you don't mind. I got — if I could just take a moment to read this.
Q: Of course.
A: Thank you.
Okay. I read it. Yes. it basically indicates that the models were not completed in time.
Q: Were those models ever completed?
A: My recollection is no.
Q: These models were computer software programs?
A: I — I assume so. That's what I would expect a linear program. some kind of computer software.

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Q: You would still have those in CARB staff's possession: correct?
A: I don't know.
Q: Can you think of any reason why they would not be there?
A: I just don't know what — what staff would have done with — with that documentation. or since it was not completed. what we had actually even — if we'd ever have gotten anything from Bechtel. Maybe they never provided us with anything. I — I don't know all the details of what happened back then in terms of the linear programming process and so forth.
Q: Is it your recollection that what Bechtel was going to do for you was to input the actual refinery data that you had received from these six refineries into those models. or — or was there something else as to the analysis that was to be conducted?
A: Well if we go back to the — to the report —
Q: Yes. sir.
A: — on page 146 —
Q: Give me just a moment.
A: Certainly.
Q: And when you said "report." are you in the

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1 technical support document?
2 A: Yes.
3 Q: Okay.
4 A: Exhibit 5.
5 Q: Okay. I'm there, sir.
6 A: I think we need —
7 When you take a look at the paragraph you
8 referred me to, that's the second paragraph in
9 subheading one. —
10 Q: Yes.
11 A: — it's to develop a series of linear
12 program models which would simulate actual refinery
13 operations. For this a specific California refiner
14 was modeled for each of the four — four — four
15 groups discussed, two were modeled in the deep
16 conversion group. So this indicates, down below, you
17 know, staff identified the types of models and the
18 types of refineries that those — those simulations
19 were intended to — to represent, and — and the
20 purpose is to try to —
21 You know, as this shows, there are
22 different types of refineries based on simple to very
23 complex, and that's why you see topping all the way
24 to deep conversion, and the intent was hopefully to
25 use these models to simulate how refineries might be

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1 reconfigured to comply with the regulation and
2 therefore, through these models, give us some — some
3 perspective for different types of refineries what
4 the costs might be. And, you know, my recollection
5 looking at this is we were able to, through Bechtel,
6 use models that reflected some California refineries
7 so we'd have some — some confidence that, had this
8 work been completed, the results would have been
9 representative of the types of refineries we have in
10 California.
11 Q: But the work was never completed.
12 A: Well that's what this indicates.
13 Q: And do you know if the work was not
14 completed because of some time constraint or
15 information constraint, or was it a philosophical
16 decision to not complete it?
17 MR. PARK: Objection, form.
18 MR. GOLDMAN: Objection, vague and
19 ambiguous.
20 A: I don't understand what you mean.
21 Q: Let me —
22 A: That's —
23 Q: Let me have —
24 Let me see if I can go at it a different
25 way. In the final statement of reasons staff

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1 described the cost data that it had received from
2 these six refineries as realistic and criticized
3 other studies which were based on linear programming
4 models as not as realistic. Do you remember that?
5 MR. PARK: Objection, form.
6 A: Not — not specifically. But there —
7 there were an awful lot information and reports and,
8 you know, we — we'd review those, and some we'd
9 concur with, or pieces of, and others we had
10 technical differences with them.
11 Q: Do you remember staff commenting anyway
12 about how linear programs tend to over-optimize
13 actual conditions?
14 A: They may have. And I recognize and have to
15 appreciate any model like this is a representation.
16 You know, you're trying to represent some very
17 complex real-world processes through basically a set
18 of mathematical equations and so forth, and every
19 model's going to have biases, and what's important
20 when you're running these models is to understand
21 those biases, those technical biases when you re —
22 look at the results and so forth. And, you know —
23 But that's just the reality of the — the
24 models.
25 Q: And that was the basis of the question I

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1 was asking you, is simply whether you recall if staff
2 concluded that it was something more realistic to use
3 the actual refinery data and not use the linear
4 programming model, or if it was a matter of simply
5 not getting a linear programming model done?
6 A: I don't know specifically. What I do know
7 and I recall clearly, we were trying our hardest
8 technically to get the best information we could any
9 way we could to get as best a picture as we could of
10 what the cost of this regulation was going to be.
11 And everything we did, you know, we shared, and —
12 you know, it's another indication of how concerned we
13 were about the costs of this program.
14 Q: Do you remember who from Bechtel
15 Corporation was the main contact with CARB staff on
16 these issues?
17 A: No, I don't.
18 Q: Turn your attention again to the actual
19 refinery data upon which CARB staff based its
20 cost-effectiveness analysis. Was this data that the
21 staff accepted uncritically? Well let me withdraw
22 that. It wasn't clear.
23 As I understand it, you sent out a survey
24 and you received back information from these six
25 different refineries as to cost of different

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1 operations, I take it; is that right?
2 A: Correct.
3 Q: Did you understand that your staff had
4 further communications to verify accuracy or get
5 further explanations about these costs?
6 A: You know, it's our common practice, you
7 know, whenever we do a survey — and this should be
8 no different from any other survey — we get the
9 results, we go through it many times. If we don't
10 understand this response, you call the people up, you
11 get clarification. You know, and sometimes we'll —
12 we'll find that an error — error was made. So
13 there's a — there's a review process that's gone
14 because we want to assure ourselves that, yes, we
15 believe these — this information that was submitted
16 is reasonable and — and we can use it.
17 Q: Is the process that you've just described
18 something that either Dean Simeroth and/or Bob
19 Fletcher would have either done themselves or
20 overseen?
21 A: Yes.
22 Q: Okay.
23 A: Including the staff involved in this
24 regulation.
25 Q: Do you remember whether staff attributed

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1 any reconfiguration costs to T50 as part of its
2 proposal?
3 A: I don't —
4 MR. PARK: Objection, form.
5 A: I don't recall.
6 Q: Would you turn, please, to the final
7 statement of reasons, page 41, looking at the
8 response to comment 63. I'll give you a moment there
9 to gain the context, sir.
10 A: Page 41?
11 Q: Yes, page 41, sir, the agency response to
12 comment 63.
13 A: Okay.
14 Yes, I've read that.
15 Q: Now in this agency response the staff
16 describes different ways of controlling T50; correct?
17 A: Correct.
18 Q: It's stated that it can be controlled by
19 meeting the T90 aromatics and olefins specifications;
20 correct?
21 A: That's what it says, yes.
22 Q: And if something additional is required,
23 you could reduce the heavy or full-range reformate
24 proportion or have a straight-run naphtha heavy or
25 full-range FCC gasoline, and heavy or full-range

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1 alkylate. so there's yet another option. There were
2 several options it looks like: correct?
3 A: Yes.
4 Q: And —
5 A: Different ways to do different things at
6 refineries.
7 Q: And then they provide yet another option
8 through the addition of oxygenate and especially MTBE
9 to reduce T50: correct?
10 A: Correct.
11 Q: Looking at the options described there. do
12 you understand all of those to be operational or
13 process —
14 MR. PARK: Objection. misleading.
15 MR. BEEHLER: I'm not — I'm sorry. I'm not
16 finished.
17 MR. PARK: I'm sorry. counsel.
18 Q: Looking at the options that the agency has
19 described in response to comment 63. those are
20 process options as you understand it?
21 MR. PARK: Objection. form. misleading.
22 A: Well they're — they're different parts of
23 streams that come out of the refinery through the
24 various processes that they have.
25 Q: Okay. You understood that for some of the

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1 parameters that you were regulating there would have
2 to be very specific reconfiguration modifications
3 that take place: correct?
4 A: Yes.
5 Q: In the hardware. so to speak: right?
6 A: That's what the big investment was for.
7 Q: And that was. as I recall. a big investment
8 for —
9 Was it sulfur. T90 and aromatics?
10 A: You know. it — it's hard for me to reflect
11 back on what the specific ones were or — what —
12 What I recall is. you know. our set of
13 specifications. we were going to require refineries
14 to invest very heavily to do the steps necessary. I
15 do recall sulfur was — was — was a significant —
16 significant lever. And there were. you know —
17 Each parameter probably had different
18 effects. and it would vary by refinery. Some
19 refinery could meet some certain spec more easily
20 than others. and that's why the predictive model
21 became so important. And the averaging became so
22 important because it allowed refineries to be able to
23 look at their individual configuration and have some
24 flexibility in how they met these regulations. taking
25 into account the nuances. you might say. of their

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1 particular refinery. nuances and configuration of
2 their refinery.
3 MR. BEEHLER: Okay. I know we've been
4 going for less than an hour. but let's take a short
5 break and see —
6 I'm trying to be as efficient as I can to
7 finish you and get you out of here. —
8 THE WITNESS: Okay.
9 MR. BEEHLER: — so if you'd give me a few
10 minutes to reorganize. please.
11 THE WITNESS: Certainly.
12 THE REPORTER: Off the record. please.
13 (Recess taken.)
14 BY MR. BEEHLER:
15 Q: Mr. Venturini. could you please turn within
16 the transcript marked as Respondent's Exhibit 60 to
17 page 222. just to see if I can refresh your
18 recollection or confirm it. And if you'd look about
19 halfway down — well it's actually line 19. do you
20 see that Mr. Fletcher is speaking and he tells the
21 board that it's staff's understanding that the major
22 cost impacts are associated with T90 and aromatics.
23 Do you see that?
24 A: Oh. at 19. Okay. Yes. I do.
25 Q: And it's your recollection that there was

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1 also a substantial sulfur cost for reconfiguration
2 correct?
3 A: Yeah. that's my recollection
4 Q: You can set that aside. I just wanted to
5 refresh you on it.
6 A: That's fine.
7 Q: Did CARB staff use any information from
8 Unocal with respect to its decisions on aromatics?
9 A: I don't recall specifically.
10 Q: Or T90?
11 A: I don't recall specifically
12 Q: Or olefins?
13 A: Don't recall specifically.
14 Q: Or Reid vapor pressure?
15 A: Well there we probably did not because my
16 recollection is they — they wanted averaging on
17 every piece. So while we appreciated their comments.
18 we disagreed.
19 Q: Other than the T50. which you've described
20 several times the use that you made of specific
21 matters that Unocal discussed with you. do you
22 remember any other parameter which staff based either
23 in whole or in part upon Unocal information?
24 A: I can't recall specifically on what — of
25 the input they gave us at meetings or in writing that

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1 we actually incorporated.
2 (Respondent's Exhibit 64 was
3 marked for identification.)
4 BY MR. BEEHLER:
5 Q: I'm handing you what's been marked as
6 Respondent's Exhibit 54 —
7 THE REPORTER: Sixty-four.
8 MR. BEEHLER: Six — six four? I thought I
9 said 64. I'm sorry.
10 Q: Would you identify this document?
11 A: This is the final statement of reasons for
12 the California Phase 3 reformulated gasoline
13 regulations. It's dated June of 2000.
14 Q: Now the Phase 2 regulations had to be
15 amended in response to a decision by — decision by
16 the Governor of California: is that right?
17 A: That's correct.
18 Q: And also because of the California
19 legislature?
20 A: Oh. Yes.
21 Q: You paused there for a moment. Why don't
22 we turn to page two of this document and to the top
23 paragraph. Do you recall now that the legislature
24 had in fact adopted a new section 43013.1 providing
25 that the California Phase 3 regulations maintain or

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1 improve upon emissions and air quality benefits?
2 A: Yes. I recall that.
3 Q: So you had both the executive order from
4 the Governor and a legislative mandate.
5 A: Directive. correct.
6 Q: Okay. Now between these two mandates. is
7 it your understanding that CARB cannot backslide on
8 emissions —
9 MR. PARK: Object to form.
10 Q: — in future — in future regulations?
11 A: No. I think what's more correct is if we
12 see a need to modify a regulation that would result
13 in less benefits in terms of our overall SIP. or the
14 state plan. we need to make sure that we make things
15 up. I mean we have flexibility. And we need the
16 flexibility if at some point in time we find that.
17 you know. we need to adjust the regulation and we may
18 not get the benefits that we had anticipated because
19 of some technical reason or so forth. we have to have
20 that flexibility. —
21 Q: Sure.
22 A: — and then we just have to balance the
23 books. so to speak.
24 Q: My question goes more directly. though. to
25 the — the language that was included in this final

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statement of reasons marked as Respondent's Exhibit 64 on page two where it says that the Health and Safety Code and the Governor's executive order together say that you have to either maintain or improve upon emissions and air quality benefits.
A: Achieved by Phase —
This was very specific to the — the gasoline.
Q: And so the — the mandate, as you understand it, to not allow any of your modifications to increase emissions was only in relation to figuring out how to ban MTBE.
A: Yeah, that —
MR. PARK: Objection, form, misleading, calls for a legal conclusion.
Q: Is that right?
A: Well you might want to ask — you know, you'll be talking to Mr. Kenny about some of the legal stuff. What I can tell you is from my perspective what — what we were charged to do is we had to remove MTBE from gasoline. In doing so we were asked to not give up any emission benefits from the Phase 2 program and to provide additional flexibility where we — where we could.
Q: But that doesn't mean in the future, in

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connection with some other regulation that might occur, that — that you are deprived of that flexibility.
MR. PARK: Objection, argumentative.
A: Yeah. I don't understand your question.
Q: Okay. I'm just going for your understanding of what — what your legislative mandate is and — and, as you describe, some additional flexibility that you may need. You understood that the Governor's executive order and the legislative change required that any modifications you made in connection with banning MTBE could not increase emissions; is that right?
MR. PARK: Objection, asked and answered.
A: Yeah. I — I believe I've answered it. And if you're starting to get into how to interpret the nuances of legislation or how we should interpret all of that, that's really not why I'm here.
Q: I'm truly not. I'm trying to understand your role here in — as the manager of this division. Are you free to continue to adopt regulations, to your understanding, that could allow for increases in emissions now in the future?
MR. PARK: Objection, form.
A: I don't understand the question. I mean

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we — you know, we're charged with — and I'm charged in my division, we as an agency are charged with protecting the public health in California. In part we do that by adopting regulations.
Q: The legislature obviously came in here and did something very specific in terms of telling you that you had to either maintain or improve upon emissions and air quality benefits in connection with your California RFG 3 regulations.
MR. PARK: Objection, form, argumentative.
Q: Is that correct?
A: Well I think I answered this question already.
Q: And so — right. Is it your understanding that it would take a further legislative change for you to make any future modifications to your regulations, or are — do you maintain the flexibility that you always had?
MR. PARK: Objection, form, foundation.
A: I think that is truly a legal question —
Q: Okay.
A: — that —
Q: You don't have an understanding of that just generally?
A: I think it's a legal question.

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Q: Looking at this Phase 3 final statement of reasons, sir, as part of the amendment to the regulations, staff proposed an increase in the T50 cap of five degrees. Do you recall that?
A: I know we adjusted the T50.
Q: If you look to page 19.
A: Sure. And actually, if you don't mind, I can pull this out. This will help me to — this is that table I mentioned which just has the — the specs in it, so —
Q: Okay. But for —
If you need to refer to something, that's fine. —
A: Okay.
Q: — but I want the record to be clear as to what I'm directing you to —
A: That's fine.
Q: — so that there's no confusion.
A: That's fine.
Q: Looking at Exhibit, sir, 64. -
A: Uh-huh?
Q: — page 19, the bottom paragraph, do you see it states, "The original proposal included T50 and T90 cap limits that were each five degrees higher than the cap limit for RFG 2."

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A: Yes, the cap limits.
Q: So that would have made the cap for T50 225; correct?
A: Well I'm — the reason I'm hesitating, I'm looking at this and it says —
MR. GOLDMAN: And for the record, Mr. Venturini, if you could identify what you're referring to.
THE WITNESS: Yeah.
MR. BEEHLER: Thanks, Matt.
A: I'm look — I'm looking at the staff report for the — for June 7, 2002 here, and it's Exhibit 51, and there's a table in the regulation that has the — basically the Phase 2 and the Phase 3 standards.
Q: And what's the cap for T50, sir, on RFG 2?
A: The cap for T50 on RFG 2 is 220.
Q: Exactly, sir. So if your original proposal — if we could now turn back to Respondent's Exhibit 64, sir. Your original proposal, as you just testified, included a cap limit five degrees higher for T50, so that would make the T50 225 degrees; correct?
A: Well that's where I guess I — I — there's —

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Because on this table it shows it still is 220.
Q: We're going to work through that, sir, but if you'd stay this with Exhibit —
A: Okay. I'll stay with it.
Q: — because it's confusing otherwise.
A: Okay.
Q: Looking at Respondent's Exhibit 64, page 19, it states here that the proposal for T50 included a cap limit five degrees higher than the cap limit for RFG 2.
A: Correct.
Q: That would make it 225 degrees; correct?
A: Yes, reading that here.
Q: And do you remember that the Western States Petroleum Association argued that the T50 flat limit should be increased to 214 degrees?
A: I don't recall that specifically, but that's —
Q: Could you turn to —
A: — probably well the case.
Q: Okay. Could you turn to page 35, comment 10 of this exhibit.
A: Uh-huh. Comment 10.
Q: Do you see here it says that WSPA is

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[1] recommending the T50 increase from 213 to 214
[2] degrees?
[3] A: Yeah. Give me a moment to read that.
[4] please.
[5] Yes. I read the comment.
[6] Q: And do you see that Western States
[7] Petroleum Association is recommending an increase in
[8] the flat limit of T50 from 213 degrees to 214
[9] degrees, a one-degree difference?
[10] A: Correct.
[11] Q: And that is one degree higher than what the
[12] board passed. Do you recall that?
[13] A: Not — not specifically, but, you know, I
[14] don't question —
[15] This shows the board passed — it was at
[16] 213.
[17] Q: Okay. And — and this has been helpful
[18] now.
[19] A: Yes.
[20] Q: If you could turn to this —
[21] What exhibit do you have?
[22] A: This is Exhibit 51.
[23] Q: And the page you're referring to is page
[24] six, and there's the table, and by looking at it you
[25] can confirm that what the board actually passed for

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[1] Phase 3 flat limit for T50 was 213, sir?
[2] A: Yes. According to —
[3] Q: So the difference on that specific point
[4] was that WSPA wanted 214 degrees instead of 213, and
[5] the board stuck with the 213 degrees.
[6] A: That's correct.
[7] Q: Would you turn to page three of this same
[8] exhibit now, sir, 64, and looking at the last
[9] paragraph, will you confirm for me that the board
[10] specifically considered very seriously the comment 10
[11] that we just looked at and determined that those
[12] alternative specifications were not consistent with
[13] their mandate because they did not provide adequate
[14] assurance of emission and air quality benefits that
[15] the — achieved by the RFG 2 — RFG 2 program?
[16] MR. PARK: Objection, form, misleading.
[17] MR. BEEHLER: It was a horrible question
[18] and I'll withdraw it.
[19] THE WITNESS: And I'll —
[20] Q: Looking at the bottom of page three, sir,
[21] the board considered the Western States Petroleum
[22] Association alternative standard; didn't they?
[23] A: Yes.
[24] Q: And the board determined, as it states
[25] here, that they did not have — they did not have

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[1] adequate assurance that they could maintain the
[2] emission and air quality benefits if they passed
[3] those.
[4] A: Okay.
[5] MR. PARK: Objection, form, misleading.
[6] A: Can I just read this?
[7] Q: Of course, sir.
[8] A: Okay.
[9] Q: You ready for the question now, having
[10] taken a moment?
[11] A: Yes.
[12] Q: You see that the board did not follow
[13] WSPA's advice to raise it to 214 degrees but passed
[14] two hundred — or passed the regulation at 213
[15] degrees. —
[16] A: Well —
[17] Q: — and is it your understanding that that
[18] was done because they could not provide adequate
[19] assurance of maintaining the air quality benefits at
[20] 214?
[21] MR. PARK: Objection, form.
[22] A: No. I don't think that's what this says. I
[23] think what this really says is it's describing the
[24] WSPA-proposed alternative standards, it doesn't
[25] specifically call out T50. And if you look at

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[1] comment 10, there were other specifications there
[2] They made a number of comments
[3] Q: Okay. If we look at comment 10, then, it's
[4] your understanding that the alternative standards
[5] proposed by WSPA, which included this T50 increase
[6] that all of those together were rejected for what
[7] reason?
[8] MR. PARK: Objection, form, misleading.
[9] A: Well as the words indicate here, that the
[10] board did determine that the alternative
[11] specifications proposed by WSPA in total were not
[12] consistent with — with this bill because they did
[13] not provide assurances that the benefits of the Phase
[14] 2 program would be maintained. Those are the words.
[15] Q: Now peer review was done under these Phase
[16] 3 amendments; wasn't it?
[17] A: Yes.
[18] Q: And that is a panel of independent
[19] scientists?
[20] A: Are you referring to the Environmental
[21] Policy Council review?
[22] Q: I'm referring to what's been described in
[23] these documents as peer review. Do you have an
[24] understanding of that term?
[25] A: Yes.

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[1] Q: And is that a panel of independent
[2] scientists?
[3] A: It's — it's people that are — that are
[4] selected, and the process particularly — we go
[5] through, I think, the University of California, but
[6] they're individual scientists that are knowledgeable
[7] in these — these matters.
[8] Q: Has that typically been done, or was this
[9] the first time that such a peer review took place?
[10] A: In terms of the gasoline regulation I
[11] believe this was the first, first time.
[12] Q: Do you have an understanding of why that
[13] occurred?
[14] A: Just very generally. I'm trying to bring
[15] up the — the — my recollection on that. I think it
[16] came out of the — the concerns when the MTBE issue
[17] came up. Others had concerns that, well, what about
[18] other properties of gasoline and so forth, so I think
[19] there was a desire to request that we go through this
[20] review process.
[21] Q: Was it the legislature who said that you
[22] should do this, or was this something that staff came
[23] up with itself? That — that's really the nature of
[24] my question.
[25] A: Yeah.

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[1] Q: What, to your knowledge, to your
[2] understanding, initiated this peer-review process?
[3] MR. PARK: Objection, form.
[4] A: I do know that we on our own initiated some
[5] peer reviews because we wanted to do it, but I'm —
[6] my recollection is there were also some other —
[7] other requirements as well.
[8] Q: Was there also a requirement for media
[9] review?
[10] A: Yes. That's the multimedia review which
[11] involved the Environmental Policy Council.
[12] Q: Is that something different than the peer
[13] review that we've been describing, or is it the same
[14] thing?
[15] A: I believe it's different.
[16] Q: Would you describe the —
[17] A: Yeah.
[18] Q: And I — and I know I'm going to —
[19] Is it "media review" or "multimedia
[20] review?"
[21] A: "Multimedia review."
[22] Q: Would you please describe —
[23] A: Yeah.
[24] Q: — what the multimedia review in connection
[25] with these Phase 3 regulations was.

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A: Yes. The multimedia review, and particularly in connection with these regulations —
As you may recall, the concern with MTBE turned out to be basically a water concern, and there were concerns that, well, if you remove MTBE, the only other oxygenate of choice basically becomes ethanol, and there were concerns, well, we don't want to replace one problem with another problem. So there was basically this requirement that when we made changes to the gasoline specifications, underwent this what's called the multimedia review to provide input to make — to look at other effects on other media, like water, solid waste and so forth.
Q: So even though you were previously charged with cleaning up the air, this was more of a concept of assuring that in cleaning up the air other aspects of our world were not negatively affected.
A: That's —
MR. PARK: Objection, form.
A: That's, I think, basically the — the thrust.
Q: Now staff had proposed a Driveability Index as part of the Phase 3 regulations; hadn't it — hadn't they?
A: Yes.

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Q: And Driveability Index was something that staff had considered back in 1991.
A: Correct.
Q: The peer review of the scientists expressed concerns about Driveability Index; didn't they?
A: I recall that. Not the specifics.
Q: They in fact said that the Driveability — Driveability Index is subjective and not directly connected to emissions reductions. Do you recall that?
A: Not specifically, but that's — that's very likely.
Q: In this same document, sir, Respondent's Exhibit 64, there's an appendix —
A: Uh-huh.
Q: — which starts with the letter B as in Beehler.
A: Yes.
Q: And if you would turn to B-2.
A: Oh, the peer review. Yes.
Q: You see the comment there, down there at the bottom, regarding Driveability Index? Why don't you take a moment and just review that comment and your response.
A: Yes, this reflects — refreshes my memory

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that the peer reviewer did have concern with — with DI.
Q: Being a subjective measure; correct?
A: In their — in their view.
Q: And that the Driveability Index did not have a direct connection to emissions as the other regulated properties do. Do you see that?
A: Yes. That was their view.
Q: And the agency response, then, was that staff dropped the Driveability Index specification.
A: Yes.
Q: Did the peer review comment on economic feasibility?
A: I don't believe. I believe not.
Q: Turn to page six, sir, of this same exhibit.
A: Page six?
Q: Yes, sir. And in the middle of the paragraph in — in the middle of the page it states, "The peer reviewers found that the rationale for the proposed changes is clearly presented, and, where possible, data is presented to justify the choices."
If you read on there a couple of sentences, it starts then, "While the emissions gains can be quantified, not all of the decisions can be defended

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with such precision. These include the cost/benefit analysis and the desire to maintain a sufficient California fuel supply. An example of this is the provision that the changes be 'economically feasible.' This is more of a policy or political question than a scientific one, and the criteria involved are different." Do you see that?
A: Correct.
Q: Now is that the peer reviewers making that comment?
A: Yes.
Q: Okay. Now the peer review also concluded that if T50 and T90 were being raised, that lowering sulfur and lowering benzine would maintain the benefits. Do you remember that?
And if you just stay on that same page I had you on, page six.
A: Okay. I don't remember that — all the specific comments from the peer reviewers, but —
Q: Of course. Look down at the last paragraph of page six —
A: Uh-huh.
Q: — of Respondent's Exhibit 64. Do you see there that they state the changes in the requirements for the distillation of T50 and T90 are directionally

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correct and that, coupled with low sulfur and reduced benzine, that it should maintain the air quality benefits? Do you see that?
A: Yes.
Q: And is that the peer-review people saying that, or is that staff saying that in that paragraph?
A: Well that's what was going through my mind when I was reading —
Q: Take a moment, please —
A: — was reading it. I think, since it's in the peer-review section, I think that's probably a reflection from the peer reviewers.
Q: Now staff concluded that increasing T50 by two degrees increased emissions in hydrocarbons, toxics and NOx. Do you remember that?
A: By increasing T50, it increased hydrocarbons?
Q: Yes, sir.
A: Okay. Yes.
Q: And if you turn to the top of page 16 in this same exhibit, —
A: Sure.
Q: — specifically to my question, staff determined that increasing T50 by two degrees —
A: I'm sorry, where are you reading? I'm

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sorry.
Q: Right at the top of page 16. I'll read it for you. "Under the California RFG 3 Predictive Model, increasing T50 by 2 degrees Fahrenheit in the 200 to 210 degree Fahrenheit range increases exhaust hydrocarbons by about .6 percent, increases potency-weighted toxics by about .4 percent" —
A: Uh-huh.
Q: — "and negligibly increases NOx emissions." Do you see that?
A: Yes. I do.
Q: And then continuing to read on, you can see your staff determined that that increase would be offset by a decrease in sulfur and benzine; is that correct?
A: Yes.
Q: Other than reducing sulfur and benzine, is there a different way to make up for increased emissions which was caused by an increase in T50?
A: Well there may be other parameters that could be adjusted, but I can't say specifically. I think —
Q: Did your —
A: — these were the most effective ones for us to lever.

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Q: Did staff consider any other factors to try and reduce this increase in emissions caused by raising T50 other than what they did?
A: I'm certain they looked at other things and reached this — this conclusion as being the most effective. Sulfur turned out to be a very effective lever.
Q: Now under your RFG 3 predictive model it's very difficult to increase T50 or T90 without severely modifying the other parameters: isn't it?
A: Oh. I don't know specifically how —
Q: Would you turn to page 65 of this exhibit. Look at comment 68 —
A: Uh-huh.
Q: — on page 65. In response to a comment by the Alliance of Automobile Manufacturers your agency describes how, if all other properties were to be held constant, increasing T50 and T90 would increase certain emissions, and then the specific point, quote, "However, the California RFG 3 Predictive Model makes it very difficult to significantly increase T50 and T90 without severely modifying the other parameters," end quote. Do you see that, sir?
A: Yes. I see that.
Q: Has staff ever identified what these other

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parameters are?
A: I'm — I'm reading the response if you don't mind.
Okay. Yeah. I see. This was in response to the Alliance wanting a DI and — and so forth.
Q: Right. And my question, sir: Has staff ever identified what the other parameters are which are mentioned here in your response to 68?
A: I'm certain that staff's aware of what — I'm certain that staff is aware of what those parameters are.
Q: Are you aware of any document or analysis that — that would reflect those parameters?
A: No.
Q: Staff also determined that a reduction in sulfur down to five to 10 parts per million would cost between three to seven cents a gallon. Do you remember that?
A: No, but that's probably appropriate.
Q: Would you turn to page 34, and looking at the first full paragraph, midway through, do you see where your staff concluded that reducing sulfur would cost between three to — — three to seven cents a gallon, would likely cost closer to seven cents a gallon?

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MR. PARK: Objection to form, misleading.
A: Yes. And it goes on to say in light of the challenges presented that we felt it would not be feasible or cost effective to impose a cap in that five-to-10-ppm range.
Q: Right. And so I'm just — Let me ask the question again so that we're — we're clear on it. Did your staff determine that a reduction in sulfur to five to 10 parts per million would cost between three to seven cents a gallon, with it likelier to be closer to seven cents a gallon?
MR. PARK: Objection to form, misleading.
A: Those are what the words say.
Q: Okay. Could a decrease in aromatics cause a decrease in the volume of the production of motor gasoline?
A: I believe that's — that's fair from my recollection of how different properties affect — affect things.
Q: And one of the considerations staff always keeps on its mind when you're considering regulations is the availability of enough gasoline for your state: correct?
A: Yes.

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Q: Would you turn to page 42 of this same exhibit, and right above comment 20, so I guess it's in response to comment 19, you see that your staff says that "The ARB is justified in having motor vehicle fuel standards that are more stringent than the comparable federal standards because they are a necessary element in attaining the national and state ambient air quality standards for ozone and PM in major portions of the state. The federal Clean Air Act has recognized this by exempting California from the general preemption of state regulations of fuel properties that differ from federal regulations..."
And those are —
That's what the words say: correct?
A: That is correct.
Q: Couple of questions about it. First of all, at this point in time it's June of 2 — June of 2000 when this statement's being made: correct?
A: Correct.
Q: And when it says that the ARB is justified in having motor vehicle fuel standards that are more stringent than comparable federal standards, is that referring to the EPA, the federal standards there?
A: Yes.
Q: And then going on they mention the national

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and state ambient air quality standards for ozone and PM. Can you tell me what that PM is?
A: Particulate matter.
Q: Now the costs for the Phase 3 modifications that you made, did you determine that that would be between 360 and 750 million dollars?
A: That sounds about right.
Q: Which translated to two to six cents a gallon?
A: Yeah. There were two — I think there were two costs in there, there was one that we estimated the first couple years of the program, and then a lower number. Because we felt that while the refiners are making this transition to an ethanol world for the oxygenate, might be a little more cost, then after things settled down it would be lower. So I think there were two — two cost numbers in there.
Q: Now as part of this California Phase 3 modification, some consideration was given to seeking an oxygenate waiver from the federal government: correct?
A: Absolutely.
Q: In fact you were directed to do that as part of these regulation-makings.
A: Absolutely.

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Q: And in fact staff did that.
A: We did.
Q: And you were denied.
A: Correct.
Q: Now was there a discussion about, if you were successful in obtaining that waiver, how costs would not be nearly as high as what you were predicting here?
MR. PARK: Objection, form, vague as to "costs."
MR. BEEHLER: It was confusing. Let me step back.
Q: You estimated that the cost of phasing out MTBE was between 360 and 750 million dollars you've previously testified. Would that cost have been affected, to your understanding, if your oxygenate waiver had been granted?
A: I — I believe so. And you have to understand the reason for requesting the oxygenate waiver was we felt, one, we felt that from studies that were done by the National Academy and so forth that oxygen really didn't contribute to ozone benefits, and also we felt the refiners, because of that and because our regulations are actually oxygen neutral — I mean our regulations basically gave

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1 refiners flexibility, it was the federal overlay that
2 imposed some — some specific mandates — but we felt
3 if we could be — if — if we got a waiver from the
4 oxygenate mandate, that would give our refiners much
5 more flexibility in the way that they produced
6 gasoline and would enable them to basically — really
7 one of the key things, to increase more — more
8 volume. Because when you — with the oxygen in there
9 and with the vapor pressure, I think they would have
10 had to — they have to take out some of the
11 components. If they didn't have that oxygen mandate,
12 they could, in my recollection, produce more volume.
13 Q: In fact, you remember one of the refiners
14 telling staff that if you got the oxygenate waiver,
15 they estimated that it wouldn't cost them anything
16 additional to comply with your Phase 3 regulations?
17 A: That — that may be the case.
18 Q: You know what, I'm done with that exhibit.
19 A: Okay.
20 Q: Do you have that large transcript handy?
21 Looking again, sir, at the transcript from
22 November 21, 1991 marked as Exhibit 60, could you
23 turn to page 138.
24 A: 138, yes.
25 Q: And you can take a moment, if you need to.

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1 to determine who is speaking, but it looks to me like
2 George Babikian of ARCO was speaking at this point.
3 And —
4 A: George Babikan.
5 Q: Babikan?
6 A: Yeah. That's how I recall the
7 pronunciation.
8 Q: Okay. I'll — I'll go with yours. I recall
9 it differently, but that's all right.
10 A: That's fine.
11 Q: It is spelled, by the way, though,
12 B-a-b-i-k-i-a-n.
13 A: I understand.
14 Q: Correct? That was more for our court
15 reporter's sake, sir, than —
16 A: Okay.
17 Q: — than yours.
18 Here's my question, and then you can take a
19 moment to confirm it. You see on page 138 where Mr.
20 Babikian is describing your staff proposal as having
21 90 percent of the benefits of the October 4
22 specifications at something like 70 percent of the
23 cost?
24 A: Okay. Can I take a moment just to refresh
25 myself on Mr. Babikan or Babikian's statement?

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1 Q: Of course.
2 A: Okay.
3 Q: Are you ready to answer the question?
4 A: You need to repeat it, please.
5 Q: Sure. Do you see Mr. Babikian is
6 describing the modified staff proposal that you
7 presented at the November —
8 A: Correct.
9 Q: — at the November hearing as having 90
10 percent of the benefits and 70 percent of the cost of
11 the original specifications? Do you see that?
12 A: That — yes, that's his testimony.
13 Q: Did anybody to your recollection from staff
14 disagree with that analysis?
15 A: I don't recall.
16 Q: If you look at what —
17 Assume for the moment with me that the 90
18 percent and 70 percent is accurate just for the sake
19 of this question, because I understand you don't know
20 if that's accurate or not: —
21 A: Uh-huh.
22 Q: — correct?
23 A: Correct.
24 Q: What occurred, then, after George Babikian
25 spoke was a proposal by Chair — by Board Member

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1 Lagarias, which staff then concluded as adopted
2 achieved 90 percent — 95 percent of the original
3 emissions benefits at 85 percent of the cost,
4 correct?
5 A: Correct.
6 Q: In other words, right down the middle
7 between the 90 percent and 70 percent as opposed to
8 the hundred percent that would — let me withdraw
9 that. Staff concluded that for a — let me withdraw
10 it.
11 Percentage-wise what the board passed
12 appears to have been directly in the middle between
13 what had been originally proposed and the
14 characterization of 90 percent/70 percent by Mr.
15 Babikian.
16 MR. PARK: Objection, form.
17 Q: Correct?
18 A: That may have been the outcome, but that
19 wasn't — that doesn't necessarily mean that was how
20 it was derived.
21 Q: Do you know what it was derived from?
22 A: It was technically derived.
23 Q: And those are the documents you believe
24 exist as to the 95 percent/85 percent calculation.
25 A: That was the calculation that was done.

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1 That estimate was done of the effect of what Mr.
2 Lagarias proposed.
3 Q: Now if I recall your testimony correctly
4 from yesterday, you told me a couple of times that
5 you thought it was inappropriate to try and look at
6 costs or benefits of individual parameters during the
7 Phase 2 reg-making; correct?
8 A: Correct.
9 Q: In determining that your modified proposal
10 as — as adopted could be achieved at 85 percent of
11 the cost, would you look at individual parameters?
12 A: Maybe it would be helpful if I gave you my
13 recollection of the process, —
14 Q: Please.
15 A: — and here's my recollection. At the
16 board hearing there's an awful lot of testimony, some
17 people adamantly supporting — yes, I remember it
18 clearly. I remember — some people supporting what
19 was in the original October proposal, some advocating
20 other much less stringent things and so forth, and
21 the board and the staff listened to all of this.
22 What transpired is Mr. Lagarias apparently — and
23 this is — you know, took a look at this and at the
24 testimony and felt that maybe there was an
25 opportunity to modify what staff had brought and that

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1 would in essence give a little more benefits than
2 what staff had proposed at the meeting and still
3 directionally reduce — reduce costs.
4 Q: It was a — an appropriate middle ground
5 that he proposed.
6 MR. PARK: Objection, argumentative.
7 A: I wouldn't use — I wouldn't use "the
8 middle ground." I mean he — what —
9 What Mr. Lagarias did, he proposed some
10 other specifications and knew directionally where it
11 was going, and my recollection is that the assessment
12 that resulted in the 95/85 was actually done after
13 the hearing. We knew directionally where it was and
14 everybody knew that it would be somewhere between
15 what the staff had proposed and the original
16 proposal, but my recollection is — we didn't know at
17 that time, but we knew it was going in the right
18 direction, and my recollection is it was after that
19 we did it, and that's why you see it showing up in
20 the final statement of reasons.
21 Q: Where is the staff proposal that was
22 modified and first presented at the '91 hearing best
23 reflected in a document?
24 A: Should be in the record of the hearing. It
25 was part of the staff presentation.

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Q: In paper form.
A: It was part of the staff presentation.
That's in paper.
Q: Would you look at Exhibit 60, sir, and at the back of it would appear to be slides that were used at the hearing. At least these are how they were presented to me by complaint counsel. Would you first of all confirm that that is what is at the end of the transcript in that exhibit.
A: Let me — let me take a look.
Yes, this appears to be the staff presentation.
Q: In those slides is there a description of the modified proposal which you presented to the board which — end of the question. Is there —
In those slides is there a description of the modified proposal which you presented to the board?
A: Well the second slide that's titled "OVERVIEW" has a — one of the bullets saying "STAFF'S PROPOSED MODIFICATIONS."
Q: Could you give me a number, document number?
A: Yes, 1667. See that?
Q: There's no details at all, sir.

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A: Well that's in the overview. Let's — let's continue on.
Q: Okay, you're misunderstanding my question. I am wondering if there is a slide, sir, that shows what the proposal is as modified.
A: Let me go —
MR. PARK: Objection, counsel, witness was trying to answer the question. Allow him time to review the full document before you interpose an argumentative question.
A: Just please give me a moment.
Q: Of course.
A: There are two slides that apparently are missing on these. I don't know what those are.
Q: I don't know what the explanation for that either is, sir; that's how it was presented to me.
MR. PARK: I'm sure it could be copying error, counsel.
A: Okay. If you go to page 1681 —
Q: That's where I'm at, sir.
A: Okay. That's basically a summary of the original staff proposal and the final staff proposal, and we did do an analysis. Refreshes my memory on the effects.
Q: Well let's be more specific as to what this

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page 1681 actually shows. This doesn't show what your proposed specifications are at all; does it?
A: That slide doesn't, but I direct you to slide 1698.
Q: I'm talking about 1681, the page that you first referred me to.
A: No.
Q: Okay?
A: This is a summary of the original proposal versus the final proposal.
Q: As far as the emissions reductions or effects; correct?
A: Correct.
Q: Okay. So let's look at 1681 for a moment. Originally staff said that there would be 40 tons of NOx removed and what they were proposing resulted in 37 tons removed; correct?
A: Correct.
Q: How was that determined?
A: Staff did the calculation.
Q: Did they use it on a parameter-by-parameter basis to do it?
A: I think they used the same type of analysis that they performed when they did the original calculation, they used the same tools.

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MR. GOLDMAN: Could I take a very quick break?
MR. BEEHLER: Sure.
MR. GOLDMAN: Thank you.
THE REPORTER: Off the record, please.
(Recess taken.)

BY MR. BEEHLER:

Q: Continuing to look at Respondent's Exhibit 60, sir, and specifically this page 1681, the staff also determined that under its original proposal 930 tons of carbon monoxide would be removed, but under your modified proposal only 850 would be removed; correct?
A: That's correct.
Q: And can you tell me how that analysis was performed.
A: As I said in response, I — my assumption is the staff used the same analysis technique to determine the impacts of the final proposal as they did in doing the original proposal.
Q: And would you additionally assume that those work papers reflecting that analysis would be in the custody of your staff?
A: That's —
If they still have them, that's where they

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would be.
Q: And then your staff also determined a reduction in capital cost between its original proposal and its modified-approach proposal of from four to seven billion dollars as compared to two to five billion dollars; correct?
A: Correct.
Q: Now you were going to refer me to another page which reflects that the actual property specifications of the —
A: Yes, Mr. Beehler, you had asked me where in the presentation the actual staff proposal is.
Q: Have you found that?
A: Absolutely. It's page 1698. 1698 and 1699 are the slides that presented to the board our proposed modification, and then once again on 70, 70, is the summary again.
Q: So looking at page 1698 of Exhibit 60, we can get a reflection here of the numerical figures that staff was proposing at the 1991 hearing; is that true?
A: Yeah, our proposed changes to the specifications.
Q: My point being that the following pages — the following page shows some additional

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modifications, but those aren't numerical.
A: No. Those had to do with other provisions of the reg.
Q: Okay. So let's look at page 1698. Is there a document that you can look at — you —
You had a document earlier where you were reviewing a table which showed a comparison between your Phase 2 regulations and Phase 3 regulations. Could you find that table again, sir, so that we can compare what was actually adopted to this proposal on this page? And you're referring now to Exhibit —
A: This is Exhibit 51.
Q: Of page?
A: Page six of Appendix A.
Q: Okay. So let's go — let's go through your proposal as shown on 1698 and compare it to what was actually adopted.
With respect to Reid vapor pressure, how does your proposal differ from what was finally adopted?
A: It was the same.
Q: With respect to sulfur?
A: The same.
Q: With respect to aromatics volume percent?
A: Now we're only looking at flats; right?

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Q: Oh. I — I'm sorry.
A: We've got flat limits, we've got average.
so do you want to take each one in turn? I was just
looking at flat limits.
Q: Let's go back.
A: Sure.
Q: Because, no, I was actually asking a
broader question.
A: Yeah, let's go back.
Q: So let's start this over again.
A: Certainly.
Q: I want you to —
Let me describe the process for you so that
we're both understanding.
A: Uh-huh.
Q: I want you to review this page 1698 —
A: Sure.
Q: — out of Exhibit 60, which you told me
represents the numerical figures of your modified
proposal. I want you to compare it to what was
actually adopted on a parameter-by-parameter —
A: Okay.
Q: — basis here looking at flat limits,
averaging, and cap.
A: Okay.

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Q: So look —
A: Phase 2 regs only.
Q: Correct.
A: Okay.
Q: We're not looking at Phase 3 here.
A: Super.
Q: With respect to Reid vapor pressure, could
you tell me how your proposal differed from what was
finally adopted.
A: They were the same for the flats and the
caps.
Q: And for averaging?
A: Yeah. There was no averaging, so it was
the same.
Q: With respect to sulfur how did they differ?
A: The same.
Q: With respect to aromatic volume percent how
did they differ?
A: Okay. On aromatics, the flat limit in the
staff proposal presented at the board meeting was 28
volume percent, what was finally enacted by the board
was 25. In terms of the averaging limit for aromatic
hydrocarbons, what the staff proposed at the board
meeting was 25, what was enacted was 22. And the cap
remained the same.

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Q: With respect to the aromatic parameter,
then, the board adopted something more stringent than
what staff's modified proposal reflected.
A: Yes.
Q: With respect to benzine, was there a
difference between the two?
A: Let's see, the flat is the same, average is
the same, and the cap is the same.
Q: With respect to olefins, is there a
difference?
A: Yes, there is. On the olefin the staff
proposed a seven, what was approved by the board was
six for the flat. The average was similarly reduced
by one, so it went from five to four. And the caps
stayed the same.
Q: So with respect to olefins, the board
approved a more stringent level than reflected by the
modified proposal of staff.
A: Yes.
Q: Would you look at oxygen weight-percent.
Did that change?
A: The flats are the same. No averaging. Oh,
I see, the caps — gets a little confusing because
you have wintertime. The — the cap limits, let's
see, it says 2.7 max, 1.8 winter only, and — and I

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have to qualify, what's reflected here in this table
may reflect some changes that were made later, but I
think my recollection is the oxygen was left alone
That's just —
Q: Just to clarify then your — your comments
here, with respect to oxygen weight-percent, your
best relection — recollection is that there were no
modifications made.
A: At that hearing.
Q: With respect to T90, was there a difference
between what the staff modified proposal reflected
and what the board adopted?
A: Yes. The T90, the staff proposed 310, what
was approved was 300, the averaging limit went from
300 to 290 with a refinery cap of 315, and then a
cap — overall cap of 330.
Q: Was there a difference in the overall cap
between what you proposed and the board adopted?
MR. PARK: Objection, form.
A: The cap is — as I say, I have to
qualify — and I'm not clear —
It's not clear to me if the refinery cap
was part of the — you know, that note b/. I don't
recall if the refinery cap was part of the original
proposal or if that was — excuse me. It's part of

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the staff proposal. I can't see here if that was —
was changed or not. But the number on the averaging
went down to 290. Let me — let me see.
Q: Well I want to be able to ask you just
about what — what you're certain of here. If you
need to take a moment if you think you can figure
that out.
A: Okay. Yeah, I think I can. There's a
footnote here. Give me just one moment to refresh
myself and hopefully I'll get it correct.
Q: Yes.
A: The — the averaging limit went from 290 to
300.
Q: Okay.
A: 300 to 290. How is that?
Q: So to be clear. —
A: Yes.
Q: — staff proposed 300 degrees for an
averaging limit for T90, the board approved 290
degrees.
A: Right. And if I'm correct, the refinery
cap that was at 315, I believe, if I'm reading this
right, went to 310, okay, and the cap — the overall
cap stayed the same.
Q: So with respect to T90, what the board

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approved was more stringent on the flat limit, the
averaging, and on the cap than what the board — than
what the staff had proposed.
A: No. The ultimate cap stayed the same, but
the average and flat were made more stringent.
Q: Okay. So let me clarify. With respect to
T90, the board approved more-stringent rules than
what staff proposed, and that was specifically with
respect to flat limit and averaging.
A: Correct.
Q: Was — was there any change with respect to
T50?
A: Well let's take a look. The flat limit
remained the same at 210, the averaging limit
remained the same at 200, and the cap remained the
same at 220, so there were no changes to T50.
Q: So with respect to the three parameters
that you identified, aromatics, olefins and T90, the
board in fact adopted more-stringent levels on all
three —
MR. PARK: Objection, form.
Q: — than what staff proposed.
MR. PARK: Misleading. Objection, same
objections, form, misleading.
A: Well what the board finally approved were

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[1] limits that, you know, were more aggressive than the
[2] prior limits. They were more — more stringent, yes.
[3] Q: Okay. So let's —
[4] A: Yeah.
[5] Q: Let's ask it again. We just went through
[6] this.
[7] A: Uh-huh.
[8] Q: You identified that there were three
[9] differences between your proposal of staff and what
[10] the board approved in 1991, and that was aromatics,
[11] olefins and T90; correct?
[12] MR. PARK: Same — same objections, form,
[13] misleading, argumentative, asked and answered.
[14] A: I said those —
[15] I mean it's clear those are the changes the
[16] board made.
[17] Q: And my question, sir, is: And with respect
[18] to all three of those, the board approved something
[19] more stringent than what the staff's modified
[20] proposal was.
[21] MR. PARK: Objection, form, misleading.
[22] Q: Correct?
[23] A: Compared to the modified proposal.
[24] Q: Right, the one you presented at the
[25] hearing. Correct?

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[1] MR. PARK: Same objections.
[2] A: The ones that were presented at the
[3] hearing.
[4] Q: Your —
[5] You would conclude that going from 28 to 25
[6] percent for aromatics, for instance, would be more
[7] costly.
[8] MR. PARK: Objection, form, foundation.
[9] A: You really can't do it individually; you
[10] have to look at the specifications overall. I — I
[11] think it would be inappropriate to try to parse out
[12] because there's all — there's all these
[13] interrelations. And what — what we just went
[14] through reflects what — what occurred at the board
[15] meeting, that the staff — from —
[16] The staff presented this proposal and Mr.
[17] Lagarias made another proposal that had a little more
[18] emission reductions than what the staff had proposed
[19] and was a little more costly, and that's what
[20] ultimately resulted in a final regulation that had 95
[21] percent of the benefits at what was 85 percent of the
[22] cost.
[23] Q: And that is what I want to focus on.
[24] Earlier today in your testimony you told me that it
[25] was your recollection that what Member Lagarias had

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[1] proposed was less costly than what staff had — had
[2] proposed as a modification. Looking at this —
[3] A: Yeah.
[4] Q: — exhibit now, will you confirm that in
[5] fact what Member Lagarias proposed and what was
[6] adopted was more stringent and more costly than the
[7] proposal of staff at the hearing?
[8] MR. PARK: Objection, form.
[9] A: It was compared to what staff had proposed
[10] but not compared to what was in the original report.
[11] And yes, it does clarify my understanding of that.
[12] Q: Okay.
[13] A: That's correct.
[14] Q: And I'm not talking about the original one
[15] right now.
[16] A: But there's three things there as you
[17] mentioned earlier.
[18] Q: Let's try it again because I think we're —
[19] Looking at Exhibit 60, page 1698, has this
[20] refreshed your recollection that in fact what the
[21] board adopted was more stringent and more costly than
[22] what staff's modified proposal was in 1991?
[23] MR. PARK: Objection, form.
[24] A: Correct. But there's also a comparison
[25] that could be made to what was in the original staff

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[1] proposal as well.
[2] Q: Okay. We'll try to set that exhibit aside
[3] one more time.
[4] Do you have Respondent's Exhibit 61 handy?
[5] It's a transcript.
[6] (Exhibit 61 handed to the witness.)
[7] Q: Sir, we've looked previously at this
[8] transcript from December 9, 1999. Would you turn to
[9] page 10455. Do you see on this page that Chairman
[10] Lloyd is speaking at a public hearing? And you
[11] can —
[12] A: Just a moment. I want to refresh what
[13] hearing this was.
[14] Q: If you turn to the previous page, 10455,
[15] you can see that the chairman has announced that this
[16] is the public hearing to consider amendments to
[17] California's reformulated gasoline regulations.
[18] A: Okay. Okay.
[19] Q: And at page 10455 Chairman Lloyd says,
[20] beginning at line three, quote, "As the Governor said
[21] when he issued his executive order last March,
[22] California will not backslide on air quality nor will
[23] we sacrifice clean air for clean water. We can and
[24] we will have both," end quote.
[25] I quote that to ask you and to set the

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[1] context for something that he says down at line 14 of
[2] this same page. He says, "The federal rules are
[3] simply too prescriptive and will keep refiners from
[4] reaching the best lowest-cost alternatives. That has
[5] to change," end quote.
[6] Were you present during this hearing?
[7] MR. PARK: Objection, form.
[8] Q: I need a verbal.
[9] A: I'm certain I was, pretty certain, yes.
[10] Q: Do you have an understanding of what the
[11] chairman of CARB was referring to when he made that
[12] statement?
[13] MR. PARK: Objection, vague as to which
[14] statement.
[15] A: I'm trying to see if anything — thing
[16] comes up. I — I will —
[17] I can't be absolutely certain.
[18] Q: I'm asking for your understanding of
[19] what —
[20] A: Okay. I —
[21] Q: — the chairman's remarks were here.
[22] A: But I believe this may have to do with the
[23] oxygenate requirement, oxygenate mandate.
[24] Q: Is it your recollection that at the time of
[25] this hearing, staff had not yet sought the oxygenate

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[1] waiver?
[2] A: I believe that's correct.
[3] Q: And so it's your understanding that
[4] Chairman Lloyd here was expressing his view that
[5] federal rules which would require such a thing are
[6] keeping the California refiners from reaching the
[7] best lowest-cost alternatives.
[8] MR. PARK: Object to form, misleading.
[9] Q: Is that your best understanding?
[10] MR. PARK: Same objections.
[11] A: Yeah. And I think you have to qualify that
[12] from my recollection that it's really the oxygen.
[13] And he used "the federal rules" in a very broad
[14] sense.
[15] Q: As long as we're in this document, would
[16] you turn to page 164 at the top. And I'll give you
[17] the production number as soon as I find it, sir.
[18] Production number 10567. Do you know who Greg Dana
[19] is?
[20] A: Yes, I believe so. I've heard — I think
[21] he's with Auto Manufacturers.
[22] Q: D-a-n-a. Alliance of Auto
[23] Manufacturers: —
[24] A: Ah, okay.
[25] Q: — does that ring a bell?

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A: Yes.
Q: And just generally, I — I haven't heard of it before, what is the Alliance of Automobile Manufacturers as you understand it?
A: It's an association that represents auto manufacturers, and I believe it — well I believe it's the domestics but I'm not — not sure.
Q: So that would be the General Motors, Ford, Chrysler back in 1999; is that — is that what we're discussing?
A: Yeah. It's — well it says it's a coalition of car and light-truck manufacturers representing more than 90 percent of U.S. vehicle sales.
Q: Great.
A: That's fine.
Q: At page 164 Mr. Dana speaks to the benefits of T50 and T90; doesn't he?
A: Yes.
Q: And at line 14 he says he estimates that the Phase 2 limits on T50 and T90 are responsible for 50 percent of the VOC benefits and 15 percent of the toxic benefits. Do you see that?
A: Yes.
Q: Does that comport with your understanding

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of the benefits of T50 and T90 in relation to your Phase 2 regulations?
A: I don't — don't — don't recall. This is his estimate.
Q: Well you've made estimates before, haven't you, of T90 and T50?
MR. PARK: Objection, argumentative.
A: You know, my recollection is we looked at the benefits of the — our fuel specifications in total.
Q: Separate and apart from your regulations, have you ever sat down and said, for instance under your predictive model, how effective is T90 or T50 in reducing emissions under our model?
A: Oh, you can do that analysis. I mean we used the Unocal regressions to give us an indication of — and to set the T50 specification, holding other parameters constant.
Q: I'm asking now, under your model that you approved, have you ever looked at the effects of T50 in order to quantify it in terms of how large an emissions driver it is?
MR. PARK: Objection, form.
A: I don't recall if staff's done those analyses.

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Q: Is T50 the largest emissions driver for reductions in hydrocarbon emissions under your Phase 2 model?
A: I don't know that for certain.
Q: You know, however, that it is a major driver under your predictive model for Phase 2.
MR. PARK: Objection, form.
A: Well I think I answered. I think — I think all the specifications are important.
Q: Are the Phase 2 rules now officially over and have been supplanted by Phase 3?
A: Yes. Well they are in a transition period right now, so it will be the end of this year when the phase-out of MTBE has to fully occur, so there's some refiners that, if they haven't phased out the MTBE yet, they could be operating under the Phase 2. But I think the safe thing to say is that by the end of — of this year everybody will be under Phase — Phase 3.
Q: Let's see if I can clarify. Have you heard that the Office of Administrative Law approved your Phase 3 specifications and said that they are in force as of May 1, 2003?
MR. PARK: Objection, foundation.
Q: Have you heard that?

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A: Yeah, it's probably true. Right.
Q: As you understand it, there are certain periods of time before people have to apparently come into compliance, but is it your understanding that Phase 3 is actually what is effective right now?
MR. PARK: Objection, form.
Q: That was a horrible question.
A: Yeah.
Q: Let me try it again.
I understand that your Phase 3 specifications set certain dates as to compliance with certain matters; correct?
A: Yes.
Q: Having a moment to think about it, is it your understanding that the Phase 3 regulations are actually in effect right now?
A: They are. But that's only, I think, part of the answer.
Q: Tell me the rest.
A: Okay. When we were asked to remove MTBE. —
Q: Uh-huh.
A: — okay, that's why we did the Phase 3 regulations was to say, all right, by the end of December 2002, December 31, 2002, that was, I

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believe, the original executive order, MTBE would be out of the gasoline pool. We had to update our regulation to address that and we did. And then subsequently there were concerns and issues about is everybody going to be ready at December 31, 2002? So basically we went back to the board and changed that December 31, 2002 date to December 31, 2003. So that's why I say this year is a transition year. And so some refiners may be still operating under the Phase 2 regs, some may be operating under Phase 3.
MR. BEEHLER: We're almost finished, by the way.
(Respondent's Exhibit 65 was marked for identification.)
BY MR. BEEHLER:
Q: Looking at Respondent's Exhibit 65, sir, is this the request for waiver which your staff submitted to the federal government seeking the waiver from an oxygen mandate?
A: This is an attachment to the request.
Q: Do you know where the full —
You're saying that there — there is more than just this attachment somewhere?
A: Yes. It's on our website.
Q: This attachment would have gone with a

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letter?
A: Yes, there was a letter, then there's an attachment. I think there were — there were several follow-up documents. They're all on our website.
Q: Looking at this attachment, sir, at page 14, the last couple of lines in the first full paragraph, you state, "For producing California RFG 3 with ethanol" —
A: Uh-huh.
Q: — "refiners will probably reduce olefins, RVP, and T50 in addition to sulfur." And "Alkylates will be increased to make up the volume." Do you see that?
A: Yes.
MR. PARK: Objection, form.
Q: Do you know why those parameters were predicted as the parameters for reduction?
MR. PARK: Objection, foundation.
A: I think that's staff's best estimate of how refiners are now going to balance the — the — the — their refinery operations in order to meet the Phase 3 specifications and also to deal with — with volume.
Q: Would that estimate have been based upon a cost-effectiveness analysis or conversations with

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[1] refiners. do you know?
[2] A: I think just technical analysis that staff
[3] performed.
[4] MR. BEEHLER: Why don't we take a couple of
[5] minutes and just see if I m finished.
[6] THE WITNESS: Okay.
[7] THE REPORTER: Off the record, please.
[8] (Recess taken.)
[9] MR. BEEHLER: Mr. Venturini. I've finished
[10] my examination of you. Thank you for coming. sir.
[11] Pass the witness to Mr. Park.
[12] MR. PARK: Thank you. counsel.
[13] EXAMINATION
[14] BY MR. PARK:
[15] Q: Mr. Venturini. as I understand it. the
[16] regulations that were adopted by CARB in November of
[17] 1991 actually became final sometime thereafter: is
[18] that correct?
[19] A: That is correct.
[20] Q: Do you know when the November 1991 CARB
[21] regulations became final?
[22] A: The final statement of reasons was
[23] submitted to OAL in October. I believe it was. of
[24] 1992. then it went through their review process. so
[25] it would have been a month or two after that.

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[1] Q: Do you know who at CARB had the
[2] responsibility for submitting to the Office of
[3] Administrative Law for approval the November 1991
[4] CARB RFG Phase 2 regulations?
[5] A: I had overall responsibility.
[6] Q: Do you recall actually submitting those
[7] regulations to the OAL for approval in the fall of
[8] 1992? -
[9] A: Yes.
[10] Q: Prior to the time that you submitted the
[11] November 1991 regulations to OAL for review. if
[12] anyone had told you that Unocal had pending patent
[13] rights that could cover most if not all of the fuels
[14] to be produced under these regulations. what if
[15] anything would you have done?
[16] MR. BEEHLER: Objection. Based upon the
[17] witness's testimony. calls for speculation. lacks
[18] foundation.
[19] A: I think it's —
[20] And it's very clear to me that if we had
[21] found out and would have been informed about the
[22] patent application prior to the regulation being
[23] final. we would not have submitted the regulation to
[24] OAL and we would not have a regulation.
[25] Q: At any time did Unocal inform you or anyone

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[1] at CARB that by July of 1992 Unocal had been told by
[2] the Patent and Trademark Office that most of its
[3] then-pending patent claims relating to reformulated
[4] gasoline had been allowed?
[5] MR. BEEHLER: Objection. vague. confusing.
[6] time.
[7] A: No.
[8] Q: Would CARB have been interested in this
[9] information?
[10] MR. BEEHLER: Objection. Based on the
[11] witness's testimony. lacks foundation. calls for
[12] speculation.
[13] A: Absolutely.
[14] Q: Do you believe that such information was
[15] material or relevant to CARB's decision-making
[16] process in the CARB Phase 2 rulemaking process?
[17] MR. BEEHLER: Objection. Based on the
[18] witness's testimony. lacks foundation. calls for
[19] speculation.
[20] A: Absolutely.
[21] Q: Do you believe that Unocal should have
[22] informed you in the summer of 1992 concerning this
[23] development and what it learned from the Patent and
[24] Trademark Office?
[25] MR. BEEHLER: Objection. Based on the

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[1] witness's testimony. lacks foundation. calls for
[2] speculation.
[3] A: Yes. we should have been informed.
[4] Q: What if anything would CARB have done if it
[5] had been informed of this development in 1992?
[6] MR. BEEHLER: Objection. Based on the
[7] witness's testimony. lacks foundation. calls for
[8] speculation.
[9] A: We would not have finalized the regulation.
[10] Q: Do you know at what point in time. if any.
[11] that it became too late for CARB to rescind or revoke
[12] the Phase 2 regulations?
[13] MR. BEEHLER: Objection. calls for
[14] speculation. lacks foundation.
[15] A: That probably would have been the late —
[16] By late 1993 we were locked in.
[17] Q: Mr. Venturini. do you recall earlier today
[18] that Mr. Beehler asked you some questions concerning
[19] your deposition testimony in the prior private
[20] litigation? Do you recall that. sir?
[21] A: Yes. I do.
[22] Q: I'd like to refer you to the portion of the
[23] deposition transcript that he questioned you about.
[24] I'd like to refer you to page 145 of your prior
[25] deposition transcript. Volume I. dated June 18th.

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[1] 1996. Do you see page 145. sir?
[2] A: Yes. I do.
[3] Q: As I recall. Mr. Beehler asked you whether
[4] or not the question and answer that you had stated on
[5] page 145 starting at line nine and ending at line 24
[6] was in fact your testimony during your prior
[7] deposition. Do you recall that?
[8] A: Yes.
[9] Q: As I recall you answered that. yes. it was
[10] your testimony: is that correct?
[11] A: That is correct.
[12] Q: I believe that you indicated in response to
[13] Mr. Beehler's questioning that you wanted to complete
[14] your answer. Would that be fair?
[15] MR. BEEHLER: Objection. misleading.
[16] A: Well that is correct.
[17] Q: Would you like to complete your answer now?
[18] A: Yes. I would.
[19] Q: Please do so.
[20] A: Basically what — what my testimony at that
[21] time described is a process. and what I wanted to
[22] explain to Mr. Beehler is that I m very comfortable
[23] in saying the result of that process would have been
[24] we would not have gone forward with the regulation.
[25] MR. PARK: Thank you. I have no further

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[1] questions.
[2] MR. BEEHLER: No further questions.
[3] Mr. Goldman. I take it you have no
[4] questions?
[5] MR. GOLDMAN: That's correct.
[6] MR. BEEHLER: Will the witness read and
[7] sign. sir?
[8] MR. GOLDMAN: I believe so. yes.
[9] MR. BEEHLER: Thank you. Mr. Venturini.
[10] thank you for coming.
[11] THE REPORTER: Off the record. please.
[12] (Deposition concluded.)
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[1] CERTIFICATE
[2] I, Richard G. Strewalt, hereby certify
[3] that I am qualified as a verbatim shorthand reporter,
[4] that I took in stenographic shorthand the deposition
[5] of PETER D. VENTURINI at the time and place
[6] aforesaid, and that the foregoing transcript is a
[7] true and correct, full and complete transcription of
[8] said shorthand notes, to the best of my ability.
[9] Dated at Minneapolis, Minnesota, this 17th
[10] day of May, 2003.
[11]
[12]
[13]
[14] RICHARD G. STIREWALT
[15] Registered Professional Reporter
[16] Notary Public
[17]
[18]
[19]
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[24]
[25]

[1] CERTIFICATE
[2] I, PETER D. VENTURINI, hereby certify that
[3] I have carefully read the foregoing transcript, and
[4] that the same is a true and complete, full and
[5] correct transcription of my deposition, except:
[6]
[7]
[8]
[9]
[10]
[11]
[12]
[13]
[14]
[15]
[16]
[17] PETER D. VENTURINI
[18] Deponent
[19]
[20] Signed and sworn to before me this day of
[21] May, 2003.
[22]
[23]
[24]
[25] Notary Public

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