

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

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

- - - - -

In the Matter of

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

- - - - -

DEPOSITION OF JAMES D. BOYD

VOLUME I, PAGES 1 - 289

August 22, 2003

(The following is the deposition of JAMES
D. BOYD, taken pursuant to Notice of Taking
Deposition, via videotape, at the Hyatt Regency
Hotel, Capitol Board Room, Sacramento, California,
commencing at approximately 9:02 o'clock a.m., August
22, 2003.)

APPEARANCES:

On Behalf of Union Oil Company of California:

David W. Beehler
Robins, Kaplan, Miller & Ciresi, L.L.P.
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402

15:20:39 1 Q. And if you look down on the second column,
15:20:41 2 sir, about part way you can see a reference to the
15:20:43 3 California Air Resource Board, about the fourth
15:20:46 4 paragraph down. Do you see that?

15:20:48 5 A. Yes.

15:20:48 6 Q. And Mr. Sessa is quoted there. Do you see
15:20:50 7 that?

15:20:50 8 A. Yes.

15:20:52 9 Q. He says -- he's quoted as saying, "'We've
15:20:54 10 seen their data, and it certainly validates our view
15:20:58 11 that gasoline can be made cleaner.'" Do you see
15:21:00 12 that?

15:21:01 13 A. Yes.

15:21:01 14 Q. That's the end of his quote, but then the
15:21:03 15 story says, "However, it's unclear that the board
15:21:06 16 would adopt the specific standards of Arco's new
15:21:10 17 formula." Do you see that?

15:21:12 18 A. Yes.

15:21:13 19 Q. Do you remember discussions occurring
15:21:15 20 within staff about patterning your regulations for
15:21:22 21 1991 on ARCO's EC-X formula?

15:21:27 22 A. No.

15:21:30 23 Q. Just to be clear, given the length of time,
15:21:35 24 are you saying that that did not occur, or are you
15:21:41 25 saying that you do not recall whether or not that

15:21:44 1 occurred?

15:21:45 2 A. I don't recall that we had discussions like
15:21:49 3 that or that it occurred. Undoubtedly staff talked
15:21:53 4 about ARCO's formulation as establishing a foundation
15:21:58 5 to work against or something, but we certainly
15:22:02 6 weren't going to embrace a single company's approach.

15:22:06 7 Q. Would you have received criticism, you
15:22:08 8 believe, from others had you modeled a regulation on
15:22:12 9 one company's formulation?

15:22:14 10 A. If we had knowingly done that, yes.

15:22:17 11 Q. And obviously that's the sort of criticism
15:22:20 12 you try to avoid.

15:22:22 13 A. Yes, if you want to remain in existence.

15:22:34 14 Q. I'm done with that document at -- at this
15:22:36 15 point.

15:22:37 16 Now you would say it's not accurate for
15:22:39 17 ARCO to say that CARB modeled its regulations after
15:22:43 18 ARCO's EC-X.

15:22:45 19 A. Yes. I would say that's taking theatrical
15:22:49 20 license.

15:22:50 21 Q. And do you remember that in fact they came
15:22:51 22 out after 1995 with large newspaper advertisements in
15:23:03 23 which they said exactly that?

15:23:08 24 A. Yes.

15:23:10 25 Q. And you actually discussed with counsel

15:50:59 1 data?

15:51:01 2 MR. ROBERTSON: Objection, foundation.

15:51:03 3 A. I have no recollection of specificity that
15:51:08 4 close, no.

15:51:09 5 Q. Doesn't what you've looked at today suggest
15:51:11 6 that ARCO certainly played a role in the T50 issue?

15:51:18 7 MR. ROBERTSON: Objection, calls for
15:51:19 8 speculation, lack of foundation.

15:51:21 9 A. Well they had a T50 spec, that's for sure,
15:51:27 10 yes.

15:51:28 11 Q. Can you think of any reason why your staff,
15:51:30 12 in putting together the final statement of reasons,
15:51:33 13 wouldn't have made reference to ARCO and the T50 when
15:51:38 14 they did make reference to Unocal, Toyota and the
15:51:41 15 Auto/Oil data?

15:51:44 16 MR. ROBERTSON: Objection, lack of
15:51:45 17 foundation, calls for speculation, misleading.

15:51:52 18 A. No, I have no knowledge as to why or why
15:51:54 19 not.

15:52:03 20 Q. I'm done with that, sir.

15:52:05 21 (Respondent's Exhibit 330 was
15:52:07 22 marked for identification.)

15:52:07 23 BY MR. BEEHLER:

15:52:07 24 Q. Looking at RX 330, sir, do you recognize
15:52:09 25 that to be a memo that you gave to Jack Lagarias on

15:52:13 1 August 18, 1992?

15:52:14 2 A. Yes.

15:52:15 3 Q. And in the second paragraph you -- you tell

15:52:19 4 Mr. Lagarias --

15:52:20 5 Who was a board member at the time; right?

15:52:22 6 A. Correct.

15:52:23 7 Q. And in fact Jack Lagarias was a board

15:52:27 8 member during the 1991 regulations.

15:52:29 9 A. Yes.

15:52:29 10 Q. You're telling him here that ARCO's EC-X

15:52:31 11 gasoline more closely represents the gasolines that

15:52:34 12 will be produced when the Phase 2 standards take

15:52:37 13 place. Do you see that?

15:52:39 14 A. That sentence says that, yes.

15:52:41 15 Q. In fact, ARCO's EC-X gasoline met all the

15:52:44 16 regulation's requirements except for oxygenates;

15:52:47 17 didn't they, sir?

15:52:50 18 A. Does that say that here? Because I don't

15:52:52 19 recall.

15:52:52 20 Q. Would you turn to the third page. In the

15:52:59 21 second-to-last paragraph, sir, beginning with the

15:53:01 22 second sentence, do you see, "The reformulated

15:53:03 23 gasoline used by ARCO (EC-X)" --

15:53:07 24 Do you see you're telling Mr. Lagarias

15:53:10 25 this?

15:53:11 1 A. Yes. Yes.

15:53:11 2 Q. -- "is very similar to the gasolines that
15:53:13 3 will be used when the ARB's phase 2 reformulated
15:53:16 4 gasoline regulations take effect."

15:53:18 5 A. Yes.

15:53:18 6 Q. Do you see that?

15:53:19 7 Goes on to say ARCO's EC-X gasoline almost
15:53:23 8 meets all of the phase 2 standards, except oxygen
15:53:26 9 content.

15:53:27 10 A. I see that, yes.

15:53:28 11 Q. And in fact their oxygen content was just a
15:53:31 12 little bit high; do you recall that?

15:53:32 13 A. Yes. I see that, yes.

15:53:36 14 Q. Why were you telling Mr. Lagarias about the
15:53:38 15 similarities between ARCO's EC-X gasoline and your
15:53:42 16 regulations?

15:53:43 17 A. Well this is reference to a paper here,
15:53:46 18 Environmental Science and Technology. I'm not quite
15:53:49 19 sure all these years later what --

15:53:57 20 Q. Do you recall generally that Mr. Lagarias
15:53:59 21 was asking you why Chevron's research may have showed
15:54:03 22 a different emissions effect for their gasolines than
15:54:06 23 ARCO -- than the regulations being promulgated?

15:54:10 24 A. I don't -- I don't recall the question.

15:54:11 25 I'm beginning to infer from the letter that there was