

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

MEETING  
STATE OF CALIFORNIA  
CALIFORNIA WASTE MANAGEMENT BOARD

COPY

RIVER CITY BANK BUILDING  
1020 NINTH STREET  
SUITE 300  
SACRAMENTO, CALIFORNIA

FRIDAY, APRIL 8, 1988  
9:15 A.M.

Eileen Jennings, C.S.R.  
License No. 5122

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

BOARD MEMBERS PRESENT

- Mr. Sherman E. Roodzant, Chairman
- Mr. John P. Moscone, Vice-Chairman
- Mr. Phillip A. Beautrow
- Ms. Ginger Bremberg
- Mr. Les Brown
- Mr. James W. Calloway
- Mr. John E. Gallagher
- Mr. E. L. "Skeet" Varner

BOARD MEMBERS ABSENT

- Mr. Sam Arakalian

STAFF PRESENT

- Mr. George T. Eowan, Chief Executive Officer
- Mr. Herbert Iwahiro, Chief Deputy Executive Officer
- Mr. Alan A. Oldall, Deputy Executive Officer
- Ms. Jo-Ellen Jackson, Director of Legislation and Public Affairs
- Mr. Robert F. Conheim, General Counsel
- Mr. Bill Orr, Standards and Regulations Division
- Mr. Caren Trgovcich, Enforcement Division
- Ms. Connie Dunn, Board Secretary
- Ms. Kay Wilson, Secretary

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

INDEX

--oOo--

Page

Proceedings	1
Item 14A - Discussion of Regulations: Financial Assurance for Liability at Operating Landfills (New)	
Presentation by Ms. Trgovcich	2
<u>Public Comment</u>	
Deeohn Ferris, American Insurance Association	5
Question-and-answer session	15
Barry Shannoff, GRCDA	27
Question-and-answer session	35
Eugene Herson, NorCal	37
Question-and-answer session	46
Al Marino, CRRC North	52
David Nakagaki, L.A. County Sanitation Districts	56
Frank Bowerman, Orange County	60
Question-and-answer session	64
Doug Isbell, Riverside County, County Engineers Association and CSAC	66
Tom Vernon, BKK Corporation	69
Mark Stevens, San Bernardino County	79
Jerry Whitfield, California Department of Insurance	80
Question-and-answer session	85

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

INDEX (Continued)

--oOo--

	<u>Page</u>
Item 14C - Discussion of Regulations: Financial Responsibility for Closure and Post-Closure Care (New)	
<u>Public Comment</u>	
Keith Seigmuller, California Pollution Control Financing Authority	91
Tom Vernon, BKK Corporation	101
Rubia Bertram, Department of Health Services	102
Doug Isbell, Riverside County, County Engineers Association and CSAC	106
Item 16 - Review of Future Board Agenda Items	107
Item 17 - Open Discussion	108
Item 18 - Adjournment	108
Certificate of Reporter	109

--oOo--



1 a number of these folks to come here and talk about that.

2 In addition, I'd just like to highlight that there  
3 are some other issues that are things that we still need to  
4 really consider in addition to the availability of insurance.  
5 That is the test that's applicable to private and public  
6 entities regarding assurance. Then there's also the  
7 appropriate levels of coverage that we should consider.

8 So we need to keep those things in mind, too, as we  
9 listen to what these folks have to say, because they're  
10 probably not only going to be talking about insurance. But  
11 those are some other issues that we need to think about as we  
12 go through this.

13 With that I'll turn it over to Caren Trgovcich and  
14 Bill Orr.

15 MS. TRGOVCICH: Good morning, Mr. Chairman and  
16 members of the Board. At the Board's last meeting, which was  
17 held on March 10th and 11th, 1988, staff presented to the  
18 Board an update on the status of the draft regulations  
19 proposed to fulfill the statutory requirements under Assembly  
20 Bill 3527, enacted during the 1984 legislative session.

21 This bill required the Board to adopt standards and  
22 regulations requiring that the operator of a solid waste  
23 disposal facility provide assurance of adequate financial  
24 ability to respond to personal injury claims and public or  
25 private property damage claims resulting from the operations

1 of a disposal facility which occur before closure.

2 At the Board's March meeting, the Board requested  
3 that a special workshop be included on this April's agenda to  
4 discuss the insurability of solid waste disposal facilities,  
5 the availability of such insurance, and the mechanisms to  
6 provide such assurances.

7 Several members of the insurance industry, trade  
8 associations, landfill owners and operators, and governmental  
9 regulatory agencies have been invited to attend and  
10 participate in this workshop.

11 Before you is a suggested order of speakers who have  
12 requested to participate today. There may also be additional  
13 interested parties in the audience who wish to address the  
14 Board on this issue.

15 Staff has received written comments from James  
16 Shamberger of the Reinsurance Association of America. Their  
17 comments address the unpredictable nature of the pollution  
18 insurance market and the magnitude of the liability  
19 associated with it. These written comments can be provided  
20 to you if you wish.

21 The suggested list of speakers before you leads you  
22 off with a representative of the American Insurance  
23 Association, Deeohn Ferris. Staff requests that Deeohn  
24 Ferris be afforded the opportunity to lead off this  
25 discussion because of her experience in the industry and her

1 ability to provide you with the background on this issue and  
2 the current problems associated with the pollution insurance  
3 market.

4 With that, I'd like to turn it back to the Chairman  
5 for the speakers that wish to address the Board on this  
6 issue.

7 CHAIRMAN ROODZANT: The list you provided me, is  
8 that the order you request people to speak?

9 MS. TRGOVCICH: Yes.

10 CHAIRMAN ROODZANT: Has the audience been provided  
11 this list?

12 MS. TRGOVCICH: No, the audience has not been  
13 provided --

14 CHAIRMAN ROODZANT: Do the speakers, do they know  
15 when they're up?

16 MS. TRGOVCICH: No. That list is not in the back.  
17 We can put it in the back of the room if you wish.

18 CHAIRMAN ROODZANT: Let me for the record then read  
19 the proposal you've given to us: Deeohn Ferris, from the  
20 American Insurance Association; Barry Shannoff, from GRCDA;  
21 Eugene Herson, from NorCal; Al Marino or designee, from  
22 California Refuse Removal Council North. There's no name,  
23 but a designee for the California Refuse Removal Council  
24 South; Steve Maguin or a designee, from the L.A. Sanitation  
25 Districts; Frank Bowerman, from Orange County; Doug Isbell,

1 from Riverside County and the County Engineers Association  
2 and also representing CSAC; other members of the audience;  
3 and to wrap it up, Jerry Whitfield, from the California  
4 Department of Insurance.

5 Does anybody else request to be heard on this item  
6 today?

7 MR. VERNON: Yes, I'd like to be heard. Tom Vernon,  
8 from BKK Corporation.

9 CHAIRMAN ROODZANT: We'll put you on No. 9 then.  
10 Let's proceed then if there's no objection with  
11 Deeohn Ferris, from American Insurance Association.

12 MS. FERRIS: Good morning.

13 CHAIRMAN ROODZANT: Good morning.

14 MS. FERRIS: As you all know, I'm here on behalf of  
15 the American Insurance Association to discuss the  
16 difficulties associated with providing pollution insurance  
17 coverage.

18 The American Insurance Association is comprised of  
19 approximately 188 of the large publically stock held property  
20 casualty insurers in the country. Several of our members  
21 have in the past attempted to provide pollution liability  
22 insurance, and due to a number of operative factors have been  
23 very discouraged in this effort.

24 I think I'd like to begin by talking a little bit  
25 about the nature of the business of insurance. The

1 underwriting process is the process by which insurance  
2 companies identify, select, and evaluate risks to be insured.  
3 There are three very critical factors that operate in terms  
4 of the business of underwriting a risk, and there's a brief  
5 overview in some of the materials that you've received today  
6 regarding these factors. They are capacity, fortuity, and  
7 predictability. Without a preliminary understanding of these  
8 factors, it's very difficult to understand why insurers view  
9 pollution risks as uninsurable.

10 Let's start with fortuity. Fortuity relates  
11 directly to whether or not a risk will occur. In the  
12 pollution context, this situation has deteriorated to the  
13 extent that there is no longer a risk, there is inevitability  
14 of an occurrence.

15 Predictability is the factor by which insurers  
16 determine the range of losses so that pricing of policies can  
17 be achieved. Once again, in the pollution context the costs  
18 associated with pollution risks are enormous. As long ago as  
19 1985 I believe it was the Technology Assessment Office  
20 indicated that clean-up of hazardous waste landfills is  
21 projected to cost in excess of \$100 billion. That was  
22 pre-1986 in which Congress passed SARA amendments, which will  
23 have a direct and much more magnified impact of the nature of  
24 those costs probably far in excess of \$100 billion to cure  
25 the national problem. In terms of predictability, that's a

1 range of loss that may be outside the capability of many  
2 insurance companies to insure.

3 Capacity is the factor which directly relates to how  
4 much business a company can write along a certain line of  
5 coverage and maintain its economic viability. Many states  
6 through insurance departments regulate how much coverage on  
7 certain lines that companies can write. In states that don't  
8 regulate how much capacity an insurer can provide in relation  
9 to other business that it writes, the company must still make  
10 a decision that in order to preserve its economic viability,  
11 it should either specialize in a certain market or diversify  
12 on a very balanced basis.

13 With that in mind or with these three factors in  
14 mind, I'd like to discuss the three primary reasons why  
15 insurers view pollution risks as uninsurable.

16 The first reason relates to liability standards  
17 related to pollution exposures. The most commonly applied  
18 liability standard in the context of pollution is retroactive  
19 strict, joint and several liability. The second factor which  
20 contributes to uninsurability relates to judicial  
21 misinterpretation of insurance contracts. The third factor  
22 has a great deal to do with the status of toxic tort  
23 liability and toxic tort litigation in the United States.

24 To begin with the first factor -- that is,  
25 retroactive strict, joint and several liability -- that's

1 commonly called the superfund standard of liability. It's  
2 uncertain as to whether the superfund standard of liability  
3 will be applied in all instances of pollution. But as the  
4 litigation ensues, we see that it is most commonly applied in  
5 terms of remedying problems at hazardous waste sites.

6 In terms of insuring retroactive strict, joint and  
7 several liability, there are several problems. First of all,  
8 no insurer would insure a retroactive problem. That is, an  
9 existing condition. Insurers are in the business of insuring  
10 risks. And if the condition exists, it is not a risk.  
11 Therefore, it is uninsurable, it is inevitable.

12 In terms of strict, joint and several liability,  
13 insurers and policy holders enter into contracts. The  
14 contract is between the carrier and the policy holder.  
15 Strict, joint and several liability separates the  
16 relationship of the insurer to the policy holder. Thus a  
17 policy holder may not be liable merely for his own conduct,  
18 he may ultimately be held liable for the conduct of others.

19 The insurer is placed in a negative position by  
20 that, because the insurer has merely collected the premium  
21 associated with the conduct of the policy holder. The  
22 contract is intended to cover the conduct of the policy  
23 holder and the nature of the policy holder's business, and  
24 not those of others outside of that contract. Joint and  
25 several liability would loop in conduct of those outside of

1 that contract.

2 To illustrate that a little more cleanly, under  
3 superfund, for example, transporters can be held liable,  
4 someone who merely deposited substance at a site can be held  
5 liable, generators can be held liable. If an insurance  
6 company holds a contract with a generator, for example -- no,  
7 let's say if the insurer company holds the contract with the  
8 owner/operator of this site that has become the problem, the  
9 owner/operator of this site can be held liable for all the  
10 damage, whether or not the owner/operator was the person who  
11 created the damage.

12 If you have any questions, please stop me; because  
13 it gets a little muddled from time to time.

14 I'd like to proceed to the second problem, judicial  
15 misinterpretation of insurance contracts. In the past  
16 insurers provided environmental damage coverage through  
17 what's commonly referred to as an EIL policy. There isn't a  
18 great deal of contention about whether or not coverage was  
19 provided under the EIL policy. The policy that's the problem  
20 is the CGL policy, formerly known as comprehensive general  
21 liability.

22 As I said, there's no dispute about whether coverage  
23 was offered under EIL, it's CGL. A CGL policy was never  
24 intended to cover pollution incidents of the nature that we  
25 read in the papers every day. The CGL was intended to cover

1 business risks, not pollution risks. It's the CGL policy  
2 that we read about in the courts every day in terms of --

3 MR. CONHEIM: If I could interrupt. Mr. Chairman,  
4 does everybody know what EIL means?

5 MS. FERRIS: Environmental impairment liability  
6 policy versus comprehensive general liability policy.

7 At any rate, it's the CGL policy that we read about  
8 every day in the paper in terms of responsible parties or  
9 potentially responsible parties suing their insurers for  
10 coverage of risks.

11 The CGL policy, if it was intended to cover any type  
12 of pollution risk, was intended to cover sudden and  
13 accidental risk off site. In most instances in terms of this  
14 litigation insurers are being sued to provide coverage for  
15 long-term gradual pollution risks both on site and off site,  
16 thus the contention in the courts.

17 Third factor -- oh, no. Let's stay on the second  
18 factor for a minute. In terms of judicial interpretation of  
19 the CGL, there's a major problem presented by the fact that  
20 the courts read the language to mean other than the  
21 definition insurers would apply to the CGL. In other words,  
22 the courts are holding insurance companies liable to pay for  
23 long-term pollution under these policies.

24 Policies are being read in ways that they were not  
25 written. For example, a recent case in New Jersey being the

1 Liberty Mutual Fire Insurance, the policy recognized that the  
2 policy was not intended to cover long-term gradual pollution,  
3 but determined that on the basis of public policy, it would  
4 override the insurance policy and find coverage for the  
5 plaintiff.

6 Insurance companies have no confidence that their  
7 policies will stand the test of time and thus have  
8 trepidation about providing pollution coverage under any type  
9 of policy.

10 In another case, a Colorado case involving a  
11 company, Hecla Mining, a court construed that leaching -- or  
12 leachate that occurred from a mining operation since the  
13 1800's was sudden and accidental. Sudden and accidental.  
14 It's a long time for something to be sudden. Once again,  
15 insurers have no confidence that the language of their  
16 policies are going to stand the test of time.

17 The third factor relates to toxic tort litigation.  
18 I personally find great parallel between what's happening in  
19 our tort liability system on the toxic side of things with  
20 the not in my backyard syndrome. Thou shalt not site it in  
21 my backyard; and if you do, I'm going to sue your socks off.

22 The courts are holding -- are rendering judgments in  
23 favor of plaintiffs based on varying standards of proof, less  
24 stringent standards of proof than we've been historically  
25 accustomed to in our courts. For example, plaintiffs are

1 receiving awards for what is defined as damage, emotional  
2 distress, fear of injury, enhanced risk of disease. Now,  
3 these indeed may be damages, but they're not damages as  
4 defined under an insurance policy. Nonetheless, insurance  
5 companies are being required to pay these costs.

6 I've been talking a great deal about solid waste and  
7 I think it's probably time to draw some parallel between  
8 what's happening in terms of -- or I have been talking a  
9 great deal about hazardous waste and I think it's time to  
10 draw some parallel to solid waste.

11 The federal statute which governs waste and waste  
12 management operations, as you know, is the Resource  
13 Conservation and Recovery Act. When Congress first passed  
14 the statute, there wasn't a great deal known about either  
15 hazardous waste or solid waste, but I think the Congress  
16 determined that the hazardous waste problem was more  
17 immediately critical and placed a great deal of emphasis and  
18 gave a lot of direction to EPA about what to do on solid  
19 waste -- I mean, hazardous waste.

20 Solid waste was fairly much left to the states. EPA  
21 promulgated some guidelines about how to operate solid waste  
22 landfills and so forth and the Congress directed EPA to do a  
23 number of studies. And it's only lately that the results of  
24 these studies are becoming apparent. Very recently EPA's  
25 issued probably three or four studies about the status of

1 solid waste management in the United States and is beginning  
2 to identify what some of the most critical problems are.

3 As members of the California Solid Waste Management  
4 Board, you're all aware that there may be some significant  
5 parallels between the problems we're experiencing with  
6 hazardous waste and those that we're experiencing with solid  
7 waste. In other words, a solid waste landfill may very well  
8 end up being a hazardous waste landfill. In some instances  
9 that has to do with operations, the integrity of operations,  
10 the qualifications of the owner/operator of the landfill or  
11 the site. But in some measure it has a great deal to do with  
12 technology and whether technology has improved to the extent  
13 that we can guarantee the environmental integrity of these  
14 types of operations. There's a great deal of study yet to be  
15 done.

16 In the meantime, however, the problems of financial  
17 assurance and guarantees that third parties will be  
18 indemnified if they face problems remains a major issue in  
19 the context of what we're going to do with solid waste.

20 Insurers view solid waste as likely to be as large a  
21 problem in the long run as hazardous waste, particularly  
22 because of the fact that you may find through the commingling  
23 of substances that solid waste in that landfill may  
24 ultimately become a hazardous waste problem. That has a  
25 great deal to do, obviously, with what's going into the

1 landfill. That's still a problem that's under study.

2 At any rate, insurers are not sanguined or ambitious  
3 about insuring solid waste landfills on the same basis that  
4 they're reluctant to offer pollution insurance for hazardous  
5 waste related operations.

6 One problem that remains whether or not insurers are  
7 energetic about providing this kind of coverage is the  
8 question of on-site pollution versus off-site pollution.  
9 Insurers that are in the business of providing pollution  
10 coverage do not provide on-site coverage. And that's where  
11 the first problems arise. Off-site coverage is routinely  
12 offered, if at all. That is, those insurers that are writing  
13 it are writing off-site coverage.

14 But because of what insurers call the moral hazard,  
15 policies do not normally provide for on-site pollution  
16 exposures. That is to encourage the owner/operator to  
17 maintain the integrity of his operations and to assume any  
18 risks that will occur on his property as a business expense.

19 So whether or not an insurer is offering this kind  
20 of coverage, you're not going to find it -- you're not going  
21 to find on-site pollution coverage. It will be off-site, it  
22 will be corrective action, it will be bodily injury, third  
23 party bodily injury, or property damage.

24 To my knowledge presently there is one company  
25 that's actively offering this kind of coverage. It's a

1 company called AIG out of New York. PLIA, Pollution  
2 Liability Insurance Association, is an association of several  
3 companies that is beginning to become active again in terms  
4 of offering this type of coverage, and they're located in  
5 Illinois.

6 Another company called ECS, which just came to my  
7 knowledge yesterday -- and I don't know where they're  
8 located. But they're actively seeking to solicit policy  
9 holders on the hazardous waste side and it's likely that  
10 they're also looking at solid waste pollution exposures as  
11 well.

12 AIG offers a wide range of coverage. I think I  
13 sound like a commercial for AIG. They're not an AIA member.  
14 But in view of the fact that there is such a limited market,  
15 I think it's fairly healthy to know that there is a company  
16 out there trying to write this type of coverage.

17 That may end my monologue. I'd be happy to answer  
18 any questions you might have.

19 BOARD MEMBER BREMBERG: Mr. Chairman.

20 CHAIRMAN ROODZANT: Mrs. Bremberg.

21 BOARD MEMBER BREMBERG: I would like to go back to  
22 something that I hope I misunderstood you when you in essence  
23 indicated that, depending upon the level of integrity or  
24 competence of landfill operators, that household waste --  
25 those landfills could become hazardous. I would like to

5  
1 suggest that the most ethical, moral and competent landfill  
2 operator in the world cannot control what the homeowner puts  
3 into their trash; that the habits of the clients of the  
4 landfill, if you will, the clients of the City of Glendale,  
5 for instance, that I as the representative of the League of  
6 Cities -- we're in the government end of trash disposal. The  
7 packaging, the recent legislation and initiative action  
8 throughout this state where the language reads "detectable  
9 levels", totally undefinable; but, nevertheless, enforceable  
10 if someone chooses to take action against any of us.

11 The manufacturing, the product labeling, the type  
12 and the volume and the tonnage of trash that's generated each  
13 day, I repeat at the landfill is not where the blame should  
14 be. Whether it's a matter of educating the public, changing  
15 their habits, the mind set of NIMBY, all of those things have  
16 a great deal to do with it. And whether or not you're  
17 willing to insure, the organization you represent and other  
18 companies, really I would hope that you would stop indicating  
19 that it is the integrity or competence of the people dealing  
20 with the problem and go the next step beyond and say the  
21 attitudes, the perceptions, the habits of the clients, the  
22 generator from one home to another, from one apartment to  
23 another, from a small business to a gigantic business is  
24 where the problem truly lies.

25 I don't believe that an insurance company or anyone

1 else at a regulatory level could expect the sanitation  
2 workers or the landfill operators to go through each load of  
3 trash to find out if there is something in it that has a  
4 detectable level of what some politician felt was or might be  
5 or could be considered hazardous or a chemical or a product  
6 that would cause an existing landfill to become hazardous.

7 MS. FERRIS: I would view my statement as an adjunct  
8 to yours, which is a far more comprehensive statement of the  
9 problem. I certainly didn't mean to lie blame on all  
10 operators. As I mentioned, there are large technological  
11 considerations that are operative here.

12 It's simply not efficient to blame any single party  
13 for the problem. In terms of technology, we're talking about  
14 double liners and leachate collection systems and all the  
15 technological aspects that come into play in terms of, as I  
16 mentioned, the integrity of the facility.

17 BOARD MEMBER BREMBERG: Yes, but you also brought in  
18 operators and owners. And that's where I got a little  
19 uptight. Because all the technology in the world, as good as  
20 it is or as good as it might become, will have not one whit  
21 of effect on the attitude and the habits of the person  
22 putting the trash in the bag to be removed.

23 MS. FERRIS: I wouldn't disagree.

24 BOARD MEMBER BREMBERG: They have the curbside  
25 mentality. We put it at the curbside, it goes away. Well,

1 we're dealing with the away business and it goes right back  
2 to from my hand to my garbage and on up.

3 BOARD MEMBER BEAUTROW: Mr. Chairman.

4 VICE CHAIRMAN MOSCONE: Mr. Beautrow.

5 BOARD MEMBER BEAUTROW: You made an excellent  
6 presentation in giving us a perspective of what the problem  
7 is for insurance. But I'd like for you to comment a little  
8 on something that we've heard about. That's offshore  
9 companies providing this type of insurance. Plus maybe you'd  
10 like to comment on something about being self-insured, which  
11 some of the companies -- which seems to be maybe only the  
12 alternative. I mean, you've indicated that for various  
13 reasons you cannot be insured. So what are some options?

14 MS. FERRIS: We turn to the alternatives, of which  
15 there are several. But whether they're viable or not is the  
16 major question at this point. You mentioned offshore  
17 companies. Captives, risk retention groups, and  
18 self-insurance are presently viewed as alternatives to the  
19 traditional insurance market.

20 I'd like to start with risk retention groups. A  
21 number have attempted to get off the ground within the past  
22 several years. But the primary difficulty seems to be in the  
23 area of capitalization. Risk retention groups, I'd say there  
24 were probably -- Alexander and Alexander has attempted to  
25 start one, for example. Epic. National Solid Waste

1 Management Association tried to get one off the ground. It  
2 was called WILL. And I don't know what the acronym stands  
3 for at this point.

4 In the underground storage tank area, for example,  
5 several risk retention groups have attempted to get off the  
6 ground. But it really seems to be the capitalization is the  
7 problem.

8 In the context of risk retention groups, I don't  
9 know whether many of you actually know what a risk retention  
10 group is. A group of companies that are in need of insurance  
11 will band together and capitalize the risk retention group at  
12 levels necessary to create adequate reserves and then they  
13 will sell insurance to those that need like coverage. Under  
14 the federal law, it's like coverage. It cannot be dissimilar  
15 types of coverage.

16 One of the problems in terms of capitalizing the  
17 group is in terms of initial capital contributions. There  
18 may be a real disparity among the financial worth of each  
19 company, and it becomes a problem to define how much money  
20 each company shall contribute to the capitalization effort.  
21 In some instances companies will view that they don't have  
22 enough money to really try to attempt to capitalize a risk  
23 retention group. So we haven't seen a great deal of them get  
24 off the ground and become successful.

25 The same problem relates to captives. Although

1 captives don't sell insurance, according to my knowledge,  
2 captives provide insurance to those within the captive group.  
3 Once again, similar insurance.

4 So there's not a lot of experience that I can relate  
5 to you with regards to captives or risk retention groups. We  
6 just have to bide our time and wait and see whether any of  
7 them become successful. It's my understanding that  
8 Petromark, which is an underground storage tank risk  
9 retention group, has actually just gotten off the ground.  
10 And if my knowledge is correct, there were many, many, many  
11 years of effort put into getting Petromark off the ground and  
12 it's only been recently that it's become a viable entity.

13 In terms of self-insurance, that becomes a  
14 difficulty for smaller entities. I meet regularly with lots  
15 and lots of chemical companies about their problems in terms  
16 of getting insurance. The major companies have the financial  
17 wherewithal to self-insure. But a smaller company has  
18 difficulty setting aside that capital. It interferes with  
19 working capital to have to set aside monies that would be  
20 tantamount to functional self-insurance. So for the smaller  
21 groups that's a little bit of a problem.

22 We've been studying an alternative in the  
23 underground storage tank area that was sanctioned by Congress  
24 in the 1986 superfund amendments. That idea is the concept  
25 of a state fund which would provide financial assurance to

1 owners and operators of underground storage tanks. As I  
2 said, we're studying this as an interim or long-term solution  
3 to the problem of underground storage tanks and beginning to  
4 consider whether or not it would be viable in other pollution  
5 contexts as well.

6 There are other alternatives that are arrayed in  
7 federal financial responsibility regulations -- letters of  
8 credit, trust funds, surety. For a number of reasons each of  
9 these are problematic in terms of their use as a mechanism.  
10 And the largest problem that runs through all of the  
11 mechanisms is the capital set-asides that are required in  
12 order to utilize those mechanisms.

13 In terms of the solution, I don't know what the  
14 solution is. But the state fund seems like a pretty good  
15 step in the right direction.

16 Some states in other pollution contexts -- for  
17 example, asbestos on the municipal level, the states are  
18 self-insuring, or municipalities are self-insuring against  
19 asbestos risk. For example, asbestos in school removal costs  
20 and so forth.

21 So there's a lot of effort being made to find other  
22 ways to solve the problem, it's just a matter of time in  
23 terms of determining whether any of these methods are going  
24 to be successful.

25 BOARD MEMBER BEAUTROW: The last one was offshore.

1 MS. FERRIS: Offshores. It's really sort of the  
2 same problem. I understand that there are a couple of  
3 offshores that are active in the asbestos area that are doing  
4 really fairly well. It's not known to me whether or not  
5 they've been hit with some of these massive asbestos  
6 lawsuits, which may have a great deal to do with their future  
7 ambition in the area. But it would certainly be an  
8 alternative that should be examined.

9 BOARD MEMBER BEAUTROW: Thank you.

10 CHAIRMAN ROODZANT: Any other questions or comments?

11 BOARD MEMBER GALLAGHER: Mr. Chairman.

12 CHAIRMAN ROODZANT: Mr. Gallagher.

13 BOARD MEMBER GALLAGHER: I'd just like to offer a  
14 word of praise for what you've done. You've certainly given  
15 us a lot to think about. I learned more this morning, I  
16 think, than I ever knew about insurance. About the only  
17 thing I know about it is I curse like hell when I have to pay  
18 the homeowners and my automobile insurance premiums.

19 MS. FERRIS: I wrecked my car the other night, so I  
20 know what you're saying.

21 BOARD MEMBER GALLAGHER: But I do hope that we'll  
22 hear more about this state fund. I was going to ask you a  
23 specific question about that, whether or not any state to  
24 your knowledge had specifically addressed the hazardous and  
25 non-hazardous solid waste issue by sort of a superfund of

1 their own, an insurance pool, or something like that.

2 MS. FERRIS: Well, most of the activity that's going  
3 on in the states now relates to underground storage tanks. A  
4 number of states are really seriously contemplating  
5 establishing the state fund concept. Iowa, for example, has  
6 got a bill which we helped develop. Wisconsin's got a bill  
7 that we helped develop. For some reason the states aren't  
8 coming to mind.

9 But there's probably a good 10 or 15 states that are  
10 really actively looking at legislation now. It seems like a  
11 very viable way to go in terms of responding to the need of  
12 the regulated community to obtain financial assurance. Also,  
13 the way the state funds are developing, it also leaves a  
14 window of opportunity for any insurers that may want to enter  
15 the market. So it doesn't foreclose anyone's option in terms  
16 of this. And I'd be happy to talk with you all about that at  
17 length, because it's a fairly complex approach to resolving  
18 the problem.

19 As I said, we're looking at it now to see whether it  
20 can be extended to other pollution contexts. It would seem  
21 from a bird's eye view that it would be easy to extend it.

22 No, to answer your question, I'm not aware of any  
23 states that have begun to look at it in terms of solid and  
24 hazardous waste. But it's likely to happen, particularly  
25 because the next wave of EPA regulations on financial

1 responsibility will relate to solid waste and will also  
2 relate to hazardous waste in underground storage tanks. So  
3 by nature of the fact that these are upcoming subjects on the  
4 federal agenda, I imagine that we're all going to have to  
5 expand our horizons and start to look at alternatives.

6 That's not to say that there aren't going to be some  
7 insurers that are going to enter this market. The insurance  
8 industry is not a monolith. And contrary to the opinion of  
9 several attorneys general, the industry is extremely  
10 competitive. And there may be some more companies that seek  
11 to actively enter this market, but the overriding problem is  
12 the liability standard and the fact that the liability  
13 standard can be imposed whether or not it's a hazardous waste  
14 landfill per se. If it's a hazardous waste situation, you  
15 may see application of this retroactive strict, joint and  
16 several liability standard. And that's really probably the  
17 pre-eminent problem. Nobody can insure a pre-existing  
18 condition. That's not risk.

19 BOARD MEMBER GALLAGHER: Thank you very much. It  
20 was very enlightening. You may very well be taken up on your  
21 offer to discuss it in general.

22 MS. FERRIS: We're here to help you.

23 BOARD MEMBER GALLAGHER: We have the responsibility  
24 of writing the rules and regulations to implement the law.  
25 The law's here. We've got to implement it. Thank you very

1 much.

2 MS. FERRIS: Thank you.

3 CHAIRMAN ROODZANT: Any other questions?

4 BOARD MEMBER VARNER: Mr. Chairman.

5 CHAIRMAN ROODZANT: Mr. Varner.

6 BOARD MEMBER VARNER: I likewise have been very  
7 interested in your presentation. It's been very  
8 comprehensive.

9 Just to go back to Mrs. Bremberg's question, I  
10 thought that you had answered a little bit different and  
11 maybe I don't understand. But isn't the answer to that and  
12 her concerns about holding owner/operators of a landfill  
13 liable goes back to the same thing of the judicial  
14 misinterpretation of who is responsible? So, therefore, it's  
15 court decisions that the insurance companies are afraid of in  
16 this respect because of the history of court decisions and  
17 how they interpret them and who they hold responsible.

18 MS. FERRIS: Well, as anyone in the room who is here  
19 on behalf of the manufacturing industry -- the insurance  
20 industry and the manufacturing industry sort of walk in the  
21 same shoes on this in terms of the tort liability system.  
22 Very historically in this country it's been the deep pocket  
23 that's had to pay, regardless of whether or not the deep  
24 pocket is liable. I think until we see some ultimate shift  
25 in that view, there's going to be a great deal of contention

1 about who's liable in the courts.

2 I think what's really fairly difficult about it is  
3 that this sort of mentality pits those who would be - who are  
4 in similar shoes against each other in terms of who  
5 ultimately pays, and is the deep pocket reaching into the  
6 other deep pocket. Until we see some resolution of that,  
7 it's going to continue to be a problem.

8 BOARD MEMBER VARNER: So, obviously, where the  
9 homeowners would be the ones who are the generators of this  
10 waste into a solid waste facility, it would be extremely  
11 difficult to go back and sue all the homeowners individually.  
12 So they don't even attempt to do so. Isn't that really the  
13 answer to that one?

14 MS. FERRIS: Well, it seems as though that there are  
15 a couple of problems here; the ones which you just mentioned,  
16 but also the problem of the municipalities that are in the  
17 business of having to handle the householder's hazardous and  
18 solid waste. Do we hold the households liable as generators?  
19 Do we hold the municipalities liable as owner/operators?

20 This is the conundrum that's presented now and  
21 probably in large measure -- and this is very much my  
22 personal opinion -- it's why Congress shifted the burden of  
23 managing solid waste for such a long period of time to the  
24 states. Congressional members wouldn't agree with me and  
25 would say, no, we did that because we didn't have enough

1 knowledge about the problem and we needed time to study the  
2 problem. But I really think -- and, once again, it's my  
3 personal opinion -- I think the real difficulty in the  
4 context of solid waste is that the two groups that could be  
5 held to blame, if any blame is to lay, are for public policy  
6 reasons not those to lay the blame upon.

7 BOARD MEMBER VARNER: Okay. Thank you.

8 CHAIRMAN ROODZANT: Is there any other questions or  
9 comments?

10 Thank you very much, Ms. Ferris.

11 MS. FERRIS: Thank you.

12 CHAIRMAN ROODZANT: Mr. Barry Shannoff, representing  
13 GRCDA.

14 MR. SHANNOFF: Thank you. Good morning, Mr.  
15 Chairman, members of the Board. My name is Barry Shannoff.  
16 I'm counsel for the Governmental Refuse Collection and  
17 Disposal Association. GRCDA is a nonprofit public  
18 educational association that provides training and  
19 information to solid waste managers and professionals largely  
20 in the public sector; town officials, city officials, public  
21 agency officials. Substate, I would call it. As a matter of  
22 fact, in California we have three chapters that go back  
23 perhaps 25 years. Our membership includes municipal and city  
24 officials throughout the United States and Canada for that  
25 matter. As a matter of fact, there's some talk about an

1 organization in Mexico wanting to start up.

2 But, basically, our membership is concerned about  
3 the day-to-day matters of the handling of solid waste on the  
4 municipal side. Among those matters that concern us, of  
5 course, that concern you today, is the financial  
6 responsibility associated with the handling of those risks.

7 To get it out as an assumption or as a given, a  
8 principle, GRCDA as an association certainly favors financial  
9 responsibility. And I don't know too many municipal  
10 officials speaking in their own right who don't favor  
11 financial responsibility for no better reason perhaps than  
12 the risk associated with the public management and operation  
13 of a solid waste landfill is probably no different than the  
14 risk associated with the private management of that same  
15 landfill.

16 At the same time I need to point out that municipal  
17 officials, municipal governments who are in the business of  
18 providing collection and disposal service of hazardous waste  
19 for the most part want to stay in that business.

20 BOARD MEMBER BREMBERG: Solid waste, not hazardous.

21 MR. SHANNOFF: I'm sorry. If I said hazardous  
22 waste, strike it. I meant solid waste. There are very, very  
23 few public agencies who have ventured into the area of  
24 hazardous waste, and some of them have done so much to their  
25 regret.

1           So let me go back and stress that municipal  
2 governments want to stay in the business of providing  
3 ordinary, garden variety, if you will, solid waste collection  
4 and disposal service, because they think it's part of their  
5 public obligation. In fact, state legislatures around the  
6 country, not to mention right here in California, have said  
7 to them that it is indeed the public responsibility of the  
8 town or the city to provide that kind of service.

9           So the question then becomes essentially an issue of  
10 how municipalities, towns, and cities will demonstrate their  
11 ability to provide that coverage. That's the point that I  
12 would like to address this morning.

13           We heard from Ms. Ferris before about the  
14 availability, or someone would conclude nonavailability, of  
15 insurance coverage for these types of matters. Certainly,  
16 the questions of the availability of insurance coverage  
17 extend both to the questions of the pricing of that coverage,  
18 as well as the availability of that coverage and the extent  
19 of the coverage that might be available.

20           Not to dwell on the point, but to give you a quick  
21 example: Even if there were a company out there prepared to  
22 write liability insurance even in the public or in the  
23 private sector, it could very well be -- and this is not much  
24 in the way of speculation -- it could very well be that they  
25 would say, we will write you an insurance policy, but you

1 will self-insure for the first 5 or 10 million dollars, and  
2 then our policy will kick in and cover the overage and we  
3 will cover certain defined risks. For example, if you have a  
4 present landfill operation, we're not going to touch that.  
5 As Ms. Ferris has already pointed out, that may be an  
6 existing risk, a defined risk, a knowable risk. And  
7 insurance companies don't want to touch that kind of risk.  
8 But if one were to establish a new landfill perhaps, if the  
9 circumstances were right, that insurance company might step  
10 in and want to write a policy.

11 But once you then consider how much would have to be  
12 retained by the insured, how much would have to be  
13 self-insured and what the coverage then would be available  
14 for the overage and how much that coverage would cost, we may  
15 then discover that insurance is unrealistic, whether it be  
16 the private or the public sector.

17 In the area of risk retention, it was an interesting  
18 point that she did bring out. And I heard some interesting  
19 follow-up questions from the Board on that. The National  
20 Solid Waste Management Association spent approximately --  
21 they represent for the most part the private sector of the  
22 solid waste collection and disposal business. NSWMA spent  
23 approximately two years looking at the question of insuring  
24 or setting up an entity to insure the risks of their business  
25 on the environmental side and eventually gave up.

1           They do provide insurance through an offshore  
2 company. When I say an offshore company, I simply mean a  
3 company that was set up in Bermuda. Because once it  
4 qualifies in Bermuda, it can write policies in the United  
5 States without having to deal with the individual insurance  
6 commissioners here and there.

7           The program that they set up through their offshore  
8 Bermuda firm simply covers automobile/truck liability,  
9 workman's comp, and the more ordinary mundane types of  
10 coverage; but not the liability of a hauler for environmental  
11 problems or of someone who manages a landfill for pollution  
12 problems associated with, let's say, groundwater  
13 contamination flowing from that landfill. That kind of  
14 coverage they can't provide.

15           I will tell you this: That GRCDA is at this time  
16 taking a look at the feasibility of establishing a risk  
17 retention group that is specifically focused on landfill  
18 environmental liabilities for municipal governments. This,  
19 too, will take some study and some time. We'd like to see if  
20 it's feasible. There are some very important insurance  
21 questions that we need to answer about risk assessment before  
22 we get to the question of how the entity itself might have to  
23 be structured.

24           But the risk retention group alternative is simply a  
25 way of municipalities -- at least our constituency -- who

1 have thrown up their hands at the prospects of finding  
2 insurance or even finding it feasible to self-insure to cope  
3 with the problem.

4 I find it interesting in the regulations that you  
5 have proposed that you have provided a particular  
6 alternative. And I'll cite it to 18243 (a)(3). It shows up  
7 at page V 3.3-4, if I have that page correct. I think so.

8 MR. CONHEIM: That's page 475 of your Board packet.

9 MR. SHANNOFF: Oh, I'm sorry.

10 MR. CONHEIM: 476.

11 MR. SHANNOFF: I think you've really come to grasp  
12 the issue that I want to address this morning in that  
13 particular (a)(3) provision where you do provide that an  
14 owner or operator can demonstrate the liability coverage, the  
15 financial responsibility that you're looking for, by a  
16 mechanism outside of the two mechanisms that were previously  
17 offered on the preceding page.

18 I think that's a good, sensible start and a good  
19 recognition of the fact that at least on the municipal side  
20 the financial people don't deal in terms of net worths and  
21 liabilities and a lot of the terminology associated with  
22 private sector financial accounting.

23 For that reason, the demonstrations under the (a)(1)  
24 and the (a)(2) alternatives would be inapplicable to  
25 municipalities simply because of the way their financial

1 systems are set up. But I like this approach. I think this  
2 approach has a lot of promise and I'd like to talk about the  
3 promise that that might have by posing to you -- making a  
4 proposal to you.

5 I don't know -- I can't stand here and tell you  
6 today what kind of mechanism precisely would work in the case  
7 of municipalities; be they town, cities, public agencies,  
8 whatever their particular function, whatever their particular  
9 organization. I don't know, because I don't think even the  
10 towns and the cities quite know themselves. They do know, as  
11 I stated at the outset, that they're prepared to meet their  
12 financial responsibility requirements and would like to do so  
13 in ways that are meaningful to them.

14 So I come to the suggestion that if you want to call  
15 it a study group, an advisory group, a working group of  
16 both -- of municipal officials who deal on a daily basis with  
17 solid waste, the finance officers of those towns, or for that  
18 matter any other towns, and perhaps even risk managers who  
19 deal with the risks associated with the landfill operations  
20 come together and be given an opportunity to see if they can  
21 develop a mechanism that might very well translate into  
22 either an operating principle or perhaps even a definitive  
23 rule; but a rule that would make sense and a rule that would  
24 be workable in the municipal context.

25 It's an idea that the California members of our

1 organization, who I have recently polled, unanimously  
2 supported; again acknowledging the fact that they don't have  
3 answers to send me with, to arm me with to give you today.  
4 They have a lot more questions than they do answers, as I'm  
5 sure you do about the whole municipal side. But they'd like  
6 an opportunity to sit down with the financial people, with  
7 the people who have to make the budgets balance in the towns  
8 and cities around this state, not to mention the risk  
9 managers who have to size up what the costs might be in  
10 meeting the risks associated, let's say, with landfills, and  
11 to report to you either periodically and clearly here with  
12 staff liaison and let you know in a time certain what, if  
13 any, answers they can come up with.

14 That's the suggestion I would leave you with today.  
15 I think you're on the right track by the alternative  
16 mechanism, the catch-all mechanism for people or for entities  
17 or institutions that can't comply another way. I think  
18 municipalities are a prime example of the kind of entity that  
19 would and should qualify for that separate consideration.

20 We're not looking and we don't desire for an  
21 open-ended requirement. In other words, show us what you've  
22 got, show the Local Enforcement Agency what you've got and  
23 they'll sit there and they'll scratch their head and decide  
24 whether it makes sense or not.

25 We prefer some definition. It needn't be locked in

1 and certain, but some working rules and concepts. And we'd  
2 like to help develop with you for your consideration those  
3 working principles and concepts to make it work for us on the  
4 municipal side.

5 BOARD MEMBER BREMBERG: Mr. Chairman.

6 CHAIRMAN ROODZANT: Thank you, Mr. Shannoff.

7 Mrs. Bremberg.

8 BOARD MEMBER BREMBERG: I find that particularly in  
9 the state of California, with 445 or 46 cities, that you have  
10 as many municipal types of waste handling as you do in any  
11 industry throughout the state; because you have contract  
12 cities, you have general law cities, and you have charter  
13 cities, you have full service cities, you have partially full  
14 service cities, you have no service cities that are really in  
15 my opinion not cities, they're incorporated neighborhoods.

16 But when a city accepts the responsibility of waste  
17 handling, which is clearly defined it is the city's  
18 responsibility, but they contract to a private hauler, you  
19 have split your problem and doubled your problem in the line  
20 of financial responsibility. Because it can come back on the  
21 municipality that they hired the company that violated the  
22 whatever, the whatever, the whatever.

23 I think that in your suggestion, which is a good  
24 one, that all of those considerations should be involved.  
25 Because a municipality does not have one direction or one

1 type of action, depending upon the type of municipality. And  
2 there are cities that provide every other service but a  
3 municipal sanitation department. They will provide police,  
4 fire, libraries, parks, whatever; but they will contract with  
5 a firm that they feel is reliable. This brings in the  
6 competitive bidding and the shifting of responsibility,  
7 financial worth and so forth. I think all of those things  
8 should come into it and not just say a blanket municipal  
9 approach, because there isn't one.

10 MR. SHANNOFF: I fully agree. You're right. It's  
11 like snowflakes, you go to one location and it's just not  
12 quite like the same in another location. That's exactly  
13 right. I would assume that those would come out.

14 You're absolutely right, no municipality any more  
15 than any other person can escape liability by supposedly  
16 contracting it away. The greatest fallacy that I see in the  
17 letters and the calls and the questions that I get on a  
18 national basis on these issues are, well, if we contracted  
19 away, can we insulate ourselves? Well, to some extent, yes,  
20 and to a great extent, no. In the end there will be  
21 liability for which you have to have financial responsibility  
22 one way or another. The plaintiffs will get us sooner or  
23 later one way or another. So we have to be prepared.

24 BOARD MEMBER BREMBERG: Thank you.

25 CHAIRMAN ROODZANT: Any other comments or questions?

1 Thank you, Mr. Shannoff.

2 MR. SHANNOFF: Thank you.

3 CHAIRMAN ROODZANT: Eugene Herson from NorCal.

4 MR. HERSON: Board members, it's a real pleasure to  
5 be here. The good news is that the Giants won last night six  
6 to one. The bad news is I wrote my presentation while I was  
7 watching the balls and strikes. So if I strike out, you let  
8 me know.

9 My name is Gene Herson and I'm representing NorCal  
10 Solid Waste Systems, Inc. We're a private refuse management  
11 firm principally serving Northern California and the City and  
12 County of San Francisco.

13 I'm not an attorney, I'm an engineer who basically  
14 spent the last 25 years in the garbage industry running and  
15 operating landfills, transfer stations, and municipal  
16 services. That's my background.

17 This is a difficult issue, it's an important issue.  
18 I've taken the time out to come up here and to kind of  
19 express some views as I see it. There's really no answers  
20 that I can come up with and offer you for instant solutions.  
21 I think in general you'll find that all of us agree on this  
22 subject, from the insurance industry, the public companies,  
23 public services, cities, as well as the private. There has  
24 to be some corporate and public responsibility. We all  
25 understand there are liabilities emanating from these

1 programs and we all understand the need for serving the  
2 community and protecting them and we all view ourselves as  
3 public servants in one way or another.

4 So it's a difficult issue. There's no clear cut  
5 answers, but I am very concerned over the existing regs and  
6 maybe perhaps the thrust of them. So in reading them three  
7 or four times, I've kind of taken an approach today as not to  
8 offer any instant solutions, but to just ask a series of  
9 questions and to try to get some food and some thought going  
10 into how different people react to the regs as they stand and  
11 maybe some alternates in the end.

12 First with regard to the coverage levels.

13 Essentially, as I see it -- and correct me if I'm wrong --  
14 you've essentially taken a model out of the hazardous waste  
15 laws out of Title 22 and patterned them to deal with  
16 municipal solid waste. I don't really believe we're dealing  
17 with hazardous waste. We do have some problems with  
18 infringement on the municipal waste stream from households  
19 and other commercial sources. But we do have a difference in  
20 this state between municipal solid waste and hazardous waste  
21 and I'm not sure as a model for financial responsibility that  
22 we should pattern ours after theirs, and we should develop  
23 one unique to municipal solid waste. Otherwise essentially  
24 we're getting to the point we're going to reclassify all the  
25 municipal waste into hazardous waste. I'm concerned about

1 that.

2 The second point is I think in order -- before we  
3 talk about specific regulations and how to implement public  
4 policies, I'd like to ask how many landfills in the state of  
5 California could comply with these regulations and what do we  
6 do with a percentage of landfills -- and it may be large, it  
7 may be small -- that can't comply, either public or private?  
8 Do we close them down? What's the impact on solid waste  
9 within the state if we do that?

10 Third is some questions over definitions. We always  
11 spend a lot of time with regulations and definitions, because  
12 ultimately that's where we are three or four years down the  
13 road. So the question is what are the definitions of a  
14 disposal site under these proposed regs? Do they include  
15 municipal sites? I assume they do for equality. It wasn't  
16 clear. Do they include construction and demolition sites?  
17 Do they include mono sites under Subchapter 15? Do they  
18 involve programs where we have the utilization of certain  
19 agricultural wastes throughout this state? They've got a  
20 disposal component. Do they include sludge amendment  
21 programs? We're arguing now within the state is a sludge  
22 amendment program an agricultural use or is it a disposal  
23 use. If it's a disposal use, does this fall under the regs?  
24 Does it even include solid waste processing facilities? I'm  
25 not sure in reading it and I'm not sure what impact it would

1 have in how we define these definitions.

2 So I think in the end the regs as they stand would  
3 have a profound impact on the industry, private and public,  
4 particularly in the rural areas and for the smaller sites.  
5 So that's my first series of questions.

6 My next series of questions derive over the issue of  
7 net working capital and net tangible, net worth. Those are  
8 accounting definitions, those are financial definitions.  
9 Most of us in industry feel a little uncomfortable with it.  
10 Most of the private companies are going to have trouble  
11 dealing with those types of definitions and most of the LEAs  
12 and the regulators are going to have trouble dealing with it.

13 Those type of definitions really don't apply, as was  
14 just indicated, to the public sector. I think if we're going  
15 to have equality, we're going to have to have some  
16 definitions and financial bases that more relate to a public  
17 entity's accounting in addition to private entities.

18 I think the whole policy of going after those type  
19 of definitions I think ultimately lead down to the point --  
20 and it's just a question -- that we're going to go into a  
21 deep pocket perspective on the financial test for municipal  
22 solid waste sites that are servicing a private or public. I  
23 think there's only two types of entities that ultimately will  
24 be able to survive in this state. One is a deep pocket  
25 public agency. And a lot of public agencies no longer have

1 deep pockets because of Prop 13. And second are very large  
2 publically-held companies, which may or may not have the huge  
3 net worths that will survive in five or ten years down the  
4 road.

5 So I guess the question itself is do we want to  
6 create a public policy that in essence limits operating  
7 landfills to those two sources? That's a question.

8 The issue of the LEA roles in doing these issues.  
9 As you know most of the LEAs are county health sanitarians.  
10 I think they've done a good job in enforcing state standards.  
11 But your regulations talk about a reasonable belief under  
12 Section 8244 with regard to these financial tests. I think  
13 most of the LEAs are going to feel uncomfortable -- not  
14 speaking for them, but raising the question -- with regard to  
15 them defining on a reasonable basis that companies meet these  
16 type of test. Because I'm not sure they really have the  
17 expertise or really will know how to enforce them, although  
18 the flexibility, I think, is excellent.

19 So, again, what impact will these regulations have  
20 on landfills? I believe they're going to force a lot of  
21 premature closures.

22 The availability of insurance coverage is really a  
23 difficult one. You've heard a representative today from the  
24 insurance industry. From a user's perspective it's a  
25 quagmire. Even a company of our substantial net worth, it is

1 a very, very difficult issue. Long-term liability insurance,  
2 environmental impairment is almost impossible to come by  
3 nowadays. But even worse is the trend of not being able to  
4 get general insurance because of the issue -- and I'm not an  
5 expert in the insurance industry. But because of the issue  
6 of confusion over general liability versus environmental  
7 liability and the whole deep pocket concept of insurance  
8 companies, many insurance companies are now refusing to  
9 provide general liability insurance -- you know, the trip and  
10 fall out my front door in front of my office -- for our  
11 company, as well as others because of the potential that  
12 they've been drawn in to a deep pocket perspective in terms  
13 of the landfills and the broader issues.

14 So I think even general liability insurance is going  
15 to be difficult to have in the future under the current  
16 scenario.

17 What I'd like to suggest is there's so many  
18 questions that are raised by this proposed regs is some  
19 additional alternates that staff might consider in putting a  
20 program together. One is we might try to tie financial  
21 guarantees, which are also on the other side financial risk,  
22 of a project to the scope of that project. I'm not sure as a  
23 policy if we want to put the same onerous conditions on a  
24 50-ton-per-day landfill servicing a small community in Sierra  
25 County with a 500-ton-per-day landfill servicing a county

1 around here with a 5,000-ton-per-day landfill servicing a  
2 metropolitan area like Los Angeles or San Francisco. Do you  
3 want to impose the same exact conditions on all of those? Is  
4 there really the same exact level of risk emanating from all  
5 of those?

6 It's clear that every landfill is site specific and  
7 the risks emanating from that landfill are site specific.  
8 It's also clear that it's also related to the quantity of  
9 material. So I think that's one consideration staff might  
10 want to make.

11 The second is we might consider some threshold. Are  
12 you going to impose these regulations on sites that only have  
13 two, three, four or five years of life left? Where will they  
14 be able to amortize the funds or develop the sources of  
15 dollars to come up with the guarantees that are required? I  
16 think many of those sites will just close rather than deal  
17 with it. That's an impact you're going to have to consider.

18 Third is, as was discussed before, I'd like to see  
19 if we can somehow deal with alternate criteria. I don't have  
20 magic answers as to what an alternate criteria is, but  
21 clearly the thrust of the existing regs are either have an  
22 insurance policy or have a net worth.

23 I think there are other alternates that are  
24 available. There are ways of spreading the risk out among  
25 its users. Perhaps we really have to get down to the point

1 and consider the households of this state liable for their  
2 material and at risk for their material and spread that risk  
3 back to them like we do with hazardous waste in the  
4 generatorship role. Are they really the generator of that  
5 material and responsible for future liabilities? Is the  
6 operator, be it public or private, responsible?

7 There are also contractual guarantees; there is  
8 local trust funds, some of which have been set up. There's a  
9 lot of other ways to deal with the issue and I'm not sure how  
10 far this Board can go to enforce regulations evenly and still  
11 allow flexibility on a local and a county basis and a  
12 landfill site-by-site basis to implement the intent, which is  
13 to guarantee some type of financial assurance.

14 I have a concern over public disclosure of  
15 individual financial statements from individual companies  
16 operating specific sites versus those multi-national or large  
17 companies like ourselves that operate a number of sites. Are  
18 we going to have to disclose information as a whole or  
19 individually? And if they're disclosed individually, there's  
20 going to be some concern in the private sector.

21 Last is the issue of can the regs somehow deal with  
22 the integrity or the effectiveness of waste acceptance  
23 control programs. A lot of the companies and industries are  
24 now screening materials, are now doing a better job at  
25 controlling what's going into a landfill. Do they get a

1 bonus, do they get a credit, do they get any benefit from  
2 this; or do they share the exact same risks in terms of  
3 financial exposure as those companies or municipalities that  
4 don't do that?

5           It's a difficult issue. We opened, as you are  
6 probably aware, the state's first household hazardous waste  
7 collection facility. We now allow residents of San Francisco  
8 to bring their household hazardous waste to us free of charge  
9 where they're properly managed and disposed of. And it's a  
10 real interesting experience when you deal with homeowners who  
11 come to our facility and they pay a fee to throw out their  
12 trash. We sit there and inspect the trash and put it right  
13 back in their truck and say we can't accept that. They get  
14 furious. They say, well, you're in the garbage business.  
15 It's garbage, you take it. We say, no, state law doesn't  
16 allow us to take it.

17           So in essence this whole issue of retraining our  
18 customers, from companies, as well as users, particularly  
19 homeowners, is a really difficult one that may impinge upon  
20 the liability of the ultimate risk out of all these sites,  
21 including ours. There ought to be some mechanism and a lot  
22 of benefit to deal with those type of issues.

23           So, in summary, I'm not here to oppose or to  
24 support, I'm here to raise some questions from our concerns,  
25 from an operator's concern. I think I stated in the

13  
1 beginning that we need to have financial assurances and  
2 everybody in this industry knows they have liabilities, know  
3 they have a risk, and know that we have a standard and we  
4 know that standard is changing and we're going to have to be  
5 better than we've been in the past and in the next ten years  
6 be better than we are in the next five.

7 But I think the regs need some greater flexibility  
8 and I think they need to be developed for our industry and  
9 not be patterned after the hazardous waste industry. And  
10 that's the way I perceive it. Beyond that, I'll answer any  
11 questions anybody has, and I appreciate the opportunity to be  
12 here.

13 BOARD MEMBER BEAUTROW: Gene.

14 CHAIRMAN ROODZANT: Mr. Beautrow.

15 BOARD MEMBER BEAUTROW: As usual, you've given an  
16 excellent overview of this. Since we're just starting with  
17 this, we obviously don't have any answers either. You've  
18 really posed some interesting quandaries that we've got to  
19 resolve. I know that one issue that's been brought up is  
20 that there's a pool of money that is going to be established  
21 in this 2448 initially starting with -- is it \$100 million?  
22 I can't remember the amount.

23 EXECUTIVE OFFICER EOWAN: It's 20 million a year.

24 BOARD MEMBER BEAUTROW: To grow to 200 million?

25 EXECUTIVE OFFICER EOWAN: One hundred max.

1 BOARD MEMBER BEAUTROW: Oh, to grow to 100 max.

2 I guess the woman that started the discussion,  
3 Mrs. Ferris, indicated that some states are doing it. So  
4 there's a start. But I already know that some concern has  
5 been raised, well, that's all nice, but what about your  
6 company and what's the financial prospect of that.

7 So I think it's important that the state backdrop  
8 this. But all I can say is you've raised a lot of  
9 interesting points and we've got to go back and deal with  
10 this and I hope you understand we're just starting with this.

11 MR. HERSON: I understand. We're groping with the  
12 same thing. Just for your information, when we went through  
13 the last major contract in San Francisco and before as a  
14 public issue, this issue was raised over the impact of future  
15 regulations, of future legislation, of financial  
16 responsibility. We went out and as a company with the  
17 blessing of the City and County of San Francisco agreed to  
18 develop a \$15 million trust fund just for San Francisco just  
19 on its current disposal contract. We are funding at the rate  
20 of some \$700,000 a year a \$15 million trust fund that will be  
21 set aside to deal with these type of issues.

22 So it is being addressed on a local basis in many  
23 areas. Is \$15 million adequate for the entire City and  
24 County of San Francisco? I don't have the slightest idea.  
25 But clearly the intent there was to do what I think the

1 intent here is to do is to look at the perspective that  
2 sometime in the future there will be liabilities emanating  
3 out of -- no matter how our best efforts, no matter how  
4 effective we are, there is an exposure out there.

5 We felt a need to assess the current users of the  
6 system, as well as the future users of the system. I think  
7 that's a big issue you're going to face in implementing  
8 regulations where a landfill -- where one landfill has ten  
9 percent of its capacity utilized. Therefore, if you look at  
10 it as 90 percent of its capacity yet that they could assign a  
11 price tag to this, be it public or private, and accrue these  
12 dollars versus a landfill that has 90 percent of its capacity  
13 gone and therefore has only ten percent of its capacity left  
14 to develop the funding mechanisms to deal with these future  
15 liabilities. I mean, that's a real difficult question and  
16 that's another issue.

17 But there is an effort on some municipalities and  
18 some companies to deal locally with these issues and I think  
19 somehow your regulations should reflect that need, if  
20 possible.

21 BOARD MEMBER GALLAGHER: Mr. Chairman.

22 CHAIRMAN ROODZANT: Mr. Gallagher.

23 BOARD MEMBER GALLAGHER: I'd like to ask a question.  
24 I'm going to again expose my ignorance. I do it every time I  
25 open my mouth. But I need to have a little bit of

1 information to keep me occupied here on this issue.

2 In the insurance industry is the insurance industry  
3 required by law to retain a certain amount of the premiums  
4 that are paid for the liability that they cover in order to  
5 fund the payment of claims against those policies? If so,  
6 what is that percentage and how do self-insurers go about --

7 MR. HERSON: That's a question I'll pass on.

8 MS. FERRIS: The answer is yes. The percentage  
9 varies from state to state and it's very dependent upon the  
10 Department of Insurance.

11 But another factor that contributes to this -- and  
12 the concept that you discussed is called reserving. Not only  
13 do states require that certain percentages of premiums  
14 collected be set aside, but in order to maintain its own  
15 financial viability, companies in most instances will  
16 calculate reserves based upon company-specific equations that  
17 will guarantee that risks can be covered if there is a  
18 pay-out down along the line.

19 BOARD MEMBER GALLAGHER: May I follow that with  
20 another question? Assuming that another company has done all  
21 those things and there is a catastrophe or something and they  
22 are impacted very heavily with claims, are they then required  
23 or is that the time that premiums are raised or there is some  
24 other mechanism to rebuild that reserve within their company?

25 MS. FERRIS: Well, it's as I described when I was at

14 1 the microphone. The industry's not a monolith. And  
2 companies' reserving practices are very much dependent upon  
3 the way that a company does business.

4 I think your question is leading to what would  
5 happen if a company faced a catastrophic loss such as that  
6 posed in this environmental area, what would happen? Well,  
7 presuming that the company and its parent company and its  
8 subsidiaries and all the rest of the companies that are  
9 involved with that company can't ante up the funds, what you  
10 get is a bankruptcy; or in the nomenclature it's called an  
11 insolvency.

12 States have established what are called State  
13 Insurance Guarantee Funds, which in the colloquial kick in in  
14 the event of insurance insolvency. I think very recently in  
15 California there were a couple big insolvencies. What  
16 happens is that the State Insurance Guarantee Fund, which has  
17 been funded by all companies that do business in your  
18 state -- let's say, it's the State of California -- these  
19 companies fund the Insurance Guarantee Association based upon  
20 the percentage of businesses that they write in the state.  
21 And when one or another company in the state becomes  
22 insolvent, the Insurance Guarantee Fund is activated and pays  
23 out claims that are outstanding as a result of this  
24 insolvency.

25 BOARD MEMBER GALLAGHER: Thank you. I think you're

1 really getting down to what I'm trying to get at. That is, I  
2 can perceive in the State of California, as an example, that  
3 there might be a state fund established which would be an  
4 assessment against all of those people who were in this  
5 liability group such as the solid waste operators and what  
6 have you. They could establish a fund based upon some  
7 formula of their percent of liability and it would just sit  
8 there as a pool insurance thing with claims being paid out of  
9 it. The minute that the thing dropped below a certain level,  
10 all of the operators within the state in that industry would  
11 be reassessed in order to build that back up. Kind of a  
12 self-insurance for the industry itself. I don't know if  
13 that's practical or --

14 MS. FERRIS: That's exactly what I was discussing in  
15 terms of this fund. Your own state, for example, is  
16 considering legislation. I believe it's called the Keene  
17 bill, and the numbers elude me. But in -- the petroleum  
18 industry and the insurance industry and the California  
19 Legislature got together on this bill and fleshed out the  
20 concept of a state fund that would be used by the petroleum  
21 industry, specifically oil and gas underground storage tanks.

22 Tank owner/operators and businesses in the business  
23 of oil and gas would be assessed fees, whether that be  
24 inspection fees, licensing fees or some other assessment.  
25 This pool of money would go into a fund and in the event of

1 environmental claims -- that being correction action, third  
2 party bodily injury or property damage -- those who were  
3 assessed fees could utilize that fund to pay those claims.

4 Now, there's a threshold level of financial  
5 assurance that oil and gas owner/operators would have to meet  
6 in order to become eligible to use the fund. That's what I  
7 meant when I described that window of opportunity that would  
8 give the owner/operator the option of finding his own  
9 financial assurance, self-insuring, using a letter of credit,  
10 assurity, and so forth. It would also allow insurers who  
11 want to take a stab at providing this type of coverage some  
12 concrete boundaries of liability for which to offer the  
13 coverage.

14 BOARD MEMBER GALLAGHER: Thank you very much.

15 MR. HERSON: Are there any more questions?

16 Thank you for your time.

17 CHAIRMAN ROODZANT: Thank you, Mr. Herson.

18 Mr. Al Marino, representing the California Refuse  
19 Removal Council North.

20 MR. MARINO: Mr. Chairman, I'll be relatively brief,  
21 since I have to be because I'm not a lawyer and I'm not a  
22 fiscal expert. I'm trying to represent the Northern District  
23 of CRRC, who are primarily garbage haulers.

24 But first I'd like to say that, you know, it's  
25 ironic. I was trained in public health. The biggest

1 problems that we worried about and the biggest dangers to the  
2 public health were from sewer plants, not from garbage dumps  
3 or landfills.

4 Today -- and I guess because of the influx and the  
5 uses of exotic household chemicals primarily and some  
6 paranoia that spills over from the real hazardous waste  
7 problems that exist throughout the nation, every landfill,  
8 residential landfill, is under the gun because of the  
9 supposed and sometimes real problem of the effects of these  
10 wastes and household hazardous chemicals on the groundwater.

11 The reason I started off with that is because I  
12 think that if everyone could do -- and probably more and more  
13 will do -- what NorCal is doing in San Francisco with these  
14 stations for the homeowner to bring his household hazardous  
15 waste and to get rid of it that way, I think it would relieve  
16 the problems on the landfills tremendously; although I don't  
17 know that you'd ever really convince the public or especially  
18 the Legislature across the street of that.

15  
19 But, anyway, getting down to what's before us today.  
20 Gene also mentioned, you know, the difference in the size of  
21 landfills, the location of landfills, and all the things that  
22 go in to make the pot of stew that we have in front of us  
23 today. And Gene is perfectly right, but I think you're  
24 hampered by the fact that the law, if I understand it right,  
25 doesn't distinguish between a small landfill or large

1 landfill.

2 Is that right, George?

3 EXECUTIVE OFFICER EOWAN: (Nods head.)

4 MR. MARINO: So, unfortunately, what your  
5 regulations going according to the law would probably have to  
6 do, as the staff has done, is not try and distinguish between  
7 them either.

8 One other point I'd like to make is that I think the  
9 lovely mayor from Glendale mentioned the fact that  
10 contracting with private sector doesn't contract away the  
11 responsibilities. I think that works both ways. Because we  
12 have some instances where we have taken over sites that were  
13 run by cities and counties only to find that there was  
14 tremendous problems that we didn't know about and maybe the  
15 cities and counties didn't even know about and the liability  
16 accrues to both parties.

17 Because of that, I'd like to second the GRCDA's  
18 notion of getting all of the local government agencies and  
19 responsible parties together to develop a consortium to come  
20 up with some answers and perhaps some better responses to  
21 what's before us today. I certainly think that the private  
22 sector who operates under local government contracts should  
23 be included in that type of approach; because, as you said,  
24 contracting the work doesn't contract away the  
25 responsibility.

1 I'd like to ask just a couple of questions, and  
2 probably more out of ignorance than anything else. Is not --  
3 on the possible use of funding is not the CPCFA mechanism  
4 available to the private sector for clean-up of problem  
5 areas? Isn't that an environmental situation that that kind  
6 of money could accrue to? Not that they give the money, but  
7 that you still have to have your letter of credit, you have  
8 to have the funding; but at least the lower interest rates  
9 would be available through the CPCFA.

10 By the same question for the local governments, GO  
11 bonds are often used for sewer problems and to correct sewer  
12 problems. Could they not be used on the local level, if  
13 necessary, to correct anything that might happen where the  
14 local government is responsible?

15 Most probably important of all that I wanted to  
16 say -- and Gene kind of stole my thunder -- I really think  
17 that the time has come to look at the statewide levying of a  
18 household fee just as is done for a connection fee to a sewer  
19 plant. Any new development or any new building ought to be  
20 charged a fee to buy into the landfill and to buy into the  
21 problems and the corrections of the problems, as well as a  
22 fee perhaps on those that have already contributed to the  
23 problem.

24 It's not unlike a connection fee to a sewer plant  
25 and it's not unlike what the Energy Commission -- I get some

1 kind of a charge on my phone bill to take care of the Energy  
2 Commission's work in trying to get us cheaper energy. I  
3 don't know if they've ever approved anything in the state of  
4 California, but at least the charge is still there.

5 It's not unique is what I'm trying to say and I  
6 think that maybe the time has come where the funding  
7 mechanism should be on all of us and not only the local  
8 government official or the operator.

9 The last thing I'd like to say is that I don't know  
10 if all of the private operators of landfills or if each  
11 individual county or city has gotten a copy of this document,  
12 but it would seem to me that it be absolutely essential that  
13 they do. As far as the private sector's concerned, they all  
14 have their legal counsels, they all have their engineering  
15 consultants, and it would be important that they be able to  
16 review this in depth before your next hearing or workshop.  
17 Thank you very much.

18 VICE CHAIRMAN MOSCONE: Are there any questions of  
19 Mr. Marino?

20 Thank you, Al, for your input.

21 Is there a designee from the CRRC Southern District?

22 If not, is Steve Maguin here? I did not see him.

23 Or someone representing Mr. Maguin?

24 MR. NAKAGAKI: Mr. Chairman, members of the Board,  
25 my name is David Nakagaki. I'm a Senior Engineer in the

1 Solid Waste Management Department for the Sanitation  
2 Districts of L.A. County. As part of my job, I work on  
3 financial matters for the Department and also tasks relating  
4 to the budget of the Department.

5 As you probably know, the Districts operate a  
6 regional system for currently active landfill. These are  
7 large metropolitan landfills in L.A. County. The size of our  
8 system and the multiple sites might make the Districts'  
9 situation perhaps unique, but we think that many of the  
10 experiences that we have had and the mechanisms that we might  
11 use to demonstrate financial responsibility might be  
12 applicable to other public agencies and cities.

13 As far as financial responsibility, historically  
14 we've looked at both insurance and the means test. As has  
15 been testified, both general liability and pollution  
16 insurance has been at times very difficult, if not impossible  
17 to obtain for public agencies.

18 We've also looked at the means test. And based on  
19 your proposed regulations, as was pointed out by the  
20 representative from GRCDA, the two definitive tests seem to  
21 be more applicable to private companies rather than public  
22 agencies. So we've looked at the third test, which is  
23 equivalency, as far as other methods of showing financial  
24 responsibility. This is the one which the Sanitation  
25 Districts would probably use.

1           Financially the Districts' system is actually two  
2 separate systems. Each system is responsible for two of the  
3 four operating sites and related facilities. Excess funds  
4 generated by any of these facilities is put into a common  
5 joint fund and then funds from that fund are distributed to  
6 sites which might be short of fund or, for instance, to sites  
7 which have been closed and are no longer in operation.

8           So that -- also as part of the joint fund, we also  
9 maintain separate post-closure funds, which might be  
10 considered what is stated in the summary given to the Board  
11 as enterprise funds, which are earmarked for closure and  
12 post-closure operations at each of the sites. We make  
13 regular contributions to these funds. These funds accumulate  
14 interest by themselves.

15           We also operate a -- maintain an operating reserve  
16 for contingencies. This could also be used for closure and  
17 post-closure and for any liabilities which might accrue from  
18 operations at our landfill sites.

19           All reserve funds and the general funds contain an  
20 annual budget. That is approved by our board. We have  
21 specific line items for post-closure funds and for various  
22 other funds for specific purposes. So that the -- then these  
23 post-closure fund contributions and the budget itself are  
24 approved by our board yearly. Internally we keep a  
25 three-year budget horizon in determining how much we are

1 going to be putting into these separate funds.

2 We feel that the regulations, as far as they contain  
3 a provision for situations such as the Districts' in Section  
4 18243, the financial means test, subsection (a)(3), as far as  
5 the demonstration of alternative means for -- concerning  
6 financial responsibility as far as the Districts' system  
7 would apply, we would support these regulations.

8 We feel that we maintain financial responsibility by  
9 maintaining a large contingency fund, maintaining funds for  
10 specific purposes such as post-closure expenses and closure,  
11 and we also have an established record for responsibly  
12 operating our landfill sites.

13 We also operate a multi-landfill system. In such  
14 cases we are spreading the liability for our entire system  
15 over many sites such that if there should be a problem at one  
16 of our sites, then funds from the rest of the sites in our  
17 system could be used and applied to that problem.

18 In short, we support the direction that the  
19 regulations are going and are being developed by staff and we  
20 feel that landfills should be responsible for normal  
21 liabilities; but we would support any legislation which might  
22 cover unusual cases such as the state fund that operators  
23 would contribute to that could be used for, say, catastrophic  
24 or very large claims.

25 Thank you for being able to speak to the Board. And

1 I'll answer any questions you might have.

2 VICE CHAIRMAN MOSCONE: Are there any questions?

3 Thank you, sir. We appreciate your input and for  
4 taking the time to come forward this morning.

5 MR. NAKAGAKI: Thank you.

6 VICE CHAIRMAN MOSCONE: Mr. Frank Bowerman, from  
7 Orange County.

8 MR. BOWERMAN: Good morning, members of the Board.  
9 I'm Frank Bowerman. I'm the Director and Chief Engineer for  
10 the Orange County Waste Management Program. Appreciate the  
11 opportunity to talk to you about liability insurance  
12 programs.

13 The County of Orange has about 2.2 million people  
14 producing and disposing of about five million tons annually  
15 at four major landfills, all owned and operated by the County  
16 of Orange. Our budget for the fiscal year commencing in July  
17 will be about \$60 million. So it's a fairly significant  
18 enterprise.

19 I'm going to read to you a statement that I asked  
20 our risk management group to prepare for me. So it will go  
21 into the record exactly as they wrote it for me. I want to  
22 be sure I get it correct for your purposes.

23 The county is currently self-insured and charges  
24 back to each fund budget for their participation in the  
25 insurance program. Our current charges are running \$80,000

1 annually, \$74,000 of which is for liability. The balance  
2 covers property insurance and administrative costs. There is  
3 no coverage for liability due to pollution of air and ground,  
4 et cetera. According to our risk management people, there is  
5 no pollution liability insurance available at any cost.

6 The risk management fund operates on a \$15 million  
7 annual budget and in a normal year pays out claims of \$8  
8 million. The balance of \$7 million is added to a reserve,  
9 which currently totals \$20 million. The actuary consultant  
10 estimates our unfunded liability at \$55 million. This is the  
11 potential liability that could occur in a bad year. In this  
12 hypothesis, bad is distinguished from catastrophic.

13 Workmen's Compensation is administered under a  
14 separate fund. Our current annual contract is \$150,000.  
15 This is based on the last three years of experience in cost.  
16 Waste Management's percentage of the compensation is 1.7  
17 percent, which is amazingly low for our activity. The high  
18 incident occupations such as fire and sheriff run over 20  
19 percent. I think that it may catch up with us, but most of  
20 the Workmen's Compensation claims currently being filed  
21 include some form of stress liability, which will have a  
22 significant cost as soon as we get some unfavorable court  
23 decisions. That's gloomy, but may be predictable.

24 Now, in addition to those written comments that I  
25 received from our risk management office, I'd like to point

1 out that with respect to our closure/post-closure activities  
2 and liabilities, we for the past five years have been  
3 operating on a five-year budget that is advanced a year each  
4 year in planning. We have decided a year ago to not continue  
5 with the five-year budget planning, but are going instead  
6 into a life cycle fiscal plan. We are costing out each of  
7 our landfills in a life cycle mode so that we can take care  
8 of the period of activity when the landfill is being used and  
9 a post-closure maintenance activity for up to 30 years.

10 That has caused us to look very carefully at our  
11 present gate fees, and we are going from \$6 per ton to \$11  
12 per ton, almost a two-fold increase, because of that life  
13 cycle planning. So we're bringing the future into the  
14 present and it's really causing us quite a bit of concern.  
15 Because this impinges upon the cities primarily. Eighty-five  
16 percent of the waste comes from incorporated or city areas  
17 and only 15 percent from the county. So we have to work very  
18 closely with the cities and get their support.

19 Now, the life cycle fiscal planning in our opinion  
20 is similar to trust funding, but we don't call it that. We  
21 will be putting this money into reserves. We could call them  
22 trust funds. But as best as I can determine, if we set up a  
23 trust fund, the way the Board of Supervisors operates is that  
24 they can't tie the hands of the future board by setting up a  
25 reserve or trust fund that is inviolate. So any future board

1 that decided to change the rule and needed the money in  
2 advance of the decision as to what the trust fund was  
3 established for could actually call upon that money and  
4 dissolve the money and utilize it. I think that's probably a  
5 correct translation.

6 So the trust fund is maybe a good concept, but I  
7 don't think it's inviolate. I'm not sure that it produces a  
8 totally secure future reserve.

9 In addition to increasing our gate fees, we are  
10 proposing an \$80 million revenue bonding program to provide  
11 the capital for a number of activities. One will be our  
12 gas-to-energy plants. We're currently putting pipes in the  
13 ground and will pipe the gas to flare stations for purposes  
14 of air emission control. But in order to produce the program  
15 that we feel is more desirable where the gas is converted  
16 into electrical energy, we need to have the capital funds and  
17 they'll come from this revenue bond.

18 In addition, the revenue bonds will provide for the  
19 implementation of leachate recovery and disposal systems. We  
20 currently have one in place. We're planning to build one at  
21 a second landfill, and two of the landfills have no leachate  
22 problems whatsoever.

23 We need further capitalization for the closure of  
24 two major landfills; one of which will close within a year,  
25 the other within three more years. And we will need the

1 capitalization for the implementation of the new major  
2 landfill that will probably cost us, when it is actually on  
3 stream in March of '89, an implementation cost of close to  
4 \$15 million.

5 That's the end of my statement. I will answer  
6 questions, if I may.

7 VICE CHAIRMAN MOSCONE: Are there any questions of  
8 Mr. Bowerman?

9 BOARD MEMBER BROWN: Mr. Chairman.

10 VICE CHAIRMAN MOSCONE: Mr. Brown.

11 BOARD MEMBER BROWN: I don't have a question, it's  
12 an observation. Frank points out or gives emphasis to a  
13 comment that Mr. Herson earlier made. That had to do with  
14 volume and ability to pay.

15 I note that your figures point to great distress in  
16 your county with respect to now an \$11-per-ton figure. That  
17 does include life cycle planning you say.

18 MR. BOWERMAN: It does.

19 BOARD MEMBER BROWN: My county, which is Kings  
20 County, only 85,000 people strong, have just gone to \$20,  
21 creating great distress, also. And there is no life cycle  
22 planning in that figure.

23 So it's relating those kinds of numbers and those  
24 kinds of problems over into the insurance field and the  
25 ability to pay really does reinforce some of the earlier

1 comments. I'm only making an observation. I wish I had a  
2 solution here. But we really have some major problems with  
3 respect to being able to fund these long-term liability  
4 commitments.

5 MR. BOWERMAN: I think your observation is totally  
6 correct. The larger systems have great advantages. I think  
7 we'd be in really deep trouble if we were a very small  
8 system. I understand what you're saying.

9 BOARD MEMBER GALLAGHER: You think you got stress.  
10 He just raised my garbage bill double.

11 MR. BOWERMAN: Thank you very much.

12 BOARD MEMBER GALLAGHER: Thanks, Frank.

13 VICE CHAIRMAN MOSCONE: Thank you very much,  
14 Mr. Bowerman. We appreciate your taking these two days to  
15 come before us on these matters.

16 BOARD MEMBER BREMBERG: Mr. Chairman.

17 VICE CHAIRMAN MOSCONE: Mrs. Bremberg.

18 BOARD MEMBER BREMBERG: Mr. Bowerman, one of the  
19 things that you talked about -- and it's absolutely true, you  
20 cannot commit future city councils or county boards of  
21 supervisors. One of the -- and the impact of the Gann limit  
22 is something you didn't mention, which I think is terribly  
23 important in this. Because if that trust fund is changed,  
24 then it becomes revenue and then the city or the county is  
25 bucking up against its Gann limit. So some other service

1 will have to suffer.

2 I know we've taken \$5 million from our revenue from  
3 the landfill and started our closure-postclosure funding.  
4 But we did tie it to the garbage fund.

5 So when you have a trust fund, one way you can kind  
6 of restrict future people without violating the law is make  
7 it that it has to be used for that purpose, that it can't be  
8 taken and put into a capital fund for a new park or a new  
9 library or something like that. Because the revenue was  
10 generated from the landfill, it must be spent for -- or  
11 sanitary services and must be spent for it. At least we're  
12 going to try that. It's just a thought. I mean, that's the  
13 way we labeled it.

14 VICE CHAIRMAN MOSCONE: Any other questions?

15 Mr. Doug Isbell, representing Riverside County,  
16 County Engineers Association, and CSAC.

17 MR. ISBELL: Board, it's a pleasure to meet with you  
18 again this morning.

19 Riverside County has had some experience recently in  
20 the environmental impairment insurance area, which I think we  
21 have related to you before, in the development of our  
22 El Sobrante Landfill. But I think it's important to kind of  
23 start it there.

24 The county decided that it was wanting to have a  
25 privately-owned and operated landfill and solicited

1 proposals, and everything looked great until we came down to  
2 the issue of environmental impairment insurance, which did  
3 not exist at that moment in time and from what I heard this  
4 morning is not in much better shape today. The private firm  
5 could not provide the insurance. The first reaction of our  
6 county risk manager was, well, we just won't do the project  
7 then; not realizing that we were going to be shortly out of  
8 disposal space.

9 But the result was the county and the private  
10 industry shared the environmental risk, and the county is  
11 actually standing behind this private landfill in terms of  
12 the county's deep pocket.

13 But in order to accomplish that, the waste disposal  
14 operation in our county contributes approximately a million  
15 and a half dollars at the current time per year into the  
16 county's liability trust fund for all liabilities. They feel  
17 that that exposure to potential environmental impairment is  
18 that high. I'm not sure that that's so, but it is a  
19 significant amount of exposure.

20 Coming back on what Mr. Brown said just a moment  
21 ago, a small county in the north certainly could not make  
22 that kind of a commitment to a trust fund at a million and a  
23 half dollars per year. That would be just impossible.

24 So that leads me where I think we have to come with  
25 this. It's very easy to say in the regs that you shall have

1 X number of dollars of coverage period, blanket coverage. If  
2 the insurance industry was health in this area, then the  
3 insurance premiums would be based on the nature, the size of  
4 the facility, the exposure. In fact, they would probably do  
5 a risk analysis. They might even involve the information  
6 we're currently gathering from our SWAT test in terms of the  
7 groundwater, what's there today, what's the air pollution,  
8 what chemicals are in the landfill, what's the landfill gas  
9 emissions, and do a full risk assessment. Is this facility  
10 sitting right next to a community, is it out in the middle of  
11 nowhere? The chances for claims are based directly  
12 proportional to that risk.

13 But we do not have a healthy insurance industry in  
14 this field and I think what I'm hearing today and what we  
15 have seen, self-insurance for counties is about the only way  
16 we can go. And to demand a same level of self-insurance for  
17 a small county as to Orange County or to Riverside County is  
18 just going to be almost an impossibility for the small  
19 counties to meet that level.

20 I think the other thing that we have going for us  
21 that needs to be taken in to put this whole thing into  
22 context is that we are beginning with our SWAT programs and  
23 the regulations that you're considering yesterday and closure  
24 and post-closure maintenance to get to the early detection.  
25 We have now funds through the AB 2448 of last year, \$20

1 million a year, a good portion of which is set aside for  
2 remedial actions so that we can go in and clean up and if we  
3 detect that if we have a groundwater emission, go in and do  
4 some remedial actions to reduce our risk of environmental  
5 impairment and reduce the risk of being sued.

6 I don't have the answer. It's going to take a lot  
7 more work. But I think we've got to look to a balanced  
8 program and take into consideration the size and nature of  
9 the facilities and the requirements that we're having.

10 We look forward to -- that is, the County Engineers  
11 Association, CSAC, and Riverside County look forward to  
12 working with your Board in the months to come to develop this  
13 program.

14 CHAIRMAN ROODZANT: Thank you, Mr. Isbell.

15 Are there any comments or questions?

16 We'll just take a break here for five minutes.

17 (Thereupon a brief recess was taken.)

18 CHAIRMAN ROODZANT: We'll now hear from Mr. Tom  
19 Vernon. Is Mr. Vernon here?

20 MR. VERNON: Yes, I'm here.

21 Ladies and gentlemen, I'm here representing BKK  
22 Corporation. I'm Assistant General Counsel. I'd like to  
23 point out before I get started that before I was at BKK, I  
24 worked for the law firm of Sidley and Austin. We had a  
25 number of clients in the industry. And my comments today are

1 going to be drawn largely upon my experience over a number of  
2 clients and shouldn't be thought of as necessarily referring  
3 to BKK.

4 I want to emphasize at the outset that from the  
5 standpoint of a private operator, I think it's important that  
6 whatever regulations are ultimately adopted, that those  
7 regulations are even handed and that they apply equally to  
8 all operators and don't give certain operators in a  
9 particular position undue economic advantage. Over the long  
10 haul that will result in a healthier industry that is better  
11 able to install the kind of environmental safeguards that we  
12 all need so it is really very much in keeping with the spirit  
13 of environmental protection.

14 We're all quite familiar with the problems in the  
15 insurance industry. And I want to present just a little view  
16 of the tremendous changes that have occurred.

17 In about 1980 for less than a half a million dollars  
18 a company of about \$50 million in sales size could typically  
19 have this arrangement of insurance: They would have had a  
20 \$1 million general liability policy in place with a  
21 self-insured retention of typically about \$25,000 -- or a  
22 deductible of \$25,000. Then they would have had a \$5 million  
23 umbrella above that. The \$5 million umbrella would kick in  
24 if the 1 million were exhausted. Finally, they would have  
25 \$10 million in place over the \$5 million umbrella.

1           Those policies provided some significant advantages  
2 over today's system. First of all, you had three insurance  
3 companies typically involved, or at least you had almost  
4 always more than one company involved. Usually two companies  
5 to three companies would be involved. Second of all,  
6 obviously, there is \$10 million of insurance. And, third,  
7 there was only a \$25,000 deductible.

8           Today for that -- and I would hasten to add that  
9 that coverage within the general liability policy generally  
10 covered the kinds of pollution risks that we see at  
11 landfills.

12           Today the same company will probably only be able to  
13 get \$1 million in coverage on their general liability policy,  
14 and it won't cover pollution, and it will probably have a  
15 deductible closer to \$100,000 rather than \$25,000. Of  
16 course, it will be from a single company, and larger  
17 umbrellas will be largely unavailable. That same company  
18 will probably pay \$500,000 or more for that million dollar's  
19 worth of insurance.

20           The worst part is the company who has a landfill  
21 will probably have to go out and get an EIL policy, or an  
22 environmental impairment policy, to insure against pollution  
23 risks and comply with RCRA. And that company is probably  
24 going to pay \$500,000 or more for that policy. Some policies  
25 are out there for as little as \$100,000, but they may contain

1 a lot of site specific exclusions that the operator may or  
2 may not care to live with.

3 Another point that I want to make that I hope will  
4 assist the Board in promulgating these regulations is that  
5 insurance policies are typically written on what we call an  
6 ISO form. ISO is the Insurance Standards Organization.  
7 Since insurance companies are a legally-permitted monopoly,  
8 insurance companies will typically all use the same form at a  
9 given time.

20  
10 When we talk about insurance policies, we're not  
11 talking about a group of policies; each one having different  
12 language from company to company. They're all pretty much  
13 the same. This is one of the reasons that an adverse ruling  
14 on policy language is so devastating. If you have an  
15 appellate level court in the federal system ruling on a  
16 superfund case on the language of a policy, it affects all  
17 policies, all insurance companies across the board.

18 The insurance industry may not be a monolith, but  
19 there are certain aspects in which you have to look at the  
20 industry as if it were a monolith. And from the standpoint  
21 of the ISO forms, that's certainly the case.

22 Many of the changes in coverage which have occurred  
23 have occurred because of changes in ISO forms. The standard  
24 ISO forms that provided for coverage for sudden and  
25 accidental pollution are basically no more in the general

1 liability field. Now we're going to a form of EIL insurance  
2 for that kind of coverage and that phrase is no longer used  
3 in the EIL policy. Rather we look at whether the pollution  
4 was expected or intended. That is the new operative language  
5 in my understanding in most of your EIL policies.

6 The reason these things are important is that I  
7 notice the regulations do contain references to sudden and  
8 non-sudden pollution. It will be very important that the  
9 regulations track with the language in insurance policies so  
10 that they do not set up an impossible goal to meet for those  
11 who are going to be meeting the financial test with  
12 insurance.

13 It's also very important that those regulations be  
14 kept up to date. As policy language changes, the regulations  
15 must change or they will be left behind and people will  
16 become unable to get insurance. When the old policies  
17 disappear, no one's going to write them. And as the new  
18 policies take their place, the regulations need to keep pace  
19 with that.

20 Today we're seeing typically lower levels of  
21 coverage, as I mentioned. From my experience I think it  
22 would be very difficult for our company at the present time  
23 to get a \$2 million aggregate. I know some companies have  
24 them. I think there's a lot of companies that would find EIL  
25 coverage impossible to get at any price, and they're going to

1 be looking obviously at the alternative means.

2 I want to say a word at this time about the way that  
3 a person might demonstrate to the Board or to the  
4 satisfaction of the regulations that the required coverage is  
5 in place. Typically in the insurance industry what is done  
6 if someone wants to know whether you have the required  
7 insurance or not, they require that you submit a certificate  
8 of insurance. Like everything else in the insurance  
9 industry, this is going to be on an ISO standard form. The  
10 forms are usually put out by a company called Accord.

11 Many public agencies have very lamentably been  
12 manuscripting their own forms to demonstrate proof of  
13 insurance. And I think this is a very dangerous practice and  
14 it's certainly a very distressing practice from our  
15 standpoint.

16 When you're a company of our size and you're dealing  
17 with a huge insurance company like AIG or National Union, you  
18 send them a form that they don't recognize -- the terminology  
19 that the insurance adjusters use when they're talking to me,  
20 they say this is an illegal form, it is a non-ISO form. They  
21 don't want to fill it out. In many cases they simply won't  
22 fill it out.

23 If the Board requires that someone fill out a  
24 special or manuscripted type of form that you yourself have  
25 drawn up, you're going to find a lot of people are going to

1 be unable to get that form filled out by their insurance  
2 company.

3 I recommend that you specifically adopt language  
4 either accepting the Accord forms as the preferred proof of  
5 insurance, or in the alternative require certified copies of  
6 policies where you can see what the language is and what the  
7 limits are yourself.

8 The certified copy of a policy is a fairly easy  
9 thing to obtain and it costs two to five dollars, depending  
10 on the company, and it just isn't a big deal. But getting a  
11 company to fill out these forms where the company is now  
12 taking on some obligation outside the policy language is  
13 oftentimes a task that is impossible and many times your  
14 insurance company will simply send the form back. Or worse,  
15 the insurance company will send the form back, it will be  
16 filled out, but they will have X'd out what they find  
17 objectionable and written in other language. Then the public  
18 agency will get the form back and they'll say, well, this  
19 form has had language deleted, it's not acceptable, you're  
20 going to have to get them to sign one without deleting or  
21 adding language.

22 This makes for tremendous difficulties for a small  
23 operator or medium operator who doesn't have the leverage on  
24 an insurance company to say, fill this form out or I'll  
25 change my account and go somewhere else.

1           Along those lines of going somewhere else, I'd like  
2 to touch briefly on a subject that was mentioned earlier  
3 today. I was in contact just yesterday with Joan Berliner of  
4 Alexander and Alexander Epic, which is probably the most  
5 viable of the risk retention groups around these days. It's  
6 definitely going to be operating within about -- they're  
7 going to start writing coverage within 60 days. And they are  
8 partially funded, so they're going to be writing coverage on  
9 a lower level than they had initially planned.

10           But it looks like Epic is going to get off the  
11 ground. It's the only one that has so far in this industry  
12 to the best of my knowledge.

13           I'd like to mention one other thing about offshore  
14 insurance companies. I notice that your requirements have  
15 wisely called for the company that provides the insurance to  
16 be licensed in California. I suggest it could be licensed in  
17 California or any of the 50 states. But many of the offshore  
18 insurance companies are offshore so that they can escape the  
19 requirement of having the reserves they would have to have in  
20 just about any state in the United States. And I think  
21 that's one of the major reasons you find offshore carriers.

22           I've dealt with offshore carriers before and I  
23 always advise any client of mine that uses them, buy the  
24 coverage to get their certificate, but consider yourself  
25 uninsured as far as whether the company is really going to be

1 there down the road.

2           There was a mention of insurance bankruptcies.  
3 There have been two major ones in California, Mission and  
4 Integrity Insurance Companies, that have affected the  
5 environmental market to a great degree because they were  
6 writing a lot of environmental impairment liability coverage  
7 or CGL coverage that served that function in the early 80's.  
8 In California we do have a surcharge on insurance policies  
9 that is called a CIGA surcharge. At this time those of my  
10 clients who are insured by those companies are submitting  
11 claims to the fund and they're going to get cents on the  
12 dollar, but there will be some money coming their way on  
13 those claims.

14           I'd like to mention also one item about  
15 self-certification. There is a significant danger in the way  
16 the regulations seem to have been drafted at this point.  
17 Take the example of a company who is self-certified in 1988.  
18 We have a good, thriving, viable company, self-certified or  
19 self-funded in 1988 and a lawsuit is filed in 1988. In Los  
20 Angeles County, of course, it's taking lawsuits about five  
21 years to come to trial. So five years down the road the  
22 lawsuit comes to trial. Well, the company is now  
23 experiencing difficulties. They're in bankruptcy. Maybe if  
24 they've been following the regulations, they've gone out and  
25 gotten an insurance policy. But, as was mentioned before,

1 this insurance policy is not going to refer back and insure  
2 the company against the risks of the prior policy.

3 By having a self-certification policy for companies,  
4 you're running the risk that when a claim actually comes for  
5 trial and a judgment is rendered, there will not be any  
6 protection there. The only way you're going to have  
7 protection is if you have either a trust fund -- and in the  
8 case of private companies, of course, trust funds can be set  
9 up that are just about inviolate -- or actually having an  
10 insurance company. Their self-certification for the private  
11 sector may give coverage that is illusory. It might not be  
12 there at a time when the claims are actually to be paid or  
13 the pollution is actually to be cleaned up.

14 Connection fees are an idea that has been around the  
15 industry for many years. In a market where you have a mix of  
16 private and public companies, they may be impractical.  
17 Because where the landfill is owned by a private entity, then  
18 there's going to be a great deal of difficulty over  
19 determining which operators receive how much or what share of  
20 the connection fees.

21 In cities that are served by a single landfill, this  
22 certainly may be practical. But in larger urban areas like  
23 San Francisco or certainly Los Angeles, that may not be a  
24 practical solution to the problem.

25 That concludes the comments that I wanted to make.

1 I thank the Board for this opportunity to address and if they  
2 have any questions, I'd be very pleased to answer them at  
3 this time.

4 VICE CHAIRMAN MOSCONE: Are there any questions of  
5 Mr. Vernon?

6 Thank you, Mr. Vernon. We appreciate your taking  
7 the time to appear before us and give us your input.

8 MR. VERNON: Thank you.

9 EXECUTIVE OFFICER EOWAN: Mr. Chairman, I just  
10 wanted to note that we had Mr. Vernon on the wrong list.  
11 You'll see on your list that he's on 14C, but he belongs on  
12 14A. Oh, he is going to be on 14C as well. So we neglected  
13 to put him on A, but he wants to be on both.

14 VICE CHAIRMAN MOSCONE: Is Mr. Whitfield to be the  
15 last one to --

16 EXECUTIVE OFFICER EOWAN: Yes.

17 VICE CHAIRMAN MOSCONE: Are there any other members  
18 in the audience who would like to -- yes, sir.

19 MR. STEVENS: Mark Stevens, representing the County  
20 of San Bernardino. Just had a brief comment.

21 VICE CHAIRMAN MOSCONE: Would you come up, please.

22 MR. STEVENS: Mark Stevens, representing the County  
23 of San Bernardino Local Enforcement Agency.

24 We agree in general with all of the comments so far.  
25 We just -- this has been slightly alluded to, but we wanted

1 to give it a little emphasis that there may be undue reliance  
2 upon the financial means test and the insurance approach  
3 because of potential bankruptcy of the operator, owner or a  
4 nonrenewal of cancellation of the policy based on nonpayment  
5 of premiums, or perhaps the insurance company just wants to  
6 get out of that line of business. There might be some lag  
7 time in catching this problem and then liability problems  
8 develop. Without a backup mechanism, this system might fail.

9 So we wanted to give our vote, also, to these backup  
10 mechanisms like the trust fund and state funds and some of  
11 these alternative approaches and that we do need a backup  
12 system to ensure the success of this approach.

13 That's all I have. Thank you.

14 VICE CHAIRMAN MOSCONE: Thank you, Mr. Stevens.

15 Are there any questions of Mr. Stevens?

16 Thank you, sir. We appreciate your input.

17 Is there anyone else from the audience who would  
18 like to make any remarks?

19 We'll call then on Mr. Jerry Whitfield, California  
20 Department of Insurance.

21 MR. WHITFIELD: Good morning. I wanted to go last,  
22 because I wanted the opportunity to listen to the  
23 presentations of this morning and compare them to  
24 presentations that were made during the Department of  
25 Insurance hearings conducted in October of 1987 on the issue

1 of the availability or unavailability of environmental  
2 impairment liability insurance and assessment of alternatives  
3 to private insurer environmental impairment insurance.

4 Everything I have heard today is consistent with the  
5 testimony that we received in October. Insurance for these  
6 risks is for all intents and purposes unavailable. Where it  
7 is available, it is available at very low limits with very  
8 broad exclusions and at almost prohibitive premium rates.

9 I do not believe that you can look for private  
10 insurance to be an effective means of establishing financial  
11 responsibility for the foreseeable future. I do not believe  
12 that some of the alternatives that have been proposed such as  
13 a state fund, a joint underwriting association are viable  
14 alternatives either.

15 There's been some discussion of the way states are  
16 approaching underground storage tanks in response to the EPA  
17 financial responsibility requirements. And I think the  
18 illustration of why states are moving forward on underground  
19 storage tanks is a good example of why they are not and will  
20 not be moving forward in the area of either hazardous storage  
21 and treatment or solid waste.

22 There was a discussion of the Iowa plan. That's a  
23 program which will provide insurance to anyone who has a  
24 storage tank. Very little underwriting. The basis for the  
25 program is that there will be substantial reporting, you will

1 know what's in the tank, you will know where all your tanks  
2 are, the tanks will meet the required standards for  
3 monitoring and integrity. There are also provisions for  
4 replacement.

5 I don't have the figures handy, but the assessment  
6 or the evaluation or actuarial evaluation that was prepared  
7 for the Iowa plan for underground storage tanks for all the  
8 controls involved is catastrophic. I don't believe that they  
9 can insure at a reasonable premium.

10 On the other side of the spectrum is the program  
11 that is being contemplated by the State of New Jersey. The  
12 first step in that program for underground storage tanks is  
13 if your tank is over ten years old, forget it, it comes out  
14 of the ground. We will not insure any risk that does not  
15 meet our strict, very strict, risk assessment criteria in  
16 terms of barriers, in terms of monitoring, very strict  
17 controls on the way someone can do business. Only then and  
18 only then will the State of New Jersey consider insuring any  
19 further risk.

20 What we have in California is something in between.  
21 That is SB 539. I think staff has been provided a copy of  
22 that legislation. But we can move forward in the area of  
23 underground storage tanks because we do have the ability to  
24 assess risk and control.

25 The distinction that was drawn early today between

1 the responsibility for generator acts, the difference in  
2 generators being you can't control the generator, in essence;  
3 which is the householder, you and me. Now, the distinction  
4 between the ability -- or the inability to control a  
5 generator in the solid waste area and the supposed ability to  
6 control generators in toxics, where the regulations  
7 concerning control and justification, I believe, are much  
8 more stringent, is not one that makes me as a state regulator  
9 contemplating the creation of a fund want to create a fund.  
10 The state has very little interest in getting into a losing  
11 proposition any more than do private insurers.

12 The testimony at our hearings from the American  
13 Insurance Association and the Reinsurance Association of  
14 America was very consistent with the AIA presentation today.  
15 It's an uninsurable risk. Same fortuity issue, same  
16 predictability issues. Nothing's changed. It won't change  
17 because insurance is not the dog, it's the tail, and it's not  
18 going to wag anything.

19 The availability of insurance is a response to the  
20 activities of the industry and the program underway. That is  
21 true whether it's being provided by Prudential or insurance  
22 being provided by the State of California. And there's no  
23 distinction between first dollar coverage, mid-range  
24 coverage, or what is in essence reinsurance.

25 I would only have two technical corrections of the

1 previous testimony to make -- well, one correction, one  
2 suggestion. The suggestion is that for purposes of  
3 establishing financial responsibility, that you never accept  
4 an Accord binder or an Accord evidence of coverage. I can  
5 get one and do a binder that will show that you're covered  
6 for \$50 million, and I can sign off on it, and I can hand it  
7 to you. You want certified copies of policies.

8 The correction that I would make is with regard --  
9 or amplification is with regard to the Insurance Services  
10 Office, ISO, that was mentioned before. The Insurance  
11 Services Office is a trade association of the majority of the  
12 property and casualty insurers, and its substantial function  
13 through its members and executive board is to create and  
14 offer forms for its members. Many of its members do use ISO  
15 forms strictly. Some use a combination of their own forms  
16 and ISO forms. Of course, there are insurers that aren't  
17 part of the trade association and they use forms that they  
18 create themselves.

19 I think a very, very good analysis of where  
20 environmental impairment liability insurance is today is the  
21 complaint filed by the attorneys general. I believe your  
22 staff has a copy of that document as well. I think you'll  
23 get a feeling for where we are and, unfortunately, I think  
24 you'll see what the future, at least the immediate future, of  
25 private insurance will be. And I'd be more than happy to

1 answer any of your questions.

2 VICE CHAIRMAN MOSCONE: Any questions?

3 BOARD MEMBER VARNER: Mr. Chairman.

4 VICE CHAIRMAN MOSCONE: Mr. Varner.

5 BOARD MEMBER VARNER: Yes, you mentioned a couple of  
6 alternatives that were suggested here that you would not be  
7 in favor of. Were there any alternatives you heard that you  
8 would be in favor of, and do you have any alternative  
9 suggestions yourself?

10 MR. WHITFIELD: Self-insurance, which is  
11 non-insurance, appears to be the most reasonable alternative.  
12 I think assessment of the generators -- that is, in fact, all  
13 Californians -- as a means of establishing a fund dedicated  
14 specifically for the purposes of remedial conduct has some  
15 viability.

16 BOARD MEMBER VARNER: That's in the form of a trust  
17 fund?

18 MR. WHITFIELD: Established, maintained. The  
19 proceeds of the fund could be used for investment to generate  
20 additional capital, but dedicated solely to this purpose.

21 BOARD MEMBER VARNER: Done in such a way then that  
22 it couldn't be used for any other purpose?

23 MR. WHITFIELD: Yes. And that will be a task in  
24 itself.

25 BOARD MEMBER VARNER: Okay. Thank you.

1 BOARD MEMBER CALLOWAY: Excuse me, Mr. Chairman.

2 VICE CHAIRMAN MOSCONE: Mr. Calloway.

3 BOARD MEMBER CALLOWAY: Just to follow-up on that  
4 point. Would you suggest that the Insurance Department  
5 handle that fund so that it could not be used for anything  
6 else, so it doesn't get over to the General Fund or doesn't  
7 get in Caltrans' budget or somebody else's?

8 MR. WHITFIELD: I'd be hesitant to suggest that,  
9 because I don't think we have the facilities at present for  
10 administering the fund. What we do in fact -- or what  
11 California law provides right now in connection with the  
12 assigned risk program, for example, is that we delegate that  
13 authority in essence to insurers. I think it would be more  
14 appropriate, although I can certainly understand the -- well,  
15 opposition to creating another layer of bureaucracy. I think  
16 it's a case where it really belongs with money managers,  
17 claims people and some technical people with the technical  
18 expertise that this department does not have. We regulate  
19 insurers, we don't operate as one.

20 BOARD MEMBER CALLOWAY: I understand. But in any  
21 event, either way, as far as I know, there's no other  
22 department in the state that can do this. So in any event,  
23 it's going to have to be -- as you described it very well,  
24 it's going to have to be another layer of bureaucracy in  
25 order to do it. Either your department is going to have to

1 do it or somebody else is going to have to do it, this Board  
2 or whoever. I don't know who's going to have to do it. But  
3 somebody's obviously going to have to do it.

4 MR. WHITFIELD: It would require additional staff  
5 encompassing substantial expertise, which our department does  
6 not currently have.

7 BOARD MEMBER CALLOWAY: Thank you very much.

8 BOARD MEMBER GALLAGHER: Mr. Chairman.

9 VICE CHAIRMAN MOSCONE: Mr. Gallagher.

10 BOARD MEMBER GALLAGHER: I don't know if this needs  
11 to be directed specifically at you, sir, but can staff find  
12 out the answer. As a potential for solving this problem, we  
13 may have to go to some sort of an assessment of all of the  
14 citizens of California to establish whatever fund is  
15 necessary.

16 I notice on my phone bill every month there is a  
17 little note that they collect a certain amount of tax on my  
18 phone bill for aid to the hearing impaired. And I see the  
19 same thing on my gas bill to provide for life line rates or  
20 something of that nature.

21 Who administers the collection and disposal of those  
22 funds? And is the law that created them something that we  
23 would want to take a look at as a potential copy for  
24 something that we might suggest?

25 MR. ORR: We'll take a look at that.

1 BOARD MEMBER GALLAGHER: Thank you.

2 VICE CHAIRMAN MOSCONE: Are there any questions of  
3 Mr. Whitfield.

4 Thank you, sir. We appreciate your coming.

5 MR. WHITFIELD: Thank you.

6 VICE CHAIRMAN MOSCONE: Is there anyone else in the  
7 audience who would like to contribute?

8 Mr. Eowan, does staff proceed with this or should  
9 we --

10 EXECUTIVE OFFICER EOWAN: I'm sorry, Mr. Chairman.  
11 We're running a little late here. I think we're going to  
12 have to improvise a little bit on our schedule.

13 What I would recommend at this point in time is to  
14 very, very briefly summarize -- staff summarize a little bit  
15 of what we've heard today, about a minute. And we have one  
16 suggestion on the GRCD A proposal and that is to ask them to  
17 put it in writing to us and then we can consider it.

18 Then move into testimony on 14C and hear that. Then  
19 we would propose that at the next meeting we would -- we,  
20 staff, would then pursue our presentation on this topic,  
21 incorporating and further summarizing what we've heard today.

22 VICE CHAIRMAN MOSCONE: I don't know how staff  
23 people feel about this, but to me it seems -- trying to put  
24 all of the information that we have received today and  
25 presenting it to the Board for the next meeting, is this a

1 little too soon?

2 EXECUTIVE OFFICER EOWAN: I'll let Mr. Orr answer  
3 that.

4 MR. ORR: I would appreciate the time, I'm sure.  
5 That's the kind of direction that I like to hear; you might  
6 not like something for an extra month, for example.

7 I think that we do have a lot here to assimilate.  
8 And this is part of the reason that we invited the various  
9 groups here today is because we don't have the particular  
10 staff expertise in the financial areas. So we're learning  
11 along with everyone else here today.

12 So I think that we do have a variety of things that  
13 we would like to look into, and at the Board's pleasure we  
14 could use another month.

15 VICE CHAIRMAN MOSCONE: Well, my feeling is that  
16 inasmuch as most of this testimony was verbal and you don't  
17 have copies of it, that you're going to have to wait for the  
18 transcript to get all of this. How long does this take? It  
19 seems to me -- that's why I felt that the next meeting would  
20 not be an adequate amount of time.

21 EXECUTIVE OFFICER EOWAN: It does take three weeks,  
22 I think.

23 MR. ORR: We got last month's testimony earlier this  
24 week, I believe.

25 EXECUTIVE OFFICER EOWAN: Three weeks to four weeks.

1 It's a good point.

2 VICE CHAIRMAN MOSCONE: So I would think about it  
3 before we put it on next month's agenda.

4 EXECUTIVE OFFICER EOWAN: Probably put it on the  
5 June agenda then. Okay.

6 VICE CHAIRMAN MOSCONE: I'm speaking for myself.  
7 This is my reaction. Now, I don't know about the rest of the  
8 Board.

9 BOARD MEMBER BROWN: You're right.

10 EXECUTIVE OFFICER EOWAN: Then we could probably  
11 then go ahead and hear the testimony on Item 14C, closure and  
12 post-closure care funding.

13 BOARD MEMBER BEAUTROW: You might note that we were  
14 going to be scheduled to go to 12 o'clock.

15 BOARD MEMBER CALLOWAY: Mr. Chairman.

16 CHAIRMAN ROODZANT: Mr. Calloway.

17 BOARD MEMBER CALLOWAY: That's why I would suggest  
18 that we put some kind of a limit on speakers and so forth. I  
19 see very little advantage to speaker after speaker repeating  
20 exactly what has been said. If they have something new to  
21 input, obviously that's the thing to do.

22 But it's all on record. So for the sake of time and  
23 the advantage to those who want to speak with new ideas, I  
24 would certainly ask everybody, through the Chair, to limit  
25 their remarks to those that have not already been inputted.

1 CHAIRMAN ROODZANT: What's the pleasure of the  
2 Board?

3 BOARD MEMBER BROWN: With respect to what?

4 CHAIRMAN ROODZANT: To the procedure on this item.

5 EXECUTIVE OFFICER EOWAN: I think we would recommend  
6 that we just go then to testimony on 14C.

7 CHAIRMAN ROODZANT: With time limits?

8 EXECUTIVE OFFICER EOWAN: That's up to you.

9 BOARD MEMBER BEAUTROW: The main emphasis, I think,  
10 Mr. Calloway was making was that we shouldn't repeat.

11 BOARD MEMBER CALLOWAY: That's correct,  
12 Mr. Beautrow. That's exactly what I said.

13 CHAIRMAN ROODZANT: With that stipulated, we'll  
14 proceed.

15 First speaker is Keith Seigmuller, with California  
16 Pollution Control Financing Authority.

17 MR. SEIGMULLER: Mr. Chairman, members. Thank you  
18 again for the opportunity, as we have had in the past, to  
19 appear before this Board on numerous matters.

20 The question of the possibility of financial  
21 assistance from the California Pollution Control Authority  
22 was raised by one or two people this morning. For the  
23 benefit of refreshing the memory of some of you who may have  
24 heard this before and for bringing other new members up to  
25 date, briefly let me say what the Authority is and does.

1           It has under state statute and under constitutional  
2 authorization the ability to sell tax exempt bonds in the  
3 municipal bond market and to relend those proceeds for  
4 certain specified purposes. One of those purposes is for the  
5 financing of the construction, the capital equipment costs,  
6 construction of solid waste disposal facilities.

7           The ability for us to provide the financial  
8 assistance is in the provision of a lower cost of interest in  
9 the borrower. That lower cost of interest is achieved  
10 through the lower cost of interest on tax exempt bonds as  
11 compared to regular taxable debt or bonds or in the bond  
12 markets. That is entirely 100 percent dependent at the  
13 present time on the federal Tax Code. Without going into the  
14 various provisions of the Tax Complication Act (sic) of  
15 1986, let me say that there were some restrictions put on  
16 that and on our ability to do that and some of those  
17 restrictions were incorporated also in the conforming statute  
18 of the California State Legislature this past year.

19           We have and we can and have supplied tax exempt  
20 financing for various solid waste disposal facilities,  
21 including landfills, including the El Sobrante Landfill,  
22 which was referred to, in Riverside County, including a  
23 number of transfer stations, and including a number of  
24 waste-to-energy projects, only two or three of so-called  
25 municipal waste-to-energy projects and most of the rest have

1       been for agricultural or biomass waste.

2               We are at least as risk averse as any of the people  
3 who have spoken to you before, if not more so. We are  
4 constitutionally prohibited from pledging the credit of the  
5 State of California or the taxing power of this state or any  
6 governmental entity to the credit of any of the bonds that we  
7 issue. As a result of this, about eight years -- ten years  
8 ago the Board adopted the operating policy of not issuing  
9 bonds in publically tradable denominations -- that is, \$5,000  
10 denominations -- unless the bonds could carry a rating of A  
11 or higher by nationally recognized municipal bond rating  
12 agencies; or in the alternative, unless there was a single or  
13 limited private placement of these bonds to sophisticated  
14 institutional investors who would specifically bear the risk  
15 of default on the bonds that would otherwise be carried by  
16 the general credit risk of a higher rating.

17               What this has typically meant is to sell bonds in  
18 the \$5,000 denominations, we have required a letter of  
19 credit. Letter of credit banks, again, are as risk averse as  
20 insurance companies or any other credit provider. Or in one  
21 or two instances the sale of bonds to private institutional  
22 investors.

23               Over the course of the last 14 years -- the  
24 Authority was created in '73, '74 -- we have sold in the  
25 neighborhood of three and a half billion dollars' worth of

1 bonds. The only bond that has ever gone into default because  
2 we sold it on a basis somewhat different prior to the policy  
3 change I just mentioned to you, somewhat different to that  
4 policy change, is a seven and a half million dollar bond  
5 issue for a garbage transfer station in the city of Los  
6 Angeles.

7 In general we have had outside of SB 8 guarantees --  
8 actually even including some SB 8 guarantees on a program for  
9 small businesses that we had. The problems that we have had  
10 have been with solid waste facility bonds.

11 Another problem that has developed and illustrates  
12 pre-eminently the various problems that you have discussed  
13 here this morning is a small issue of a million and a half  
14 dollars' worth of bonds to finance the resale and reopening  
15 of a portion of what used to be the Harbor Landfill in  
16 Wilmington, Alameda Avenue in Wilmington.

17 That was a bond which was purchased by a bank in Los  
18 Angeles, small bond issue, and the facility went forward with  
19 its reconstitution of ownership and redirection of operation  
20 for a year or two until there was a change in the local  
21 regulations which required essentially shutting down that  
22 facility. It can no longer operate as a facility for the  
23 receipt of solid and/or hazardous waste, some of which it was  
24 alleged was in the facility to begin with.

25 The security for the bond issue basically was the

1 land. The bond holder is a bank, as I mentioned. And  
2 although the company, the borrower, is now in default, the  
3 bond holder has not foreclosed on the land. Among other --  
4 it's in limbo. The bond holder does not wish to become the  
5 owner of the land and, therefore, to accept the liabilities  
6 that you have had so eloquently presented to you in the  
7 future.

8 I think we may be in the position of having  
9 disproved one of Casey Stengel's reported aphorisms. He said  
10 that prediction is always very difficult to do, especially if  
11 it involves the future. I think what we've found out is it's  
12 not at all difficult in the case of solid waste. We can  
13 predict that you cannot get adequate financial security for  
14 these things.

15 Closure and post-closure. The only experience that  
16 the Authority has had has been with the company, BKK, that  
17 runs the West Covina Landfill, which for many years also  
18 accepted hazardous waste for many years.

19 Under the provisions of the Tax Code as it existed  
20 then and in large measure as it still exists now, we did and  
21 we could finance expenditures for capital improvement for a  
22 solid waste disposal facility. That's pipes, pumps,  
23 collection systems, monitoring systems, earth cover over the  
24 closed portions of the landfill, and that sort of thing. We  
25 could not then and we cannot now finance what turns out to be

1 a cost reduction measure, which BKK is doing itself, which is  
2 taking the generated methane gas, burning it and generating  
3 electricity to generate some external revenues to help pay  
4 for the other operations. Under the Tax Code we could not do  
5 that. BKK went ahead and has done that for their own  
6 benefit.

7 We sold bonds in December of 1985. There were  
8 certain advantages in the Tax Code as it then existed for  
9 selling bonds. We put the proceeds of the bonds in an escrow  
10 account. Because, among other things, the closure plan had  
11 not yet been accepted. So we had that as a condition of  
12 release from escrow. And because there was not a letter of  
13 credit in place, which we required -- the twelve and a half  
14 million dollar bond issue required on our part a letter of  
15 credit before we would release money from escrow.

16 Within the following year BKK had successfully  
17 negotiated and had accepted by all the relevant agencies --  
18 EPA and the state agencies -- the closure plan. So that was  
19 one hurdle out of the way. That was one year later.

20 Now we've had to move into getting the letter of  
21 credit. The particular financial institution that had been  
22 working with BKK turns out to have been serendipitously the  
23 financial institution that is holding the bonds on the Harbor  
24 Landfill. And their position was that BKK was a small enough  
25 company that on the general credit of the company they could

1 not extend a letter of credit, among other reasons. I can't  
2 speak for some of the larger operators. A Waste Management  
3 or a Browning-Ferris perhaps would have had a different  
4 approach to their financial institution. So that required  
5 getting a letter of credit from somewhere else or in some  
6 other fashion.

7 The better part of the next year was spent in doing  
8 that. And I think the company itself and its attorneys and  
9 staff are to be commended in this. They essentially, as I  
10 understand it and to short circuit the description, used the  
11 leverage of the potential for strict, joint and several  
12 liability to approach people who had been depositing  
13 hazardous waste, potentially hazardous waste, in that  
14 landfill for the previous 20 years; the first one of which  
15 was the mortgage over on the property itself, the financial  
16 institution. Then they went down the line of all the major  
17 oil companies and the chemical companies in the Southern  
18 California basin and essentially said to them, we are a small  
19 company, we have an approved closure plan, it will cost us  
20 something like \$20 million or more, which we have already put  
21 up a certain amount of money, and we have over here in this  
22 bank twelve and a half million dollars designated only for  
23 the purpose of this closure plan. If we go under, if we are  
24 not able to get our hands on that twelve and a half million  
25 dollars and if we cannot successfully execute this closure

1 plan, under the state of the existing law and the court  
2 decisions, you, you, you, you and you are likely to be liable  
3 for this.

4 After severe contests of egos and balancing of  
5 economic interests among oil companies of various sizes in  
6 Southern California and a few other things, at the conclusion  
7 of that year what they got was a plan where about 10 or 11  
8 different companies put up their own separate letters of  
9 credit. And these are very large and credit-worthy companies  
10 who already have bond ratings on the general credit of their  
11 operations, have bond ratings in financial markets. These  
12 people put up a commitment of a proportion of this amount of  
13 money and BKK itself put up an additional commitment to round  
14 it out.

15 They came up then with 100 percent coverage of the  
16 liability on the bonds, twelve and a half million dollars, by  
17 these subsidiary letters of credit, and then that was  
18 wrapped -- in the financial industry parlance -- wrapped with  
19 a letter of credit from a foreign bank. A domestic bank's  
20 not willing at reasonable rates to do that.

21 So with that single letter of credit then we could  
22 release the proceeds of the bond fund and BKK could reimburse  
23 itself for costs already involved and go forward with  
24 additional costs.

25 I think that one case illustrates some of the

1 problems that you're facing in this and I too have very few  
2 answers except to indicate that all of us in the financial  
3 guarantee or financial industry world are really, really very  
4 risk averse and do not know, cannot foresee, and are not  
5 willing to take the risk of potentially unlimited liability  
6 on these things in the future.

7 In this case it required -- I know part of your  
8 discussion has considered the appropriateness of guarantees.  
9 A benefit of a guarantee is that you can sometimes set up a  
10 smaller amount of money up front and leverage that to  
11 guarantee the total amount of bonds. To do that, any  
12 financial institution will require some kind of historical  
13 track record, some kind of predictability. What is the  
14 likelihood, or as it has been expressed, the fortuity or  
15 predictability of this risk.

16 When the Authority -- as a side example. When the  
17 Authority a few years ago tried to set up a program to  
18 provide financial assistance to small businesses, we had  
19 access to the then historical record of the Small Business  
20 Administration, the then historical record of two or three  
21 major banks in California to assess the probability of a  
22 typical small business defaulting on its bond payments over a  
23 10 or 15-year period of time.

24 We've made an assumption that providing some  
25 percentage of coverage -- I can't remember the exact number,

1 but let's say it was 10 or 15 percent -- on an ongoing basis  
2 would cover the probability of the risk of this universe of  
3 companies from defaulting on their bond. Never being sure  
4 which one was going to default, but some of them would and  
5 some of them would not.

6 In the case of BKK you were dealing with a universe  
7 of one and the risk was simply too great for anybody to be  
8 willing to accept a partial deposit or a partial guarantee.  
9 In this case, as I said, they wanted 100 percent guarantee.

10 I understand that you're faced with something in  
11 the neighborhood of 80 to 85 landfills which are going to  
12 close, some of them, as was expressed by one of the previous  
13 speakers, with a very short-term left on their life  
14 expectancy and some with longer within the next 10 to 15  
15 years.

16 Out of that universe I don't know how to assess the  
17 fortuity and the predictability aspects that you were  
18 presented with earlier. Also out of that universe there will  
19 be some very large companies -- Waste Management Company and  
20 Browning-Ferris, for example, amongst others -- that perhaps  
21 could present a different financial posture and financial  
22 profile to a financial institution and provide less expensive  
23 guarantees.

24 I think in closing, my comment would be only that in  
25 looking for a guarantee, this Authority is not provided with

1 the legal authority to provide those guarantees. That can be  
2 done separately by the Legislature, if it so chooses, or  
3 through regulations that you're dealing with. We can operate  
4 with guarantees provided by other legally constituted bodies.  
5 I'm not at all sure, given the magnitude of the problem  
6 facing you, that the amount contemplated in the current  
7 legislation is adequate to do the job.

8 Thank you for the opportunity to make these comments  
9 and I would be happy to answer any questions.

10 CHAIRMAN ROODZANT: Any questions?

11 Thank you, Mr. Seigmuller.

12 Next is Mr. Tom Vernon, BKK Corporation.

13 MR. VERNON: I just wanted to add one brief comment  
14 based upon -- partially upon what Mr. Seigmuller mentioned  
15 about our landfill and based upon an experience that we did  
16 have at BKK.

17 Something that we were able to work out with the EPA  
18 that I think should be incorporated into your regulations is  
19 that many times a lot of the activity that's going to take  
20 place under closure and post-closure such as the placement of  
21 cover soil, building a gas system, those are things the  
22 operator is very capable of doing.

23 I think that it's important that the regulations  
24 reflect the ability of the operator to satisfy some closure  
25 and post-closure obligations using his own equipment and

1 using his own people and thereafter to be reimbursed from the  
2 trust fund or to have the obligation on the trust fund  
3 relieved to a certain degree in the case of an early closure  
4 of a landfill that had a longer life expectancy where the  
5 closure or post-closure trust fund has not yet been fully  
6 funded. That can be a very important item to a landfill  
7 operator. And I appreciate the opportunity to comment.

8 CHAIRMAN ROODZANT: Thank you, Mr. Vernon.

9 Any questions?

10 Next is Rubia Bertram, Department of Health  
11 Services.

12 MS. BERTRAM: Good morning. I'll make this real  
13 brief, since I think everybody's just about ready to go.

14 I was invited here just to give you a little bit of  
15 a perspective from the Toxics Division on the problems that  
16 have come up with some of these mechanisms that you're  
17 considering. The waste that we deal with, of course, is  
18 hazardous waste, but the mechanisms are the same and some of  
19 the problems are the same.

20 We regulate about 80 land disposal facilities that  
21 we look at for these financial responsibility requirements  
22 and in the neighborhood of 400 to 500 treatment and storage,  
23 some of which will be removed from that universe through  
24 various inspections and procedures, withdrawals of parties,  
25 applications for permits, and things like that.

1           The treatment, storage and disposal facilities that  
2 we deal with are required to submit a written closure cost  
3 estimate and a post-closure cost estimate, and those  
4 estimates have to be adjusted every year for inflation. The  
5 mechanisms that are available through our regulations to  
6 provide those coverages are essentially the same ones that  
7 you're considering and some of the background information  
8 that your staff has provided for you. Those are trust funds,  
9 letters of credit, surety bonds, closure insurance, financial  
10 test of a corporate guarantee, and then we have a regulation  
11 that allows for alternative mechanisms. That is, something  
12 that a facility can come up with that provides essentially  
13 the same level of coverage, the same availability of funds.  
14 But the onus, if you will, is on them to come up with  
15 something that they can propose to us that can be accepted.  
16 We have to at this time work through EPA to get anything out  
17 of the norm approved.

18           We have a variety of formal procedures, forms review  
19 procedures, those kinds of things for the submittals that we  
20 get. And we have five analysts that do that kind of work. I  
21 mention that because I know one of your concerns is going to  
22 be if you require these types of guarantees, staffing levels,  
23 who's going to do it and what kind of staffing levels you're  
24 going to need.

25           We have five fulltime people that do this right now

1 for the 80 land disposal facilities and then the 400 to 500  
2 treatment and storage. We review approximately half of those  
3 400 to 500 facilities each year. We alternate reviewing --  
4 doing a comprehensive review every other year simply because  
5 the universe is so large and our staffing levels aren't  
6 adequate for comprehensive review on all the facilities every  
7 year.

8 Of those facilities, about 40 percent use the  
9 financial test of the corporate guarantee and about 20  
10 percent use the trust fund. The problems that we've come  
11 across with the trust fund is basically the pay-in period.  
12 We're facing a lot of closures that are coming before the  
13 expected operating life of the facility. The initial  
14 expectation was longer for these facilities that are closing.

15 The pay-in period for the trust fund for our  
16 purposes was initially ten years. Some of these facilities  
17 are closing at five years. And so the levels of funding in  
18 the trust fund are not high enough to cover the actual costs,  
19 particularly when you take into account that what they  
20 thought they were going to do initially may not be what they  
21 ended up doing. So the costs may be a lot higher.

22 So that's a really big problem that we're facing is  
23 not having enough money in the trust at the time they close  
24 simply because the pay-in period didn't reflect that  
25 possibility.

1           We're also facing some problems which you'll face as  
2 well if you set up a trust kind of procedure on how to pay  
3 the money out, the actual procedures. Fortunately, our trust  
4 fund procedures are set up such that the Department has the  
5 approval authority for expenditures from the trust fund and  
6 those expenditures can only be for approved closure  
7 activities that have been itemized in an approved closure  
8 plan. So our problem in that area is simpler than yours in  
9 that you have to deal with, like someone was saying, the  
10 county boards of supervisors and cities and city governments.

11           The other major problem that we face is the  
12 financial test, which has been mentioned several times  
13 before, in terms of what happens between the time that a  
14 corporation or a company makes a financial test guarantee for  
15 something and the point at which they actually have to come  
16 up with the money and there has been substantial financial  
17 reversal and there's no money there. We have several major  
18 companies in that situation right now and there's no money to  
19 do the clean-up.

20           So those are the primary areas. I have some  
21 additional information for your staff that they might find  
22 helpful in researching this. I'll just give them a call and  
23 provide that to them.

24           Did you have any questions?

25           CHAIRMAN ROODZANT: Thank you, Mrs. Bertram.

1           Is there any questions?

2           Eugene Herson from NorCal will speak next.

3           MR. HERSON: No, I think we can pass.

4           CHAIRMAN ROODZANT: Mark Reston from Smith Barney.

5           Are there any other members of the audience who  
6 would like to speak on this section of the proposed  
7 regulations?

8           MR. ISBELL: Doug Isbell again.

9           Just briefly. In the session on public we relate to  
10 the enterprise fund. I think a further clarification on that  
11 would be necessary on that in the final. Enterprise fund is  
12 the fund by which we normally do daily operations. Within  
13 the enterprise fund though and within the county we have the  
14 ability to set up trust funds and the County Board of  
15 Supervisors can set those trust funds up with very specific  
16 uses in mind and procedures by which monies can be deposited  
17 and withdrawn.

18           I believe that's a very strong mechanism, especially  
19 when that pledge of that trust fund under that agreement is  
20 part of the operating conditions of landfills. I think that  
21 the Board's ability to go in and delete that fund in the  
22 future -- I think their hands may not be totally tied, but I  
23 think it's strongly tied. And I think that's the mechanism  
24 that most counties and governmental agencies will find.

25           So we look forward to working with actually how to

1 structure those and how to protect them. Because we are just  
2 as concerned in operating a department that those funds not  
3 be touched for other purposes as you would be.

4 BOARD MEMBER BROWN: Mr. Chairman.

5 Yeah, you make a good point. You're correct. The  
6 fear always is, of course, you can't bind future boards, and  
7 somehow or other the financial community gets a little  
8 nervous on that point and I don't blame them.

9 However, because of the need to bind future  
10 governmental agencies, we have moved into those areas. And  
11 you're correct with respect to trust funds. Also bonded  
12 indebtedness is another one that we have found is pretty  
13 dog-gone binding. You go out and you float a \$20 million  
14 bond for a jail expansion, you've pretty well committed  
15 future boards whether they like it or not.

16 So, yes, necessity has brought on the result there.  
17 I think you're right.

18 CHAIRMAN ROODZANT: Any other comments or questions?

19 Thank you, sir.

20 Any other members of the audience that would like to  
21 speak on the Item 14C?

22 Hearing none, we'll proceed then with the agenda.

23 Item 16, Review of Future Board Agenda Items.

24 As in the past, you've been given a list of proposed  
25 items for the next meeting. If you have any requests to add

1 to that or delete --

2 EXECUTIVE OFFICER EOWAN: I think there was one by  
3 Mr. Beautrow to add the 2448 as an annual -- a monthly  
4 update.

5 BOARD MEMBER BREMBERG: Annual?

6 EXECUTIVE OFFICER EOWAN: Annual update.

7 CHAIRMAN ROODZANT: Item 17, Open Discussion.

8 BOARD MEMBER CALLOWAY: Mr. Chairman.

9 CHAIRMAN ROODZANT: Mr. Calloway.

10 BOARD MEMBER CALLOWAY: I think you asked me if I  
11 would go back to Washington in May to the recycling plastic  
12 conference or something. And I'd just like to ask the Board.  
13 I'm willing to do it if it's okay with the Board. However, I  
14 don't want to take off to Washington and then come back and  
15 say, who the hell authorized that junket?

16 So if you want me to go, I'll go. So I guess that's  
17 what I'm asking the Board.

18 CHAIRMAN ROODZANT: Thank you, Mr. Calloway.

19 Any other comments?

20 Hearing none, we'll recess for five minutes to go  
21 into executive session to discuss personnel matters and we'll  
22 adjourn immediately thereafter.

23 (Thereupon the meeting of the California Waste  
24 Management Board adjourned to executive session at  
25 12:10 p.m.)

CERTIFICATE OF SHORTHAND REPORTER

1  
2  
3 I, EILEEN JENNINGS, a Certified Shorthand Reporter  
4 of the State of California, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing meeting was reported in shorthand by me, Eileen  
7 Jennings, a Certified Shorthand Reporter of the State of  
8 California, and thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or  
10 attorney for any of the parties to said meeting nor in any  
11 way interested in the outcome of said meeting.

12 IN WITNESS WHEREOF, I have hereunto set my hand this  
13 1st day of May, 1988.

14  
15  
16  
17  
18   
19 EILEEN JENNINGS  
20 Certified Shorthand Reporter  
21 License No. 5122  
22  
23  
24  
25