

MEETING
STATE OF CALIFORNIA
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
PERMITTING AND ENFORCEMENT COMMITTEE

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BOARD ROOM
8800 CAL CENTER DRIVE
SACRAMENTO, CALIFORNIA

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WEDNESDAY, MAY 17, 1995

10:00 A.M.

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Vicki L. Medeiros, C.S.R.

License No. 7871

A P P E A R A N C E S

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ROBERT C. FRAZEE, Committee Chair
Board Member

SAM EGIGIAN, Committee Member
Board Member

PAUL RELIS, Committee Member
Board Member

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P R O C E E D I N G S

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3 COMMITTEE CHAIRMAN FRAZEE: If everyone would take
4 their seats, please, and the meeting, the May 17 meeting of
5 the Permitting and Enforcement Committee will come to order.

6 I'll ask the secretary to call the roll.

7 MS. PARKER: Board Members Egigian.

8 COMMITTEE MEMBER EGIGIAN: Here.

9 MS. PARKER: Relis.

10 COMMITTEE MEMBER RELIS: Here.

11 MS. PARKER: Chairman Frazee.

12 COMMITTEE CHAIRMAN FRAZEE: Here.

13 All members are present.

14 Any ex parte communications that anyone needs to
15 do this morning?

16 COMMITTEE MEMBER EGIGIAN: I don't think I need
17 to, but I'd better. I said hello to Rob Sorian from
18 Forward, is that Forward that he's from?

19 Yes, Forward.

20 COMMITTEE CHAIRMAN FRAZEE: I guess we all said
21 hello to him.

22 COMMITTEE MEMBER RELIS: I had a meeting -- I'm
23 not sure if it has been filed yet, with Vons Company, in
24 Arcadia, with the Environmental Manager and the Quality
25 Control Manager, regarding their composting operations and

1 related regulatory matters.

2 COMMITTEE CHAIRMAN FRAZEE: Thank you.

3 For review of the Agenda, Item 4 has been pulled
4 from the calendar. Item 3, the consideration of the Waste
5 Facilities Permit for the Caspar Transfer Station, we've had
6 a request to trail that one until after lunch or until the
7 operator arrives. Someone will keep us informed.

8 Then, also, the Item 9, which is the consideration
9 of approval of staff options for the authority of the Waste
10 Board to regulate non-hazardous petroleum contaminated soil
11 operations, I believe we should trail that one.

12 I think we have a considerable amount of testimony
13 on that particular item. We will work in that order.

14 Any reports from staff before we start the regular
15 agenda, Mr. Chandler?

16 MR. CHANDLER: No.

17 I think we will just proceed.

18 COMMITTEE CHAIRMAN FRAZEE: We will start with
19 Item 1, which is the consideration of concurrence in the
20 issuance a new Solid Waste Facilities Permit for the Mission
21 Road Recycling and Transfer Station, in Los Angeles County.

22 MR. OKUMURA: Good morning, Mr. Chairman, Members
23 of the Committee.

24 Agenda Item 1 is a project involving changes in
25 operator only, and the staff presentation will be made by

1 Ms. Amalia Fernandez.

2 MS. FERNANDEZ: This item regards the
3 consideration of concurrence in the issuance of a new Solid
4 Waste Facilities Permit for the Mission Road Recycling and
5 Transfer Station, located in the City of Los Angeles.

6 The proposed permit will allow operations under a
7 new operator. The 1989 Solid Waste Facilities Permit was
8 issued to Arthur Kazarian, with Waste Transfer and
9 Recycling, Incorporated.

10 Under the proposed project, operations will be
11 conducted by Waste Management Collection and Recycling,
12 Incorporated.

13 The site is on 3.5 acres, in an area zoned as
14 heavy industrial. The site is located near the junction of
15 the Santa Ana Freeway, which is Interstate 5, and the Santa
16 Monica Freeway, which is Interstate 10.

17 The proposed tonnage is a maximum of 1,500 tons
18 per day. The facility's operated 24 hours per day, seven
19 days a week. Environmental control measures for impacts
20 from potential problems have been addressed.

21 The LEA and Board staff have made the following
22 determinations: One, the facility is in conformance with
23 the Los Angeles County Solid Waste Management Plan; the
24 facility is consistent with the City of Los Angeles General
25 Plan; The facility is consistent with the diversion goals of

1 AB-939; and CEQA requirements have been satisfied.

2 Staff have reviewed the proposed permit and found
3 it suitable for Board's consideration. Board staff,
4 therefore, recommends the Board adopt Permit Decision
5 95-594, concurring in the issuance of Solid Waste Facilities
6 Permit 19-AR-1183.

7 Representatives of the operator and the LEA are
8 present to answer questions you may have. This concludes
9 staff's presentation.

10 COMMITTEE CHAIRMAN FRAZEE: Okay. Thank you.

11 Let me indicate now that if there is anyone here
12 that wishes to speak on any of the items, we do have speaker
13 slips in the back of the chambers. Fill those out and bring
14 them forward. It would be helpful to us to be sure to not
15 miss anyone.

16 Is there anyone here that wished to be heard on
17 this particular item?

18 If not, questions, discussion?

19 COMMITTEE MEMBER RELIS: No.

20 I'm prepared to move the item.

21 COMMITTEE CHAIRMAN FRAZEE: Okay. We have a
22 motion and a second.

23 COMMITTEE MEMBER EGIGIAN: I will go along with
24 that.

25 COMMITTEE CHAIRMAN FRAZEE: On the approval of

1 staff recommendation on Agenda Item 1, no further
2 discussion.

3 Secretary call the roll.

4 MS. PARKER: Board Members Egigian.

5 COMMITTEE MEMBER EGIGIAN: Aye.

6 MS. PARKER: Relis.

7 COMMITTEE MEMBER RELIS: Aye.

8 MS. PARKER: Chairman Frazee.

9 COMMITTEE CHAIRMAN FRAZEE: Aye.

10 Motion is carried.

11 Without objection, I recommend that to the Consent
12 Calendar for the full board.

13 Item 2 is the consideration of concurrence in the
14 issuance of a Revised Solid Waste Facilities Permit for the
15 Avery Transfer Station, in Calaveras County.

16 MR. OKUMURA: Mr. Chairman, this project is for
17 continued operations and improvement of the Avery Transfer
18 Station. Staff presentation will be made by Mr. Jon
19 Whitehill.

20 MR. WHITEHILL: Good morning, Mr. Chairman and
21 Members of the Committee.

22 The Avery Transfer Station is located in eastern
23 Calaveras County, near the town of Avery, about a quarter
24 mile east of Highway 4. Surrounding land is designated
25 general commercial, general forest, timber production,

1 unclassified or public service.

2 The transfer station receives an average of 14
3 tons per day, but is designed and will be permitted to
4 process up to 51 tons of non-hazardous residential waste per
5 day.

6 In addition, the station will be permitted to
7 accept up to 3 tons of separated recyclables per day. An
8 attendant is always on duty during the operating hours, and
9 on-site improvements include a compactor, attendant shelter,
10 a paved driveway and queing area, a recycling drop-off area
11 and perimeter fencing.

12 Waste is compacted into 40 cubic yard transfer
13 bins before being hauled to the Rock Creek Landfill, in
14 western Calaveras County.

15 State law requires that preparation and
16 certification of an environmental document whenever a
17 project requires discretionary approval by a public agency.

18 In this case the Calaveras County Planning
19 Department prepared a Negative Declaration for the proposed
20 project in 1992.

21 However, the 1992 Negative Declaration did not
22 address the potential environmental impacts of redirecting
23 transferred waste to a new disposal site or address the
24 potential noise, odor and dust impacts of the transfer
25 station on an adjacent middle school, which was built after

1 the preparation of the Negative Declaration for the transfer
2 station.

3 This proposed permit was originally scheduled to
4 be heard at last month's meeting, but the LEA and the
5 operator waived our 60-day time limit, while an addendum to
6 the Negative Declarations were prepared.

7 The Calaveras County Planning Department has since
8 submitted an addendum to the 1992 Negative Declaration,
9 which analyzes the change in waste destination and the
10 change in surrounding land use.

11 The addendum concludes that the above-mentioned
12 concerns do not constitute a substantial change in the
13 project, a substantial change in the circumstances under
14 which the project was undertaken or new information of
15 substantial importance that would prompt the need to conduct
16 further CEQA review.

17 In addition, the addendum references other
18 environmental documents that address the above impacts and
19 concerns. For instance, lead agency previously approved and
20 certified an EIR for the Rock Creek Landfill which
21 identified and analyzed the potential impacts of the traffic
22 concerns we had with the redirection of waste.

23 The addendum also references a Negative
24 Declaration that was prepared for the construction of the
25 school.

1 So, this information has been incorporated into
2 the Negative Declaration, and after reviewing the
3 environmental document for the project, Board staff have
4 determined that the Negative Declaration is now adequate and
5 appropriate for the Board's use in evaluating the proposed
6 permit.

7 In summary, the LEA and Board staff have
8 determined that the operator has complied with the
9 requirements of the California Environmental Quality Act;
10 that the proposed permit is consistent with the standards
11 adopted by the Board; that the project is consistent with
12 the waste diversion goals of Assembly Bill 939; that the
13 facility is in conformance with the Calaveras County General
14 Plan; that the facility is identified in the Calaveras
15 County Solid Waste Management Plan; and that the design and
16 operation of the station meet the State Minimum Standards
17 for solid waste handling and disposal.

18 Because a Revised Solid Waste Facilities Permit is
19 proposed, the Board must either concur or object to the
20 proposed permit as submitted by the LEA.

21 So, in conclusion, staff have reviewed the
22 proposed permit and supporting documentation and found them
23 to be acceptable. Staff recommend that the Board adopt
24 Solid Waste Facilities Permit Decision No. 95-378,
25 concurring in the issuance of Solid Waste Facilities Permit

1 No. 05-AA-0009.

2 The LEA and the operator are both here in case you
3 have any questions, and this concludes my presentation.

4 COMMITTEE MEMBER EGIGIAN: Mr. Chairman, I am not
5 talking against the situation, however, we have down here
6 tonnage, it says, currently accepting an average of 14 tons
7 of waste per day, but the proposed permit allows a maximum
8 of 51 tons of waste per day.

9 Now, awhile back, I think it was the County of Los
10 Angeles that had the same type of situation come before us,
11 and we denied them the higher rate. Now, we have had
12 several of these come through that do not specify the
13 amount.

14 I would rather not put down 14 a day, and then
15 they can go to a maximum of 51 tons. If they want a maximum
16 of 51 tons, let's go for that.

17 Otherwise, we are going to have these permits come
18 in, and they are going to go from a low to a high expandable
19 tonnage, and I will go in favor of allowing it if we are
20 going to start doing it on these smaller stations.

21 COMMITTEE MEMBER RELIS: Isn't it, though, the
22 fact, I mean, what the permitted tonnage is is the number
23 that is up to 50 would be allowable?

24 MR. WHITEHILL: That's correct.

25 COMMITTEE MEMBER RELIS: Whether they use 14 or 18

1 or 22, the permit is 50.

2 COMMITTEE MEMBER RELIS: Their average is 14 tons
3 per day, but there are some days of the year, particularly
4 after busy holidays, during the tourist season, when their
5 peak tonnages approach 50 tons per day.

6 So, they felt it was prudent to include that
7 tonnage in the permit, so that it would be clear that if
8 they did accept 50 tons on a day that they would not be
9 violating their permit.

10 COMMITTEE MEMBER EGIGIAN: That is the reason why
11 I brought it up.

12 I don't remember exactly the situation.

13 COMMITTEE MEMBER RELIS: It was Sunshine Candy, I
14 believe.

15 COMMITTEE MEMBER EGIGIAN: During the growing
16 season, they had a lot more green waste going in there.

17 Now, I'm sure that green waste is going to go
18 someplace else. But it does give them the 51 tons, well, we
19 ask if it gives them the 51 tons a day.

20 By the same token, we didn't let the county get
21 away with this. Okay. We restricted them to the tonnage
22 that -- the low tonnage rate.

23 If I have misunderstood this, somebody correct me.
24 But I just wanted to bring it up.

25 I have no objections on this permit. If you are

1 ready, Mr. Chair, I'll move it.

2 CHAIRMAN FRAZEE: Okay. We have a motion on
3 approval.

4 Is there a second?

5 COMMITTEE MEMBER EGIGIAN: Just one other
6 question.

7 Was there a CEQA problem here?

8 MR. WHITEHILL: There was a Negative Declaration
9 prepared in 1992, but the only problem with CEQA was there
10 was one small bit of information that was not incorporated
11 into the CEQA document, and they have since fixed that.

12 COMMITTEE MEMBER EGIGIAN: No other comments.

13 COMMITTEE CHAIRMAN FRAZEE: Yes. Not the
14 distinction here the average versus maximum, the 51 tons is
15 an absolute maximum for any one day.

16 It's not an average?

17 MR. WHITEHILL: That would be the absolute maximum
18 that they could accept without violating their permit.

19 COMMITTEE CHAIRMAN FRAZEE: But with the 14 ton
20 average, there are obviously days when that is less than
21 that and some are more than that.

22 MR. WHITEHILL: More than half the time they would
23 take less than that 14 tons per day.

24 COMMITTEE CHAIRMAN FRAZEE: That makes sense.

25 Is there anyone here to be heard on this item?

1 Apparently not.

2 We have a motion and a second to approve this
3 item.

4 Will the secretary call the roll, please.

5 MS. PARKER: Board Members Egigian.

6 COMMITTEE MEMBER EGIGIAN: Aye.

7 MS. PARKER: Relis.

8 COMMITTEE MEMBER RELIS: Aye.

9 MS. PARKER: Chairman Frazee.

10 COMMITTEE CHAIRMAN FRAZEE: Aye.

11 That motion is carried.

12 Now Item 3, we are going to trail.

13 Item 4 has been pulled.

14 So, we will move on to Item 5, which is the
15 consideration of sites for funding under the Solid Waste
16 Disposal and Codisposal Site Cleanup Program.

17 MR. OKUMURA: As part of the 2136 Program, staff
18 will be proposing six additional sites today to the already
19 twenty approved by the Board.

20 Included in these proposed sites will be our first
21 loan requests under this program.

22 Staff presentation will be made by Ms. Charlene
23 Herbst.

24 MS. HERBST: Good morning, Chairman Frazee, Board,
25 Committee Members.

1 Today staff are bringing six sites to the
2 Committee for consideration for funding under the 2136
3 Program. The first of these potential sites would be funded
4 as an LEA grant, and the remaining five sites would be loans
5 to public entities.

6 The six sites are Greenfield Illegal Disposal
7 Site, in Kern County; the Humboldt Road Burn Dump, in Butte
8 County; and four sites in San Diego County, the Ramona
9 Landfill; Poway Landfill; the Gillespie Landfill; and the
10 Encinitas Landfill.

11 Of the four San Diego County sites, Ramona and
12 Poway would be funded by a loan using funds from the current
13 fiscal year. Gillespie and Encinitas would be funded by a
14 loan using funds from the next fiscal year, 1995-96, and
15 would only be funded if 2136 monies are provided by the
16 Legislature for the next fiscal year. All loans would be
17 simple interest, with a 20-year repayment period and carry
18 an interest rate of 5.147 percent, based on the surplus
19 money investment fund.

20 Staff are prepared to present brief descriptions
21 of each of the projects, if you wish.

22 COMMITTEE MEMBER RELIS: Mr. Chair, at the outset,
23 before we get into discussion of specific projects, in the
24 briefing when it was brought to my attention that the
25 Gillespie and Encinitas would be, in effect, commitments

1 made this fiscal year subject to approval of the budget for
2 next year, I had some reservation about the worthiness of
3 the projects, but whether it's appropriate as a policy
4 matter for the Board to incur or project obligations ahead
5 of schedule, because these tend to create expectations which
6 we are not always in control of and which can lead to
7 complications down the line, which I am more in favor of
8 dealing with the budget as it is approved rather than on
9 expectations.

10 I just wondered what other Members thought on it.

11 COMMITTEE MEMBER EGIGIAN: Mr. Chairman, Mr.
12 Relis, I go along with that, too.

13 Spend the money that you have today. Don't spend
14 the money that you haven't been given yet.

15 So, if we go for the Ramona Landfill and Poway
16 this year, and if we have the money next year, we can look
17 at Gillespie and Encinitas.

18 That would be my feeling on this situation.

19 COMMITTEE CHAIRMAN FRAZEE: Perhaps you should
20 give us a little capsule of how much money is remaining in
21 this fund and what this does.

22 MS. HERBST: Okay. If the first four sites on the
23 list, Greenfield, Humboldt Road, Ramona and Poway sites, if
24 they are approved for funding by the Committee and by the
25 Board, that would mean that all but \$12,000 of the

1 \$5-million provided for 2136 Program for the current fiscal
2 year will have been encumbered.

3 Staff is proposing to carry that remaining \$12,000
4 over into the next fiscal year and propose a small project
5 to consume the rest of it, probably at the July Committee
6 and Board meetings.

7 COMMITTEE CHAIRMAN FRAZEE: The cash flow from the
8 loans being paid off, is that taken into consideration in
9 this \$12,000?

10 MS. HERBST: So far, we have no loans.

11 COMMITTEE CHAIRMAN FRAZEE: This is the first --

12 MS. HERBST: This would be the first one, and we
13 are making provisions to ensure that loan money is
14 redeposited into the trust fund once it's collected.

15 But so far, we haven't collected any since we
16 haven't made any loans.

17 MR. CHANDLER: Let me see if I can speak a little
18 bit to Mr. Relis's point.

19 As you know, we collect tip fee dollars for the
20 Integrated Waste Management account, and the statutes
21 require that we set aside \$5-million for the Loan Fund and
22 \$5-million annually for this Site Cleanup Program. That is
23 set in statute and is required.

24 I think what staff is pointing out is that those
25 dollars don't become available for expenditure until the

1 Governor has signed the budget, and it's been approved by
2 the Legislature.

3 I would only note that neither the Assembly or the
4 Senate Budget Committee Hearings we had this spring have
5 raised any questions with regard to the appropriateness of
6 seeing those sub-accounts established for both the Market
7 Loan Program and the Site Cleanup Program.

8 So, essentially what we are doing is allowing
9 staff to get some policy direction here today, so they can
10 begin the preparation of putting into place the necessary
11 contracts and contractors in the field, so come July first,
12 whenever the budget is passed, we are in a position to move
13 forward on a couple of sites.

14 It is a valid point that we don't have the
15 expenditure authority until the Governor's budget is, in
16 fact, signed. But I wanted to make it very clear that the
17 statute does direct this Board to set aside annually a
18 sub-account, \$5-million for Cleanup and \$5-million for
19 Market Development loans.

20 So, it would be like staff soliciting future loan
21 applications from future loan applicants and wanting to get
22 that process started. We're trying to get the process
23 started here of putting contractors in the field for a
24 couple of sites that we think are worthy of attention, and
25 we look to the Legislature and the Governor to approve the

1 appropriation.

2 COMMITTEE CHAIRMAN FRAZEE: How does the cycle for
3 applications for loans, is that a new annual cycle?

4 MR. CHANDLER: Loans as it related to this
5 program?

6 COMMITTEE CHAIRMAN FRAZEE: This program.

7 MR. CHANDLER: I'd ask Charlene to speak to that.

8 MS. HERBST: The way that this program has worked
9 is that we accept applications for any of the mechanisms for
10 funding under the 2136 program continuously.

11 So, as they come in, they are evaluated, they are
12 ranked and they are compared with the other applications
13 that we're currently processing. So, we do accept
14 applications continuously.

15 COMMITTEE CHAIRMAN FRAZEE: It seems like in order
16 to rank that you must have a cut-off period, though.

17 MS. HERBST: Well, one of our concerns is to see
18 that the projects continue to move forward, and there are a
19 lot of potential projects out there. We were concerned that
20 if we waited until we got a whole bunch of applications, we
21 might not be able to process the applications and encumber
22 the money properly.

23 So, we know relatively -- we have ranked enough
24 sites and know of the worst sites, so we know what a high
25 scoring site would have in terms of a number. So, as these

1 projects come forward, we compare them to the numbers of the
2 projects that we know are already in the system. -

3 So, we actually can evaluate one against the
4 other, even though we haven't received applications from
5 every possible site that exists.

6 COMMITTEE CHAIRMAN FRAZEE: In the case of the two
7 that my fellow Board Members are recommending be put over
8 until the next fiscal year, is there not the potential for
9 them being in competition with something new that may come
10 up that bumps them down or out of priority position?

11 MS. HERBST: It is possible that we might get an
12 application from someone that we don't know about right now
13 that might have a higher ranking.

14 If you want to get some more details on the
15 characteristics of those two projects, I do have Wes
16 Minderman, from staff, available to talk about the projects
17 themselves.

18 COMMITTEE MEMBER RELIS: Just to pursue that
19 further, suppose we adopted staff's recommendation?

20 We would in effect announce to the parties that we
21 would, subject to getting our money in hand, a commitment
22 would be forth coming. If we carried that forward, let's
23 say to next year, and maybe there -- how many -- I guess I'm
24 getting at the criteria and selection process, too.

25 We are going to continue to receive I guess

1 applications for new sites, unless you feel you have a
2 handle on the whole statewide situation, and the staff has
3 already gone through all the available sites and has an
4 operating list off of which it is working and is certain
5 that those are the one's that we want to fund over the, say,
6 full next year.

7 MS. HERBST: Staff does have an operating list of
8 entities that have expressed interest in getting funding for
9 various projects, but it's a continuing process to look for
10 additional sites, or people suddenly become aware of the
11 program.

12 We are also soliciting LEAs to provide
13 recommendations, and some LEAs haven't taken us up on that
14 offer yet, but they have said that they would. So, while
15 staff has a list of projects that have come to their
16 attention and are in the process of being evaluated for
17 their suitability, it doesn't mean that that list includes
18 every site that we may become aware of over the next six to
19 eight months.

20 COMMITTEE MEMBER EGIGIAN: I think because there
21 is only going to be \$12,000 left, we cannot go ahead, but we
22 can certainly instruct the staff that these two, Gillespie
23 and Encinitas, we expect them to be on the next go-around,
24 otherwise we will change the staff.

25 This is what the Committee wants.

1 MR. CHANDLER: I want to just be clear.

2 Staff's recommendation is not to fund these sites
3 in any way this fiscal year with any dollars that are
4 appropriated currently. It is recognized that these sites
5 have been ranked relative to all of the other sites that we
6 know about statewide, and conditioned on approval of the
7 Governor's budget, they would by then, moving into the
8 funding status, be recognized by this Board to then begin
9 remediation next year.

10 There would not be one dollar spent on these sites
11 in this fiscal year, and perhaps what staff has done is kind
12 of got a little bit ahead of themselves, but it is analogous
13 to a contract concept where we approve a contract for fiscal
14 year 94-95, and then we say, this is a two-year contract,
15 and upon approval of the Governor's budget, we recommend
16 second year funding out of 95-96, and we have done that
17 frequently here at the Board.

18 So, it's just conditioned on the availability of
19 dollars upon appropriation and approval by the Governor's
20 budget.

21 We are more than pleased to come back in July and
22 revisit these projects. We wanted just to present them
23 today in anticipation of what I believe the Legislature and
24 the Governor will do and that is to fully appropriate this
25 important fund for the upcoming fiscal year.

1 COMMITTEE CHAIRMAN FRAZEE: I think it might be
2 helpful in this issue, we do have a couple of speaker slips,
3 representatives of the City of Chico, who apparently have
4 some concern about this process. They might help us.

5 MS. HERBST: We have representatives from the City
6 of Chico to speak on the Humboldt Road Burn site and address
7 any questions that you might have.

8 COMMITTEE CHAIRMAN FRAZEE: Oh, that's the --

9 MS. HERBST: That's the second project on the
10 list, and then we have representatives from the County of
11 San Diego, Department of Public Works, Ralph Thielicke and
12 Ken Calvert, the San Diego County LEA to respond to
13 questions about the four sites.

14 COMMITTEE CHAIRMAN FRAZEE: I was misreading this.
15 They are on that application, the Butte County
16 application.

17 I thought they were here to dispute our list of
18 items.

19 MS. HERBST: No.

20 COMMITTEE CHAIRMAN FRAZEE: I didn't connect the
21 two.

22 Do either of these gentlemen wish to be heard on
23 this item?

24 MR. BOEHM: Robert Boehm, City of Chico.

25 We are just here to address any questions that you

1 might have about our loan application.

2 COMMITTEE CHAIRMAN FRAZEE: I think we are clear
3 on that item then.

4 What is pleasure of the Committee at this point?

5 MR. CHANDLER: Mr. Frazee, I think the
6 representative from San Diego wishes to speak.

7 Ralph Thielicke.

8 MR. THIELICKE: Thank you, Mr. Chairman. My name
9 is Ralph Thielicke, and I'm with the County of San Diego,
10 Solid Waste Division.

11 Perhaps a little explanation of what the projects
12 are. You see them as four individual projects before you,
13 but, in fact, we bid them as one job so we have one
14 contractor.

15 In fact, the work has already started. It's about
16 50 percent complete at this point. We have run into some
17 budget problems this fiscal year, and we had to stop the
18 projects.

19 The reason that we requested from your staff that
20 they go forward at this time is in talking to the
21 contractor, the contractor is hesitant to piecemeal the
22 project. We are trying to get him restarted.

23 He indicates to us that because the economies of
24 scale, he needs to order all the equipment, all the supplies
25 for all four sites so he can get the best price from his

1 suppliers. He also needs to work the four sites
2 simultaneously so he gets the best use of his labor and the
3 equipment that he has on the job.

4 That is why we presented it to your staff in this
5 manner. If we know that the money is going to be available
6 in the next fiscal year, then there is some assurances that
7 we can get the contractor started and the projects going.

8 Also, we are concerned that if there is any risk
9 that the projects don't go forward, they will be stopped
10 again, there is a cost associated with stopping the
11 projects. Every time we have to do that, it costs us money,
12 and it's not cost-effective to do it in that manner.

13 COMMITTEE CHAIRMAN FRAZEE: Thank you. That is
14 helpful, I think.

15 Discussion? Questions?

16 COMMITTEE MEMBER EGIGIAN: No questions other than
17 the fact that we don't have the funds for the total package
18 this time around, as has been explained, so it is going to
19 take some different planning on your part, I think, if you
20 have to do these all at once.

21 COMMITTEE CHAIRMAN FRAZEE: I think the fact is
22 that we are within a month and a half from the end of the
23 fiscal year.

24 By the time this gets approved and money available
25 and the start-up, we are going to be into the next fiscal

1 year anyway, and as long as it doesn't create a cash flow
2 problem for us here in funding that in the first month or so
3 of the fiscal year, I don't see what the problem is.

4 MR. CHANDLER: I just want to reiterate to San
5 Diego County that should the Board consider recognizing this
6 project today, we would not be in the position to provide
7 any funding for this project until July first.

8 If what you are looking for is the signal from
9 this Board now or later, preferably now, that we see the
10 appropriateness and the need for ongoing funding for this
11 project and recognize the time line being that this is a
12 project proposed for support in the next fiscal year, that
13 being July first or upon approval of our budget, so, as long
14 as that's clear, I am still very comfortable with
15 recommending this project now, as long as all parties
16 recognize, the Board Members and the County, that we are not
17 in a position to honor any invoice or any reimbursement
18 claim from any contract for any County representative until
19 July first.

20 MR. THIELICKE: That is clear.

21 We do understand that.

22 COMMITTEE MEMBER RELIS: Would the County be
23 starting any work on the assumption that money would be
24 forthcoming ahead of --

25 MR. CHANDLER: If they did, they would be moving

1 at their own risk, and I think it's a calculated risk on
2 whether or not they believe that this budget by the Governor
3 is going to somehow eliminate funding for our Site Cleanup
4 Program.

5 I think that would be a question that they ask
6 themselves.

7 We reiterate again, there has been no reference in
8 our budget that this support program is going to receive
9 reduced funding on July first. I don't mean to answer for
10 the County, but that is a risk that they would have to
11 evaluate.

12 MR. THIELICKE: We recognize the risk, but if we
13 have some indication from your Board that it would be
14 approved and subject to the budgeting next year, I think it
15 would be easier to work with the contractor and have him go
16 forward.

17 COMMITTEE MEMBER RELIS: It was my understanding
18 what Mr. Egigian said was that it would be our intent to
19 follow-up on this Committee, just where the line falls, so
20 to speak, and I guess the comfort level of different
21 Committee Members on procedurally how to do it, because I
22 don't think there is any quarrel over the substance or
23 wanting to do that.

24 COMMITTEE MEMBER EGIGIAN: You have another plus
25 going for you.

1 The Chairman happens to be from that area.

2 COMMITTEE CHAIRMAN FRAZEE: That should have no
3 bearing. I represent all the people in the State of
4 California.

5 I do happen to know that the Encinitas Landfill is
6 in an urbanizing area and is in desperate need of
7 remediation at this point.

8 We have a motion then.

9 COMMITTEE MEMBER EGIGIAN: Did you make it, or did
10 I, Paul?

11 COMMITTEE MEMBER RELIS: I think you did.

12 COMMITTEE CHAIRMAN FRAZEE: Give me the sense of
13 the motion, or I will take the prerogative and restate one.

14 COMMITTEE MEMBER EGIGIAN: The motion was that we
15 take care of Ramona and Poway on this go around, which
16 leaves us with a \$12,000 balance, and then at the beginning
17 of the next fiscal year, we can hear and go ahead with the
18 other two.

19 COMMITTEE CHAIRMAN FRAZEE: It is implied in that
20 that the balance of the two projects will be priorities one
21 and two next year.

22 That's the intent?

23 COMMITTEE MEMBER RELIS: Yes.

24 COMMITTEE MEMBER EGIGIAN: That is what I mean.

25 Can we do that legally? a

1 COMMITTEE CHAIRMAN FRAZEE: I am sure we can.

2 MR. CHANDLER: I am sure you can direct staff.

3 You mentioned Ramona and Poway, is there any
4 questions on the first two, Greenfield and Humboldt?

5 COMMITTEE MEMBER EGIGIAN: No.

6 Only because they come in this order, and it was
7 easier to separate them that way.

8 If the people from San Diego would like to put
9 Encinitas instead of Poway or one of the others --

10 COMMITTEE MEMBER RELIS: I wanted to ask before we
11 actually make the vote, since this is -- initially I brought
12 up the issue of just from a policy standpoint, how do we
13 want to take the items up.

14 I had a few questions about -- we're moving into a
15 loan approach here, and what the security and so forth is
16 going to be for the loans. I wonder -- I would like to get
17 into a short discussion.

18 COMMITTEE MEMBER EGIGIAN: The whole city is
19 security.

20 We buy ourselves a city if they don't pay the
21 bill.

22 I don't think that is that important.

23 COMMITTEE MEMBER RELIS: You don't think there is
24 a security issue?

25 COMMITTEE MEMBER EGIGIAN: No.

1 COMMITTEE CHAIRMAN FRAZEE: With public agencies,
2 we can trust public agencies.

3 They never go bankrupt. Okay.

4 I think we have the sense of the motion.

5 MR. CHANDLER: Let me see if I can capsulize it,
6 just so staff is clear.

7 I hear Mr. Egigian moving Item 1 through 4, which
8 the staff tells me we have funding for in the current
9 budget, with a balance of \$12,000, and indicating that the
10 Gillespie and Encinitas projects be recognized as top
11 priorities for the upcoming fiscal year, and upon approval
12 of the Governor's budget would be so recognized as projects
13 to be funded at that time.

14 COMMITTEE MEMBER RELIS: That is good.

15 COMMITTEE CHAIRMAN FRAZEE: Let me just -- I don't
16 want to prolong this, but offer -- first, the San Diego
17 County representative, just as an alternative, a suggestion,
18 that inasmuch as these are, even though they are identified
19 as four separate projects, that the indication was that they
20 are really one project, this motion would not restrict them
21 to spending the money on those two specific landfills but to
22 go ahead with the package and the dollar amount as it would
23 apply to all four rather than only to the Ramona and Poway.

24 MR. CHANDLER: I have no objection to that.

25 COMMITTEE CHAIRMAN FRAZEE: Is that what I am

1 understanding you to say, the way that it would be handled,
2 that you would start on it, start working on all four
3 projects simultaneously, then as the balance of the money
4 came in, you are taking the risk that it comes or not, but
5 it would affect all four projects rather than just the two?

6 Then I guess these are listed because of a
7 ranking, or are they listed as a package?

8 MS. HERBST: We generally list them because we
9 have looked at each individual site and determined its
10 merits.

11 I would be rather uncomfortable about saying that
12 the money that was appropriated for doing two specific sites
13 might be spread to other sites, just because of the
14 precedent that that might set.

15 COMMITTEE CHAIRMAN FRAZEE: Okay. I will back off
16 on that one.

17 So, we have a motion before us that's been
18 restated by Mr. Chandler. If there is no further
19 discussion, I will call for the vote.

20 MS. PARKER: Board Members Frazee.

21 COMMITTEE CHAIRMAN FRAZEE: Aye.

22 MS. PARKER: Relis.

23 COMMITTEE MEMBER RELIS: Aye.

24 MS. PARKER: Egigian.

25 COMMITTEE MEMBER EGIGIAN: Aye.

1 COMMITTEE CHAIRMAN FRAZEE: That motion is
2 carried.

3 Without objection, we will place that on Consent,
4 as well, and I failed to note Item 2.

5 Now, we are to Item 6, the consideration of
6 approval of the designation of Colusa County Health
7 Department, Environmental Health Division as the Local
8 Enforcement Agency for the County of Colusa.

9 MR. OKUMURA: Back in December of 1994, the Board
10 took action to dedesignate Colusa County Health Department.
11 Today staff will be presenting information regarding the
12 redesignation of Colusa County Health Department.

13 Staff presentation will be made by Ms. Mary Coyle.

14 MS. COYLE: Mr. Chairman and Members, as Mr.
15 Okumura mentioned, the Board did decide to withdraw
16 designation of Colusa County Health Department in December.

17 That was based on the fact that the staff lacked
18 the technical expertise and staffing required to be
19 certified as the LEA.

20 In the interim period, we have been working with
21 the County in trying to solve their staffing needs, and I am
22 pleased to announce that effective May 2, which would have
23 been the day we would have been officially taking over as
24 the Enforcement Agency, they did solve their staffing
25 problem and do have the appropriate staff and the technical

1 expertise now available in the County.

2 Therefore, staff recommends that the Committee
3 approve the designation, or reapprove the designation of the
4 County Health Department, Environmental Health Division as
5 the LEA for the County of Colusa. This action will
6 reinstate the agency's previous certification.

7 Additionally, the representatives from Colusa
8 County LEA were unable to attend today's meeting because of
9 a previous commitment, but they did send us a letter
10 thanking the staff and the Board in working with them and
11 solving this staffing problem, and they look forward to
12 continuing to work with us in the future.

13 COMMITTEE CHAIRMAN FRAZEE: Okay. Thank you.

14 There is apparently no one here to be heard on
15 this item.

16 Is there discussion by the Committee?

17 COMMITTEE MEMBER EGIGIAN: Mr. Chairman, I think
18 that it is only appropriate at this time that we let the
19 public know that and I for one appreciate the job that the
20 LEAs are doing.

21 We have had a repercussion because of the West
22 Covina situation, and we've had the LEAs line up like we
23 were going to bury them and take over their job, which is
24 not our intent. Our intent is to work with the LEAs, but we
25 do want the LEAs to know that we expect them to do the kind

1 of a job that they were trained to do and not get political
2 in doing that situation.

3 So, having said that, I move that we approve the
4 designation.

5 COMMITTEE CHAIRMAN FRAZEE: Second by Mr. Relis.
6 Secretary will call the roll, please.

7 MS. PARKER: Board Members Egigian.

8 COMMITTEE MEMBER EGIGIAN: Aye.

9 MS. PARKER: Relis.

10 COMMITTEE MEMBER RELIS: Aye.

11 MS. PARKER: Chairman Frazee.

12 COMMITTEE CHAIRMAN FRAZEE: Aye.

13 The motion is carried.

14 Now Item 7, a consideration of the revision of the
15 Enforcement Advisory Council Organization and
16 Representation.

17 COMMITTEE MEMBER EGIGIAN: Mr. Chair, do you want
18 Item 6 as a Consent?

19 COMMITTEE CHAIRMAN FRAZEE: Yes.

20 I keep forgetting that.

21 Without objection, we'll place Item 6 on the
22 Consent Calendar.

23 MR. OKUMURA: Mr. Chairman, Item 7 will be handled
24 by -- staff presentation will be made by Ms. Mary Coyle and
25 Mr. Jeff Watson.

1 MS. COYLE: Mr. Chairman and Members, this item is
2 to consider the realignment of the Representatives to the
3 Enforcement Advisory Council.

4 The Enforcement Advisory Council represents the
5 LEAs in the communication network between the Board and the
6 LEAs, and they have proposed that new membership make up
7 that membership matrix.

8 With that, Jeff Watson will provide the details.

9 MR. WATSON: Earlier this year, in January, the
10 EAC met to consider this proposal that was initiated by
11 representatives of several LEA jurisdictions, and they
12 overwhelmingly agreed to go forward with the proposal to
13 link the round-table representation, roughly in accordance
14 to the map that's included in your packet, including six
15 jurisdictions or regions in the State, and then, also,
16 included in your packet, a membership and appointment
17 procedure that included six representatives from these
18 geographic areas: one representative from the solid waste
19 employed by cities, in other words there would be several
20 cities included in regions, and they would have their own
21 representative; the City of San Jose; the City of Vernon;
22 the City of Long Beach; the City of West Covina; and the
23 City of LA, currently; and also the City of Pittsburgh would
24 be included or could be included.

25 One representative then also who would represent

1 the contract counties that are spread throughout the State,
2 and then a representative from the Conference of Local
3 Health Officers and a representative from the CCDEH, the
4 Conference -- California Conference of Directors of
5 Environmental Health and that would be the new matrix.

6 The advantage put forward is that it would be a
7 more responsive system where the roundtables would then be
8 incorporated as part of information dissemination from the
9 EAC.

10 That's about it.

11 COMMITTEE CHAIRMAN FRAZEE: Okay.

12 MR. WATSON: Additionally, Mr. Hanson, of LA
13 County, stated that he could not attend because he was
14 addressing the specialists meeting in Southern California
15 but had intended on stating his support for that.

16 COMMITTEE CHAIRMAN FRAZEE: The Agenda Item
17 indicates that we have three options, and what is the first
18 one, as I understand, there is not any controversy over
19 approving the described membership.

20 Everyone seems to be in general agreement?

21 MS. COYLE: Yes.

22 Everybody we have spoken with, the
23 representatives, UCDEH and the EAC and the LEAs, and they
24 are all supportive of this.

25 COMMITTEE CHAIRMAN FRAZEE: Okay. Questions or

1 discussion by the Board?

2 MR. CHANDLER: You may want to just point out to
3 some of the newer Board Members that, aren't representatives
4 from the EAC appointed by the Board or how are the
5 representatives made?

6 MS. COYLE: The selections would be coming up
7 through the various matrixes for membership consideration.

8 The actual appointment is made by the Chair of
9 this Committee.

10 COMMITTEE CHAIRMAN FRAZEE: But by recommendation.

11 MS. COYLE: By recommendation from the LEAs and
12 Board staff, and that is an item that I would like to note
13 that the Agenda Item does say that we would be coming back
14 to the Committee in June.

15 However, we'd be coming back to the Chair in June
16 for that appointment.

17 COMMITTEE CHAIRMAN FRAZEE: Okay. Any discussion
18 by the Committee?

19 If not, a motion is in order.

20 COMMITTEE MEMBER RELIS: I'll make the motion to
21 approve the EAC membership alignment based on the roundtable
22 regions.

23 COMMITTEE CHAIRMAN FRAZEE: That's the
24 recommendation.

25 Second that, if there is no further discussion.

1 The secretary will call the roll.

2 MS. PARKER: Board Members Egigian.

3 COMMITTEE MEMBER EGIGIAN: Aye.

4 MS. PARKER: Relis.

5 COMMITTEE MEMBER RELIS: Aye.

6 MS. PARKER: Chairman Frazee.

7 COMMITTEE CHAIRMAN FRAZEE: Aye.

8 That motion is carried, and without objection, we
9 will place that on the Consent Calendar.

10 Now, Item 8, the consideration of the temporary
11 Certification and Designation approval of the Local
12 Enforcement Agency for the County of Amador.

13 MR. OKUMURA: Due to reorganization in Amador
14 County departments, it is necessary for us to bring this
15 item forward to the Committee today.

16 Staff presentation will be made by Mary Coyle and
17 Mr. Jeff Watson.

18 MS. COYLE: Mr. Chairman and Members, as Mr.
19 Okumura mentioned, they did have a change in organization,
20 and additionally the county has now found that the time
21 required to complete the LEA responsibilities is less than
22 the one full-time staffing that they had previously to date,
23 and so what they are also asking us to consider is whether
24 or not they could be certified with less than a full-time
25 staff.

1 Their documentation and paperwork does allow for
2 that consideration.

3 We do recommend that you approve the proposed EPP,
4 issue the necessary temporary certification and the
5 certification types and approve the designation of Amador
6 Environmental Health Services as the LEA for Amador County.

7 COMMITTEE CHAIRMAN FRAZEE: Any questions or
8 discussion?

9 COMMITTEE MEMBER EGIGIAN: Which option is that?

10 COMMITTEE CHAIRMAN FRAZEE: That would be option
11 one.

12 COMMITTEE MEMBER EGIGIAN: I will move that.

13 COMMITTEE CHAIRMAN FRAZEE: Okay. We have a
14 motion.

15 Second by Mr. Relis to approve the staff
16 recommendation issuing a temporary certification for the
17 County of Amador for their LEA.

18 Secretary will call the roll.

19 MS. PARKER: Board Members Egigian.

20 COMMITTEE MEMBER RELIS: Aye.

21 MS. PARKER: Relis.

22 COMMITTEE MEMBER RELIS: Aye.

23 MS. PARKER: Chairman Frazee.

24 COMMITTEE CHAIRMAN FRAZEE: Aye.

25 Motion is carried.

1 Without objection, we will recommend the Consent
2 Calendar.

3 Now, we are up to the point of Item 9, the
4 contaminated soils item. One hour, I guess, we will proceed
5 with that, and if the representatives for the Caspar
6 Transfer Station in Mendocino County arrive, if someone
7 would alert us to that.

8 MR. CHANDLER: Another option you may want to
9 consider is that you do have Item 10, which may be about a
10 15 to 20 minute item.

11 MR. OKUMURA: Yes, I think it would be fairly
12 brief.

13 MR. CHANDLER: If you want, you can put that in,
14 if it's the pleasure of the Committee.

15 COMMITTEE CHAIRMAN FRAZEE: Then take the break
16 for lunch and come back and start -- take an early lunch.

17 Let's do that.

18 We will move to Item 10, which is a Quarterly
19 Update on the Status of Local Enforcement Agency
20 Evaluations.

21 MR. OKUMURA: Mr. Chairman, the Committee has
22 requested that as we move through the evaluation process of
23 the LEAs that staff come to the Committee on a quarterly
24 basis to give them an update on the status of evaluations,
25 and today staff will be making that presentation.

1 The presentation will be made by Ms. Mary Coyle
2 and Mr. Gabe Aboushanab.

3 MS. COYLE: Mr. Chairman and Members, your packet
4 does contain the matrix that shows the status of the
5 evaluations for all the LEAs that we have started the
6 evaluation process on, and Gabe Aboushanab will go over the
7 details of that analysis.

8 MR. ABOUSHANAB: Good morning, Mr. Chairman and
9 Members of the Committee.

10 Out of 57 LEA jurisdictions within the State, 35
11 LEAs have been scheduled, are in various steps in the
12 process or have been completed with the final evaluation
13 results; 22 remain to be scheduled for evaluations.

14 Out of the 35 LEAs I mentioned, 19 LEAs have had
15 complete evaluations and final results; 9 LEAs are in draft
16 result stages; and 7 LEA evaluations are scheduled in May
17 this month and June. Out of the 19 LEAs which have had
18 complete evaluations and results, six were found to be
19 fulfilling their responsibilities; 11 are under corrective
20 work plans; and 2 are special cases related in specific
21 Board actions.

22 The quarterly attachment provided in your agenda
23 packet has specifics on the time lines and jurisdictional
24 status and so forth.

25 If you have any -- if you have specific questions,

1 I would be happy to answer them.

2 COMMITTEE MEMBER EGIGIAN: Of the 19 that have
3 completed, six of them -- okay, 11 corrective plans, and 2
4 to the Board for actions.

5 Tell us about the corrective plan, what is that?

6 MS. COYLE: The corrective work plan is in the LEA
7 evaluation procedures that the Board adopted.

8 It calls for the ability for an LEA to prepare a
9 corrective work plan if they have implementation issues
10 identified during an evaluation. There are now some LEAs
11 going through or are preparing corrective work plans.

12 We will then monitor those plans at three, six and
13 nine month intervals. If issues are identified that they
14 are not fulfilling their corrective work plan, we would
15 schedule an administrative conference or schedule them in
16 front of this Committee for consideration of
17 decertification.

18 COMMITTEE MEMBER EGIGIAN: During this period of
19 time that we are going to be watching and working with them,
20 if they bring forward a permit on something that is going to
21 go on in their particular area, how do we look at that
22 permit?

23 Do we accept it as the way if the LEA had no
24 problems?

25 MS. COYLE: We look to make sure that they have

1 fulfilled all their responsibilities in completing that
2 permit, accepting a complete package and processing it
3 according to our guidelines, and normally those kinds of
4 activities would be addressed in a corrective work plan.

5 If there were outstanding permits, that would be
6 an issue that would be included in the work plan.

7 MR. OKUMURA: In addition, Mr. Egigian, if you are
8 concerned about the compliance issues, we will be doing the
9 pre-permit inspection to ensure that the history of the
10 violations have, in fact, all been corrected, and there are
11 no minimum standard violations.

12 So, we do have a double-check system. We not only
13 have the evaluation, but we have staff doing the pre-permit
14 inspection and that inspection information is included in
15 the packet when we come to the Committee and the Board.

16 So, we feel comfortable that, in fact, we can keep
17 the permit action separate from evaluation process.

18 COMMITTEE MEMBER EGIGIAN: A little bit more on
19 the two that are at the Board for action.

20 Where are they, are they completely -- we are the
21 LEA on those two?

22 MS. COYLE: The two that we are talking about are
23 West Covina and Colusa.

24 As you recall, today you considered a
25 redesignation of Colusa, so they are now effectively

1 reinstated as the LEA.

2 We never officially had to become the Enforcement
3 Agency in that jurisdiction. We only acted internally.

4 As you recall, West Covina, at your last Board
5 meeting, the Board elected to serve as the lead, in the lead
6 capacity for the CEQA aspects of the Solid Waste Facilities
7 Permit for BKK Landfill. That LEA is still fully certified
8 and is duly authorized to carry out all the duties related
9 to the LEA responsibilities in West Covina.

10 MR. OKUMURA: In addition, I think I would just
11 like to make the comment that when a person is on a work
12 plan that doesn't necessarily mean they are all at the same
13 standard.

14 There are some that have minor issues that they
15 are trying to correct. Some do have major issues.

16 So, I don't want to discolor it by saying that
17 everybody is extremely in a bad situation. That's not the
18 case.

19 There are some that just have some minor issues to
20 address, but we felt that the work plan would help keep it
21 on time frames and clearly identify the issues.

22 There are some that have more severe issues, but
23 they are not all in the scale if we had to scale them. So,
24 it's kind of a varying scale.

25 MR. CHANDLER: There is a trend here that is worth

1 noting and that's, I think, it's important that we come
2 periodically to this Committee and give these types of
3 reports so you can begin to get a snapshot of how the
4 evaluations are going, and 11 out of 19 are under corrective
5 work plan.

6 Some of those are major. Some of those are minor.

7 I think when all is said and done, that percentage
8 will probably hold for all LEAs. You will probably see that
9 about 80 percent of the LEAs are under some form of
10 corrective work plan.

11 One of the things that we heard at the very
12 beginning of this program was that there wasn't consistency
13 from jurisdiction to jurisdiction on how the State Minimum
14 Standards were being applied, and I think we're starting to
15 see that as we look at the enforcement frequency, inspection
16 frequency, permitting aspects, and so, these corrective work
17 plans are essentially bringing consistency Statewide to the
18 LEAs as they carry out their job, and those six that went
19 through with no questions at all, those are the one's that
20 are meeting the State Standards without any dispute, and we
21 are trying to bring the others up to that level, and I think
22 the LEAs in those jurisdictions are committed to bringing
23 themselves to that level.

24 So, this is a very good process for us to see how
25 they are doing and to get that kind of consistency

1 Statewide. I am not surprised by seeing 11 out of 19 under
2 corrective work plan, and I would only forecast that you
3 will see that percentage hold as we go through all 53 or
4 some-odd LEAs out there in that process to be evaluated.

5 COMMITTEE MEMBER EGIGIAN: Are LEAs themselves
6 told about this?

7 Do they know that 11 of them are going, out of the
8 19, 11 are still under the corrective situation?

9 MR. CHANDLER: I think they track this Board's
10 activity.

11 COMMITTEE MEMBER EGIGIAN: It seems like we are
12 being heavy-handed.

13 MR. CHANDLER: Some of those would like to see
14 their counterparts, hopefully, at the same level as they
15 are, and others frankly see the corrective work plan as
16 Sacramento and government getting into the affairs of local
17 issues, and we try to walk that fine line, and I think staff
18 does a very good job in doing that.

19 But we are an oversight agency ensuring these
20 standards be met, and this is the avenue that the
21 Legislature has given us to ensure that those standards are
22 carried out by the local officials.

23 It's a delegated responsibility and one which we
24 are there to back stop and oversee the performance.

25 MR. OKUMURA: These issues and numbers are, in

1 fact, discussed with the LEAs in the roundtable sessions
2 that we have throughout the State, five or six on a
3 quarterly basis.

4 So, it's not like these numbers are a surprise to
5 them. We kind of share the information with them, and we
6 are planing in the future to try to establish even better
7 networks of communication to relay this information a little
8 bit more accurately and maybe a little bit more timely to
9 them.

10 COMMITTEE MEMBER EGIGIAN: I am glad to hear this,
11 because if you were at our last Board meeting, you realized
12 that the LEAs that come charging forward to stake their
13 claim, don't touch us, and leave us alone, that we are
14 working, the whole thing, it's not just a selected few that
15 we are after.

16 So, I feel much better knowing that we are doing
17 this job, and we're looking forward to having a lot better
18 LEAs in the future.

19 COMMITTEE MEMBER RELIS: Mr. Chair, I would also
20 like to add that I think it would be surprising in this
21 whole evaluation process if we didn't see numbers like this
22 just because this has been an area that the Board has
23 committed to revisiting and tightening up and grading, as
24 Mr. Chandler said, overall consistency.

25 No one ever likes an evaluation process, and there

1 is always room for disagreement over how people are doing
2 jobs, but I think this is a healthy process and that over a
3 period of time we will get to the level Statewide that we
4 want to be, and I think we are on the right track.

5 COMMITTEE MEMBER EGIGIAN: One thing that I would
6 like to make sure that the rest of the Board Members are
7 aware of and that is what is going on with the LEA, because
8 there are a few that think that we are selective, and I
9 do --

10 COMMITTEE CHAIRMAN FRAZEE: I suggest that the
11 item be heard in the full Board and not to accept any
12 action.

13 I think that it would be well for the full Board
14 to get the report, also. The process is taking these LEAs
15 in blocks.

16 What is the time line on that? When do we finally
17 get to number 57?

18 MS. COYLE: We are to evaluate the LEAs every 18
19 months, and we have about 22 or so that we need to schedule,
20 and we will be scheduling those to begin no later than
21 September of this year.

22 COMMITTEE CHAIRMAN FRAZEE: That will finalize --

23 MS. COYLE: That will finalize the first phase of
24 evaluations.

25 COMMITTEE CHAIRMAN FRAZEE: Is there the potential

1 of really concentrating, or let me use the word, nitpicking
2 on, because you have indicated there were some minor
3 deficiencies with some of those that you are reviewing right
4 now and putting a lot of effort on that and at the same
5 time, one's that have not come up for review may, in fact,
6 be the bad apples, and I don't want to use any derogatory
7 terms, but because the time line is such in schedule we
8 don't get to those for another year or six months or
9 whatever.

10 MS. COYLE: Mr. Chairman, I would just like to
11 state that we have prioritized this on the LEAs that we feel
12 we needed to go and evaluate that we felt issues existed.

13 During the certification process, some LEAs were
14 temporarily certified because we, the Board, had a concern
15 of their history of ineffective enforcement or permitting
16 activities, so we did start with those and through our
17 selection process, I feel confident that we are getting to
18 those that need to be evaluated at the sooner level.

19 COMMITTEE CHAIRMAN FRAZEE: So, it's not in
20 geographical or alphabetical order or anything like that.

21 You are already looking at the one's that you
22 believe need attention early on?

23 MS. COYLE: Right.

24 Some of the trips we do try to keep, depending on
25 the geographic locations, but we did start with those that

1 we felt needed it.

2 There is one other aspect of this item that I
3 would like to talk about, and if you have no other questions
4 on the matrix, that is on page 106 of your packet, it shows
5 a flowchart amendment.

6 In our evaluation process we do have a copy of
7 this flowchart, and I just wanted to point out that we have
8 amended this because of some clarification needs. There was
9 some perceived ambiguity of the process.

10 The amendment is the middle right portion, and all
11 those boxes that show it hold an administrative conference.
12 The previous flowchart did not show all the options that the
13 Board can consider if an item came to the Board.

14 It now shows that pursuant to statute and
15 regulations, the Board has many options available to
16 consider, from preparation of corrective work plans,
17 withdrawal of designation, partial decertification, full
18 decertification or any other option the Board deems
19 appropriate.

20 COMMITTEE MEMBER RELIS: That is sufficiently
21 broad.

22 MS. COYLE: We will be including this, absent any
23 changes that you would like or the Board would like, we
24 would be including this flow cart in the evaluation process.

25 COMMITTEE CHAIRMAN FRAZEE: Okay. If there is

1 nothing else on this item, I think that our action is to
2 accept this report and recommend that it be heard by the
3 full Board.

4 MS. COYLE: Mr. Chairman, you could consider, if
5 you would like to have us have any redirection at this point
6 in the process, that is another option that you could
7 consider.

8 COMMITTEE MEMBER RELIS: The question that I have
9 is, is there any action that we need to take regarding the
10 chart?

11 MR. CHANDLER: No.

12 The chart is not adopted by the Board. It should
13 be noted that we are in the process of putting more
14 specificity behind, I think the comment you made, in that
15 the staff has drafted regulations which are out for review
16 in draft form on decertification, and at some point you may
17 want to give some consideration to that in this chart or the
18 process become part of those regulations, but right now,
19 it's more a guidance tool that we use with the staff in the
20 evaluation process.

21 COMMITTEE CHAIRMAN FRAZEE: Okay. Thank you very
22 much.

23 At this time, we'll take an early lunch, and then
24 reconvene at 12:30. That is for the purpose of
25 accommodating a number of people who have travel plans.

1 At that time if representatives are here from
2 Mendocino County Caspar Transfer Station, we'll take that
3 item first. I know that will be a lengthy one, and then the
4 only other item on the Agenda is Item 9, and that's the
5 consideration of the contaminated soils operation.

6 At this point, we will stand adjourned until
7 12:30.

8 (Thereupon the lunch recess was taken.)
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A F T E R N O O N S E S S I O N

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3 COMMITTEE CHAIRMAN FRAZEE: The meeting of the
4 Permitting and Enforcement Committee will reconvene.

5 We have two items remaining on the Agenda. During
6 the lunch break, we received word that the item we were
7 trailing, Item 3, consideration of concurrence in the
8 issuance of a new Solid Waste Facilities Permit in the
9 Caspar Transfer Station, Mendocino County, that they are
10 prepared to go ahead with that without any testimony.

11 So, let's take that item up now.

12 MR. OKUMURA: Mr. Chairman, Item 3 is the
13 consideration of concurrence in the issuance of a new Solid
14 Waste Facilities Permit for the Caspar Transfer Station, in
15 Mendocino County.

16 Staff presentation will be made by Mr. Russ Kanz
17 and Mr. Cody Begley.

18 MR. KANZ: Good afternoon. Mendocino County Solid
19 Waste Division is requesting a new Solid Waste Facilities
20 Permit for the Caspar Transfer Station.

21 The Caspar Transfer Station is located at the end
22 of Prairie Way, near the town of Caspar. The facility is
23 located on property owned by Mendocino County, in the City
24 of Fort Bragg.

25 The transfer station will be operated by Mendocino

1 County through a joint powers agreement between the county
2 and the city.

3 The transfer station covers three acres and is
4 within the permitted boundaries of the Caspar Refuse
5 Disposal site, which contains 65 acres. On March 22, the
6 LEA submitted a proposed permit for this facility.

7 Board staff determined that the application
8 package was not complete and correct and submitted comments
9 to the LEA on March 27.

10 As you will recall, staff had made a
11 recommendation to the Board for objections to the issuance
12 of the permit last month, because the permit did not include
13 a map defining the boundaries of the facility. The LEA
14 withdrew the permit on April 14 prior to being heard at
15 Committee.

16 On April 27, the LEA submitted the permit before
17 you today that includes in the conditioning report of the
18 station information, a map delineating the boundaries of the
19 facility. On October 18, 1992, the Caspar Landfill ceased
20 accepting waste.

21 On October 19, 1992, the operator began operating
22 this transfer station at the site without a permit.

23 The LEA issued a Stipulated Order of Compliance
24 and Agreement, No. 92-01, to the operator for building and
25 operating the transfer station without a permit. In 1991,

1 it was determined that groundwater contamination from this
2 landfill migrated off-site, resulting in the issuance in
3 Cease and Desist Order No. 91-110, by the North Coast region
4 of the Water Quality Control Board.

5 The Caspar Refuse Disposal site was approved for
6 funding under the AB-2136 program in 1994. The Board
7 approved a matching grant for remedial action controlled
8 groundwater contamination.

9 Because the operator does not have adequate
10 funding for the closure and post-closure maintenance of the
11 facility, the Board has been unable to approve a final
12 closure and post-closure maintenance plan for the site.

13 Without an approved closure and post-closure
14 maintenance plan, the operator cannot revise the permit for
15 the landfill. The operator is, therefore, requesting a new
16 permit for the transfer station.

17 The facility will accept up to 19 tons per day of
18 mixed municipal waste, non-hazardous industrial waste,
19 construction, demolition debris and recyclables.

20 Waste will be deposited in pods or drop boxes
21 placed in the pit below grade. Public Resources Code
22 Section 17513 states that any station handling an average
23 volume over 100 cubic yards per day shall have the waste
24 removed every 48 hours, or in accordance with an improved
25 operations schedule.

1 Public Resources Code Section 17426 states that
2 waste shall be removed from small volume transfer stations
3 weekly or as required in the permit. The LEA has placed a
4 condition in the permit that requires waste to be removed at
5 least every seven days, except when over 100 cubic yards of
6 waste per day are received.

7 If the station received over 100 cubic yards of
8 waste per day, the waste must be removed every 48 hours.
9 While the facility will be permitted as a large volume
10 transfer station, waste removal frequency will be based on
11 the amount of waste received.

12 The LEA and Board staff have determined that the
13 facility is found in the Mendocino County Solid Waste
14 Management Plan; the project is consistent with the
15 Mendocino County General Plan; the project is consistent
16 with the waste diversion goals of AB-939; and CEQA has been
17 complied with.

18 In conclusion staff recommends that the Board
19 adopt Solid Waste Facilities Permit Decision No. 95-374,
20 concurring in the issuance of Solid Waste Facilities Permit
21 No. 23-AA-0028.

22 Dave Koppel and Kenny Zizick, with the Mendocino
23 County LEA, are present.

24 COMMITTEE CHAIRMAN FRAZEE: Did they wish to make
25 a statement, or just here for observation?

1 MR. KANZ: They are here to answer questions.

2 COMMITTEE CHAIRMAN FRAZEE: Questions or
3 discussion by the Committee?

4 Nothing? If not then a motion is in order.

5 COMMITTEE MEMBER EGIGIAN: Mr. Chairman, I move
6 staff recommendation.

7 COMMITTEE MEMBER RELIS: Second.

8 COMMITTEE CHAIRMAN FRAZEE: Second on staff
9 recommendation on Item 3, the Caspar Transfer Station,
10 Mendocino County.

11 If there is no further discussion, the secretary
12 will call the roll.

13 MS. PARKER: Board Members Egigian.

14 COMMITTEE MEMBER EGIGIAN: Aye.

15 MS. PARKER: Relis.

16 COMMITTEE MEMBER RELIS: Aye.

17 MS. PARKER: Chairman Frazee.

18 COMMITTEE CHAIRMAN FRAZEE: Aye.

19 Motion is carried.

20 Now, our final item, Item 9, consideration for
21 approval of staff options on the authority of the California
22 Integrated Waste Management Board to regulate non-hazardous
23 petroleum contaminated soil operations..

24 First on that item in the area of disclosure or ex
25 parte communications, during the lunch break there was a

1 letter received by my office from the Resource Management
2 Agency for the County of Ventura outlining their position,
3 and I might just summarize that which is one that they do
4 not believe that is necessary for this Board to regulate
5 that particular area.

6 I would like to read a summary paragraph,
7 "Involvement of the CIWMB or local LEAs in these operations
8 on a routine basis would be duplicative of the regulation
9 already in place. We recommend that your Committee advise
10 CIWMB not to pursue regulations of these operations.

11 "Further we recommend that the Committee and staff
12 work through the already existing regulatory structure to
13 address the Board concerns."

14 That was for disclosure purposes.

15 Before we have staff presentation, Mr. Egigian has
16 some statement or some remarks.

17 COMMITTEE MEMBER EGIGIAN: Thank you, Mr.
18 Chairman.

19 As many of you know, I've been involved with the
20 issue of tiered permitting for about as long as I have been
21 on this Board. It is an issue of critical importance to
22 this Board and of great importance to the waste industry
23 which I represent.

24 Today the specific issue before us is what is our
25 statutory authority to regulate contaminated soil, and

1 having considered that, our next step will be to determine
2 how facilities which process contaminated soils fits into
3 the tiered structure from exclusion to a full permit. As we
4 proceed to apply our tiered permitting methodology, we need
5 to balance three important goals.

6 First to protect the public from health and safety
7 risks associated with processing waste. Second is fairness.

8 We must treat all those who handle material with
9 similar health and safety risk equitably and seek to
10 establish the proverbial level playing field.

11 Third we must promote economic efficiency. We
12 should not overreach or over regulate. We want to tailor
13 regulations to what is needed without undue interference in
14 the marketplace.

15 If we promote these goals, public health and
16 safety, fairness and economic efficiency in a consistent
17 manner, we can be successful in establishing a pattern of
18 oversight that can be a model for reasonable regulations
19 throughout the country.

20 With respect to the issue of statutory authority,
21 I believe that we need to be very careful not to unduly
22 limit the Board's statutory authority to protect the health
23 and safety of the public. I, for one, am very reluctant to
24 eliminate broad classes of facilities from our oversight
25 unless there is a very strong clear case for doing so.

1 I believe the burden of proof should be on those
2 who want these statutory exemptions to make a persuasive
3 case. Why should this Board chose to limit its statutory
4 authority for now and the future over facilities and
5 processes that could present health and safety risk to the
6 public?

7 I take this position because a tiered permitting
8 structure gives us flexibility to decide what type of
9 oversight, if any, is appropriate, ranging all the way from
10 exclusion to full permit. You will recall that when we
11 dealt with the subject of composting, we excluded backyard
12 composting.

13 We can chose the same approach for other processes
14 that we believe should not be regulated.

15 I believe that we should make decisions about what
16 should be excluded after evaluating the process of law.
17 This should be a public policy choice and not an overly
18 legalistic one.

19 An important consideration should be whether the
20 process we are evaluating results in the production of
21 residual material that ends up in the landfill.

22 In summary, this Board is undertaking a
23 path-breaking effort to make tiered permitting work. We
24 should seek to balance the goals of protecting public health
25 and safety, fairness to the regulated community and economic

1 efficiency.

2 If we do so based with consistencies, based on
3 objective evaluation, then the result will be structures
4 acceptable to those we regulate and one that promotes
5 economic welfare for the State.

6 Thank you, Mr. Chairman.

7 COMMITTEE CHAIRMAN FRAZEE: Thank you.

8 Let's go ahead with the staff presentation on this
9 item.

10 MS. TRGOVCICH: Good afternoon, Mr. Chairman and
11 Members. I'm Caren Trgovcich, Assistant Director with the
12 Policy and Analysis Office.

13 With me today is Bobby Garcia, who is going to be
14 working the overheads, of the Policy and Analysis Office,
15 Elliott Block of the Legal Counsel's office, and Mike Coon,
16 with the Permitting and Enforcement Division.

17 It's hard to follow Mr. Egigian's opening
18 statement there. I almost wish he'd do this presentation
19 for me. I don't know if I can be as persuasive.

20 I would like to begin by just outlining again what
21 it is that is being brought before you today. This item is
22 discussion and consideration of the Board's authority to
23 regulate petroleum contaminated soil handling methods, and
24 in a few minutes, I am going to briefly walk you through
25 some history and background to provide context to the

1 Members as well as the public that's in the audience over
2 what it is we're actually considering today.

3 I'd like to remind members of the audience that
4 there are copies of the agenda item on the back table, as
5 well as a copy of a handout that was recently completed by
6 staff at the request of several members identifying, on a
7 first-cut type of a basis, the operations that we are aware
8 of that handle non-hazardous contaminated soils in the
9 State.

10 I want to put a disclaimer on this. This is
11 intended to be used for information purposes only.

12 It is by no means comprehensive, and it may be
13 that in discussions with members of the audience, Board
14 Members, et cetera, that we would revise some of our check
15 marks and we will be updating this on an ongoing basis in an
16 attempt to provide you the most current information
17 available.

18 To briefly summarize for you the history on what
19 we are doing here and how we got here, back in April of
20 1994, the Committee, Permitting and Enforcement Committee,
21 directed the staff to begin the development of a
22 comprehensive tiered regulatory structure.

23 That regulatory structure was intended to respond
24 to criticisms or concerns raised not only by the regulated
25 communities but LEAs, Board Members and other interested

1 parties that the one-size-fits-all permit structure that did
2 exist for the Board was inappropriate for broad range of new
3 types of solid waste handling operations that were being
4 implemented or coming into existence as a result not only of
5 AB-939 but that had just grown and become a part of our
6 solid waste landscape due to other types, other growths in
7 the industry.

8 We began the development of these regulations in
9 April. We held several public workshops in the intervening
10 months. This package went to formal notice in the summer of
11 '94, and the Board adopted this package in November of '94.

12 I'm going to just briefly jump to the third
13 bullet, in March of '95, actually March 1, of this year, the
14 Office of Administrative Law approved that tiered structure,
15 and I'd just like to point out that because of the diligence
16 and the extensive involvement on the part of the Board
17 Members, that is probably a record in terms of development
18 and adoption of a regulatory package, not only for this
19 Board but any other agency that I am aware of.

20 In January of 1995, anticipating OAL approval of
21 this structure, the staff and Board Members began the
22 development of a methodology that was intended to provide a
23 framework for the consideration of placement of solid waste
24 handling operations into the tiers.

25 An advisory committee was convened, although the

1 meetings were very open in nature, and any member of the
2 public, interested party was invited to attend, and these
3 meetings became more roundtable discussions than committee
4 meetings.

5 In April of '95, that methodology was brought
6 before the Committee and the Board for adoption, and the
7 Committee and Board approved the methodology and approved
8 its use in a pilot project for non-hazardous petroleum
9 contaminated soils in an attempt to look at how the
10 methodology worked as well as to look at if any changes
11 needed to be made not only in the methodology but in the
12 tiered regulations themselves.

13 Non-hazardous petroleum contaminated soils were
14 chosen because initially the staff felt that this would
15 present a relatively non-controversial area of evaluation
16 and that the issues associated with these types of
17 operations would be relatively confined.

18 That brings us up to the last bullet on the chart,
19 May of '95, this month, where we are considering, and that's
20 what this item before you today is, the placement of the
21 first set of operations.

22 In April, the Board also evaluated and discussed
23 the merits of looking at the scope of its authority
24 independently of the actual placement of operations into the
25 tiers and considered significant testimony that was provided

1 by interested parties proposing that prior to actually
2 bringing forward in a written format the application of the
3 methodology to these handling operations, that it would
4 serve the Board well to look at its overall authority in
5 this area, recognizing that to be placed in one of the five
6 tiers of operation that that meant that those types of
7 operations represented solid waste handling operations and
8 that there may be aspects of the varieties of
9 classifications of operations on the Board's schedule that
10 may, in fact, not fall under that heading.

11 So, moving into the next overhead, the Board
12 adopted a schedule and that schedule was modified last month
13 to reflect these dual tracks or series of items that would
14 be brought before the Board for consideration so that there
15 would be the column on the left which reflects the schedule
16 that was approved by the Board with respect to consideration
17 of Board authority over these classifications of operations,
18 and the column on the right reflects consideration of
19 placement of those operations which were determined by the
20 Board to be within the scope of its authority into the
21 regulatory tiers.

22 I just wanted to make sure to raise this to your
23 attention as you consider this item today. The listing up
24 there is by no means complete.

25 There are a series of additional classifications

1 operations that are on our list, but we chose to carry it
2 through the end of this year and into the early part of '96
3 so you can see where we are heading.

4 I'm going to be turning the presentation over to
5 Bobbie very shortly, but I'd just like to reemphasize, as I
6 did at the beginning of the presentation, that the scope of
7 this item was originally intended to serve as a pilot, and
8 we chose non-hazardous petroleum contaminated soils, because
9 we felt that the scope of the issues was relatively
10 non-controversial in nature.

11 As we moved into the staff evaluation phase, we
12 found that many of the issues presented by these range of
13 operations handling non-hazardous petroleum contaminated
14 soil raised very similar questions to those types of
15 operations that the Board has placed lower down on the
16 schedules, specifically those types of questions relating to
17 the recycling of materials, relating to the manufacture or
18 reuse of materials, and thus, this item has become much more
19 complex, and the issues that are being presented to you
20 today are much more sensitive and complicated than we
21 originally thought.

22 So with that, I'd like to turn it over to Bobbie
23 Garcia, and she's going to briefly walk through for you a
24 brief identification of the broad categories of operations
25 that you will be considering today in terms of evaluating

1 the Board's authority to regulate these operations.

2 MS. GARCIA: Operations handling non-hazardous
3 petroleum contaminated soil fall into several broad
4 categories beginning with treatment, used as feed stock,
5 transfer and or storage and disposal.

6 Treatment can consist of a range of treatments all
7 designed to reduce the number of hydrocarbons in the soil.
8 These include: aeration, where the volatile hydrocarbons
9 are allowed to evaporate; bioremediation, where the microbes
10 are introduced to increase decomposition of the hydrocarbon;
11 thermal, where excessive heat volatilizes or destroys
12 hydrocarbons; and chemical fixation where Portland cement
13 and sodium silicate reagents are used to solidify the
14 material; and lastly, soil washing, where detergents are
15 applied to remove the hydrocarbons.

16 Using bioremediation treatment as an example, I
17 would like to just show you a few pictures just to give you
18 an idea of what treatment consists of. Treatment operations
19 typically screen all incoming soils, checking the
20 contaminated soil profiles to ensure that the incoming soils
21 are non-hazardous and can be accepted at the operation.
22 This process includes determining weight and volume of all
23 incoming loads.

24 You can see the truck is bringing in a load, and
25 it's putting it over the scale to keep track. Every amount

1 of soil that comes in is kept track of.

2 MS. TRGOVCICH: Just to clarify, while Bobbie is
3 moving to the next picture, this particular -- all of the
4 aspects that you are going to see in these various
5 operations, when Bobbie just mentioned that every piece of
6 soil or every granule of soil that moves within this
7 facility that that statement is specific to the facility
8 that's up there on the slides for you, that all operations
9 do operate somewhat differently.

10 MS. GARCIA: Loads are usually kept separated.

11 Let me show you the slide, the picture of those.

12 Loads are typically kept separated by generator,
13 and that's for tracking purposes, reducing the question of
14 generator liability. Each generator's pile is labeled and
15 tracked throughout the process.

16 I have a series of slides, you can see here, with
17 the orange number 5, is one file or one source from one
18 generator. Here is another one just showing the markers
19 that are numbering it all.

20 Then this is just to show you kind of what the
21 markers look like, showing the actual source of the material
22 and some other numbers to keep track of it.

23 Then prior to the actual treatment, the soil is
24 put through a grinder, and the rubbish is removed, and the
25 rubbish can consist of cement, sometimes plastic trash bags,

1 things that would come in with construction demolition type
2 work wherever the dirt was pulled from.

3 In some cases, this is, again, bioremediation, one
4 form of bioremediation and the bioremediation is going to be
5 occurring in an impermeable cell that has been created to
6 receive it.

7 Here is what the cell would look like with the
8 soil in it as it's undergoing -- the microbes have been
9 introduced, and they are slowly removing the hydrocarbons.
10 Here is another view of it.

11 Lastly, I want to show you another method which is
12 where the soil is not spread out. Instead, it's kept in
13 piles, and then the temperature is monitored tracking the
14 amount of bacterial activity that's ongoing. Once the soil
15 is treated to a level approved by the Water Board, the
16 Regional Water Board, usually this takes place about three
17 to six months on average, the soil is removed for use as
18 fill, landfill cover, road base or incorporated into
19 asphalt.

20 Another method of handling is using contaminated
21 soil as feedstock. Again, like the treatment, many of these
22 operations screen the material coming in to make sure they
23 are not receiving hazardous waste and that the waste they
24 are receiving they are permitted to receive or clear to
25 receive, if the Water Board has put any kind of regulation

1 on them.

2 They also keep the material that they receive by
3 generator, again for purposes of liability.

4 This example is an asphalt plant manufacturing
5 area, and they are storing the soil as they receive it for
6 incorporation into manufacturing of asphalt.

7 Here it shows that they keep it separated, and
8 it's going to be blended in their process with aggregate,
9 sand, and then they also use hot oils that help make the
10 asphalt.

11 Here they are just putting it, blended together,
12 moved up and the hot oils are being added in the combustion
13 type process to make the asphalt itself. Lastly, the final
14 product, which is stored by generator prior to being shipped
15 out for use as asphalt.

16 Contaminated soil on-site on average, I should say
17 is on-site on these, asphalt about 20 to 90 days before
18 being removed as a final product.

19 Lastly or not lastly, third from the last, I'm
20 talking about storage. This would be transfer and/or
21 storage. This would basically be associated with treatment.

22 Soil is going to be stored prior to treatment.
23 After treatment when it is going to be used as feedstock or
24 prior to disposal. As in the case of treatment and asphalt
25 manufacturing, the contaminated soils is typically screened

1 and tracked, and loads are kept separated by generator.

2 Depending on the amount of material, weather
3 conditions and the type of operation, contaminated soil can
4 be stored on-site between zero to six months and in some
5 cases up to a year. Disposal of non-hazardous petroleum
6 contaminated soils is at Class II landfills, is at
7 designated or at Class III landfills and are subject to
8 Board regulations at these landfills.

9 Now Caren will discuss multiple agency
10 jurisdiction for contaminated soil operations.

11 MS. TRGOVCICH: One of the things that became
12 clear to us as staff as we began evaluating this
13 classification of operations was that the range of oversight
14 by the various regulatory agencies varied significantly from
15 one region to another in the State.

16 What we have put up on the screen for you are the
17 three State agencies that have principally provided some
18 type of oversight, albeit inconsistently, throughout the
19 State over the past, and if you want to at this point in
20 time refer to the handout that we included at the back table
21 and that was provided to Board Members identifying the
22 various operations that we are currently aware of, you will
23 be able to look into the far right column and see the
24 application of the solid waste facilities permit, the waste
25 discharge requirements or the air district's permit to

1 operate and how that varies significantly throughout the
2 State.

3 The Regional Water Quality Control Boards are
4 principally interested in non-hazardous petroleum
5 contaminated soils with respect to on-site cleanup or
6 remediation, and this is principally through the underground
7 tanks program. We have spoken to a variety of Regional
8 Water Quality Control Board staff members and have found
9 that their involvement with respect to off-site handling is
10 principally an element of whether or not a potential threat
11 to water quality exists, and thus, their involvement is very
12 inconsistent, and it may be inconsistently applied even
13 within a single jurisdiction, such as a county or city
14 limits.

15 The air districts are principally interested in
16 non-hazardous petroleum contaminated soil, once again, when
17 it presents a threat to air quality depending upon the
18 region of the State that you happen to be in or air basin.
19 Those requirements will change. In fact, our most recent
20 tour we found that because of local air district rules that
21 was, in fact, encouraging or enhancing the ability of this
22 particular industry which is the handling of these soils to
23 proliferate. It was an encouragement to be able to excavate
24 and handle and then reapply this material in an attempt
25 to -- as a dust abatement effort.

1 The third agency, once again, is this Board. The
2 Integrated Waste Management Board, and I'm just going to
3 spend a few minutes with respect to the Board's past
4 involvement in this area, once again, because of the Board's
5 broader oversight, the protection of public health, safety
6 and the environment, our involvement has tended to occur
7 where a local enforcement agency has determined that a solid
8 waste facilities permit may be appropriate or necessary to
9 address concerns that they have identified at the local
10 level, thus the permits that you see on the handout.

11 The Board has, as you can well-see from the
12 handout, permitted these types of operations in the past.
13 They vary from treatment methods to some use methods,
14 transfer or storage as well.

15 I want to make it clear that none of the analysis
16 that you hear today or none of the discussion that you will
17 be undertaking in this meeting or any upcoming meetings ever
18 covered the scope of the Board's authority with respect to
19 contaminated soils. The Board acted on those permits which
20 were brought before it by local enforcement agencies and
21 focused only on the permit issue at hand.

22 In summary, there are multiple agencies with
23 jurisdiction over this material, though what we did find in
24 the field was that this jurisdiction or the actual handling
25 of this soil is not at all times a result of State

1 regulatory requirements, that many times this industry
2 operates and soil is handled, treated or managed in some
3 other method in order to address perceived liabilities
4 associated with the maintaining of that soil at a particular
5 site, there are not necessarily consistent requirements
6 Statewide that soils contaminated at non-hazardous levels be
7 excavated, treated or otherwise handled.

8 With that, I'm going to turn the presentation over
9 to Elliott Block, who is going to move into the legal issues
10 which are the basis of the analysis surrounding the Board's
11 statutory authority.

12 MR. BLOCK: Good afternoon. It is just going to
13 be a little bit easier for me to do this from here, and
14 that's why I'm not sitting at the table.

15 Before I begin discussing legal authority
16 specifically, I just want to make a couple of opening
17 remarks regarding the Agenda Item that is prepared, that
18 portion that deals with the legal analysis. I am hearing
19 some interesting comments in the last day or two. So, I
20 thought I'd just provide a little bit of the context for
21 what we did and why we did it.

22 The Agenda Item provides a framework and analysis,
23 if you will, as opposed to a specific answer, this is what
24 the Board must do or shall do or can do. The reason for
25 that is obvious.

1 There are a number of competing legal
2 interpretations that have been set out over the last few
3 years, in particular regarding Board authority and what is a
4 solid waste and those type of issues.

5 The idea behind the agenda was to set out where
6 those questions are, try to set it in a balanced way what
7 the opposing arguments are, not make a recommendation at
8 this point in time, but in a sense, invite, solicit comments
9 specific on that issue, because the specific legal issues
10 have never been addressed in this type of forum or this kind
11 of setting. The inclusion of any particular legal argument
12 in this item doesn't imply that it is being endorsed at all
13 by myself, by a lot of the other individuals that worked on
14 this item.

15 I have had some comments about having to defend
16 one argument or the other, and that's not my plan at all.
17 In fact, what I've done is these arguments that have been
18 raised in the past, and I am trying to set them out so we
19 get a complete picture of what it is we are looking at in
20 terms of the issue.

21 For that reason, there is no recommendation in
22 this item today. I'm anticipating that at some point in the
23 future we will make a recommendation, and one of the hopes
24 that we have is that the input that we get today and
25 subsequently will allow for a more complete discussion of

1 those issues and also provide the Board, Committee and the
2 Board with context for really considering what those issues
3 and those competing interpretations are about.

4 Another reminder that I want to make about the
5 item, and I know it's in the item, but I think it bears
6 repeating, is that the analysis, the legal analysis is
7 really about the broad question, if you will, of Board legal
8 authority. It's a look at overall does the Board have
9 jurisdiction or authority over certain types of operations
10 or activities, but it doesn't address for that reason
11 specific issues that are raised, for instance by AB-1220,
12 and I characterize those as broad issues, or is this
13 something in the ball park of something that the Board has
14 the authority to regulate, and then after that threshold is
15 met, there is a second threshold that has to be, question
16 that has to be answered, which is, okay, is there another
17 State agency, and is there another State agency, most
18 particularly the Water Board or the Air Board, that is
19 already regulating a particular aspect of that operation?

20 That's a more specific analysis and that, of
21 course, is on the schedule for us to do as we move through
22 the methodology with these various facilities.

23 As was actually already mentioned in Board Member
24 Egigian's opening remarks, but I think again it bears
25 repeating, this discussion is only about Board authority.

1 Once that determination gets made, that does not necessarily
2 mean that the Board will decide to use that authority or how
3 that authority will be used.

4 The examples have been given on the conclusions
5 that we have in the composting regulations now. Then,
6 finally, because what I am going to do is throw you a little
7 bit if loop, the item has some general discussion about
8 legal issues and really then moves from the general to the
9 specific issues for contaminated soil.

10 One of the reasons that the item is set out that
11 way is because -- well, first of all, we were trying to set
12 out a framework that would be usable, sort of set out how we
13 were going to analyze these issues as they came up from the
14 type of operation to type of operation, but, also,
15 importantly, there are a number of issues as has been
16 mentioned that decisions that are made with respect to
17 contaminated soil may have an effect on future decisions
18 with regard to other types of operations.

19 So, we felt it was necessary to set out some broad
20 questions and issues that are involving contaminated soil
21 and also some that are not necessarily relevant for
22 contaminated soil but are coming down the road to sort of
23 give a full context of what it is that we are doing.

24 That being said, today, since this item is
25 specifically about contaminated soil, my discussion on legal

1 authority is going to focus more on the contaminated soil.
2 Obviously I'll be discussing some of those legal issues, but
3 it will be more along the lines of Attachment 3, which is
4 part of the item. I believe that's page 101 of the item.

5 I am not going to discuss that particular
6 attachment in detail. There are a lot of different subparts
7 of it. But I will try to do a general job of discussing how
8 that flows and the legal authority issues that are involved
9 with it.

10 I have a few overheads. They are not quite as
11 fancy as the one that Bobbie had. Please, bear with me.

12 Let's start with what the Board does have
13 authority over. There is no question there are a number of
14 items in Attachment 3 where there is an indication that the
15 Board certainly does have authority, and in a sense I am
16 going backwards from the way that the item is going.
17 Please, bear with me.

18 Basically, the Board has broad legal authority
19 over most types of storage and treatment of contaminated
20 soil that's occurring off-site, in other words off the
21 generator's site. By any interpretation of the definition
22 of solid waste, and there is obviously some discussion in
23 the item about the issue of discard and the like, in this
24 case there is no question that materials being discarded by
25 the generator, whether or not that is an issue for the

1 definition, this material is solid waste.

2 In addition, the Board has some explicit authority
3 to regulate the storage and processing of solid waste. So,
4 there a number of items on the chart where the Board does
5 have authority to regulate and where there really is not a
6 lot of question.

7 For those of you that are interested in looking at
8 some more detail discussion of that, the discussion of that
9 is on page 95 of the packet, 95 to 96 of the packet, 13 and
10 14 of the item. I won't go into detail discussion of legal
11 issues now. Obviously I can answer more if there are
12 specific questions.

13 You will notice that that overhead said, over most
14 storage and treatment of contaminated soil on site. There
15 may be some exceptions -- I'm going to show you the overhead
16 with my notes.

17 There may be some exceptions to that broad
18 authority when it deals with storage and treatment of
19 contaminated soils off-site. The first instance relates to
20 the issue of manufacturing, contaminated soil being used in
21 a manufacturing process off-site. The detailed discussion
22 in the item is on page 91 of the packet. It's page 9 in the
23 item.

24 The general -- the issue about whether
25 manufacturing is included within the definition of

1 processing relates to this definition from our Public
2 Resources Code. It's very broad language.

3 Processing means the reduction, separation,
4 recovery, conversion or recycling of solid waste. It is
5 very general and very broad.

6 The question becomes and has been raised, is
7 manufacturing a conversion of processing of solid waste?

8 One argument is, it certainly is, because the
9 contaminated soil is being used in a process, and it comes
10 out at the end of that process as something different,
11 something, i.e., converted.

12 On the other hand, manufacturing, unlike typical
13 treatment processes, that Bobbie talked about, where you are
14 doing something to the material, you're taking the soil
15 doing something that changes the contamination of it.

16 That's not really what's going on in the case of
17 manufacturing. You are using a contaminated soil as an
18 ingredient in the manufacturing process, if you will.

19 The purpose of the process is not necessarily to
20 treat the material. You are not acting on the material
21 itself, per se. It's getting mixed in with a number of
22 other items that you are also using the manufacturing
23 process.

24 That is one of the issues that we are seeking some
25 input on in terms of legal interpretation. As you can see,

1 that definition is very broad.

2 It doesn't offer a lot of direction one way or the
3 other. So, that's one of the issues that's out there.

4 The second potential area where there is some
5 question about Board authority over storage and treatment of
6 contaminated soil off-site has to do with the authority over
7 storage and use off-site, post treatment, in other words,
8 after the material has been treated. This is discussed in
9 some detail in the Agenda Item, on page 10, and it's page 92
10 in the packet.

11 The argument basically resolves around recycling
12 for Public Resources Code. The problem relates to the way
13 that this language is actually phrased, because if you look
14 at the definition of recycling, it talks about recycling is
15 the process of collecting, sorting, et cetera, materials
16 that would otherwise become solid waste, and we're turning
17 them to make another phase in the form of raw materials.

18 That's a phrase that has caused an issue to be
19 raised over the years as to whether that once a solid waste,
20 always a solid waste. There has been an issue out there
21 that somehow once something is within the Board's
22 jurisdiction, because it's a solid waste, no matter what's
23 done to it, it forever remains in that jurisdiction.

24 Contrary to a literal reading of the statute, if
25 you look at the statute right above it in the books, again,

1 the definition of processing, the language of this does talk
2 about the recycling of solid waste. So, in a sense you have
3 a contradiction between those two statutes, if they are read
4 literally.

5 So, this legal issue is in the item, because I
6 felt they needed to put it in there, because it has been
7 raised over the years, although I think it may be one of the
8 easier one's to be addressed.

9 But that's the crux of the issue. Is something
10 always a solid waste once it is or is it not? And again, if
11 the decision if the interpretation of these statutes is that
12 something can be recycled and end up not being a solid waste
13 anymore, then at that point in time, the Board's authority
14 over that material would end.

15 So much for the easier one's.

16 Now, the last one. Where the Board authority is,
17 and this is probably obvious to everyone in this room, a
18 little less clear, is in the particular context of the
19 contaminated soil, the treatment and use of contaminated
20 soil on-site. The discussion of this specific discussion on
21 this page 7 and 8 of the item. It's page 89 and 90 of the
22 agenda packet.

23 The issue here becomes how do we interpret the
24 definition of solid waste, Section 40191, and how does the
25 California Supreme Court's interpretation of that section

1 affect the Board? I guess I'll do this in a couple of
2 different stages.

3 Basically, the issue, as I think most of us are
4 familiar with, is does something have to be discarded to be
5 a solid waste? In the context of contaminated soil on-site,
6 and we are dealing with a material that's either treated in
7 the ground, an agent is put into it in the ground and the
8 material never moves and stays there, or it's excavated
9 on-site, treated and placed right back into that same site
10 or maybe used as road base on-site, so, the discard issue is
11 important, because if it is a factor, then theoretically
12 on-site treatment and use is material that may never have
13 been discarded, and therefore, it would not be a solid waste
14 and therefore, the Board would not have jurisdiction.

15 On the other hand, if discard is not a requirement
16 for the definition of solid waste, then it's like either
17 that material is a solid waste. Right now it's regulated as
18 a waste by the Air Board, Water Board and a number of other
19 agencies for a variety of different reasons.

20 COMMITTEE CHAIRMAN FRAZEE: Elliott, can I ask you
21 a question right when you have that slide up there?

22 In reading that definition, where would you place
23 non-hazardous petroleum contaminated soils in that
24 definition, or is it in the final statement, other discarded
25 solid or semi-solid waste, or is it in another category?

1 MR. BLOCK: The definition itself is a very long
2 sentence, but it's basically in the first half of the
3 sentence, if you will, which is not what I consider the
4 definition, which is simply all putrescible and
5 non-putrescible solid, semi-solid and liquid wastes.

6 Then the rest of that sentence is a series of
7 examples, including but not limited to examples.

8 COMMITTEE CHAIRMAN FRAZEE: Is that, all of that
9 not qualified by the final terms that says other discarded,
10 meaning other or discarded applies to all of those things?

11 MR. BLOCK: That is, in fact, what the California
12 Supreme Court said in the Rancho Mirage Decision, and I can
13 talk in a little bit of detail about the different arguments
14 about how that does or doesn't, may or may not apply.

15 There are a lot of different ways you can look at
16 that. One of the problems, and since you've asked the
17 question, I will jump to that, that is identified in the
18 Agenda Item in terms of there being a problem with that
19 analysis is the fact that if discard at the end of the
20 sentence modifies everything in front of it, you'd get a
21 number, or two or three items earlier in the sentence that
22 have used that term, if you will, so that you have abandoned
23 vehicles a part thereof are only solid waste if they are
24 discarded abandoned vehicles, or discarded homes, and
25 industrial appliances are the same thing.

1 So, there is a grammar problem if, in fact, that's
2 the way it is. You just sort of took most of the thunder
3 out of my argument.

4 There are basically two different ways to look at
5 this issue. One, discard is required, part of the argument
6 is that the Rancho Mirage Decision says, very general
7 language, nothing is a solid waste unless it is discarded,
8 and that language is there in the court, and that's
9 something that needs to be recognized, and, of course, it
10 points to the fact that this statute uses that term,
11 discard.

12 The potential argument against that has to do more
13 with the context of the case and what its precedential
14 power for what the Board is dealing with today is, for lack
15 of a better way to describe that.

16 The Rancho Mirage case was a bad exclusive
17 franchise. It was about property ownership and about flow
18 control.

19 It uses some very broad language to discuss the
20 definition of solid waste, but nothing in that case was
21 about or was there any analysis of issues of regulation for
22 public health and safety and the environment and like.

23 So, there is a question as to, although the broad
24 language is there, whether it really is controlling or not
25 for what the Board is going to be dealing with here in terms

1 of this separate issue. Property ownership is really a
2 different issue, and franchise is a different matter than
3 the public health and safety regulations and the like.

4 So, that is really the crux of where that issue
5 is. It's something that's bothered us. I think, this Board
6 a couple of years ago thought about whether we were going to
7 deal with that issue, because we saw some potential problems
8 in some of those cases, and there is a judgment call there.
9 That is obviously one of the issues that we are looking for
10 some input on.

11 There is no question to the fact that the Supreme
12 Court has made this very broad statement. That is something
13 that needs to be reckoned with, and our decision has to go
14 forward. On the other hand, it's also pretty clear that
15 that case, Rancho Mirage Decision, was not about what we are
16 doing here. So, there are some issues there as about how
17 far it reaches.

18 Just one final, just to finish what is on here,
19 although you basically have discussed it, if we were to end
20 up deciding that we did have jurisdiction over this
21 material anyway, that it was a solid waste, the issue of
22 recycling, which I mentioned earlier, would also come up in
23 the context of on-site treatment and use.

24 Bobbie did give me one fancy one to use as a
25 summary.

1 This, again, just summarizes the issues that we
2 just sort of talked about very quickly. Again, and let me
3 just put sort of an umbrella over this, it would appear that
4 the vast majority of contaminated soil treatment that we're
5 talking about, the off-site treatment and use, the Board has
6 had jurisdiction over. There's been never a question about
7 that.

8 However, then we move to some other issues, again,
9 is manufacturing off-site something that is within the
10 definition of processing? Number two, once the material is
11 treated is it no longer a solid waste, and therefore, the
12 Board doesn't have jurisdiction?

13 The third issue is really specific to on-site for
14 the purposes of contaminated soil, is this material solid
15 waste if it's never discarded or is that not an issue?

16 I think Caren is probably ready to discuss the
17 options, but maybe I ought to stop and see if you have some
18 questions of me first before we go to her.

19 COMMITTEE CHAIRMAN FRAZEE: Let me just ask a few
20 questions. One of the great advantages, I have both an
21 advantage and a disadvantage, and that's not being an
22 attorney.

23 I don't have to hold to the strict standards. But
24 it also gives me the option of using some logic that perhaps
25 the legal interpretations do not have, and I think that's

1 what troubles me in this whole question, the conclusion, and
2 you seem to state, and I am not being critical at all, but
3 just to get this clear in my mind.

4 There is no question that we have authority, and I
5 read that in here. I guess that is where I have the
6 beginning problem.

7 We may have or may not have statutory authority,
8 but also we have case law, and again not being an attorney
9 gives me the advantage of doing strange things.

10 MR. BLOCK: You're talking now about the on-site
11 treatment and use?

12 COMMITTEE CHAIRMAN FRAZEE: Yes.

13 Well, the question of is it solid waste, and you
14 tended to put that off as not being that, the Indian Wells
15 (sic) decision is not really relevant to this issue, because
16 that dealt with franchises and a bunch of other things, but
17 it just seems to me that in reading that decision that was
18 the first conclusion that the justices had to come to before
19 they addressed anything else: Is it solid waste?

20 That's the overriding question.

21 They said, no, it isn't, and so that's where my
22 path of logic comes into play on this particular issue.
23 Again, this is kind of a narrow definition.

24 If we were talking about soils that were
25 contaminated with PCBs or a whole range of heavy metals,

1 hazardous products, I don't think I would have a great
2 problem with regulation. We're talking about this narrow
3 category, non-hazardous petroleum contaminated soils and
4 trying to think of what is the definition of that.

5 I think it gets pretty easy that that's kind of a
6 narrow category of things, and it's a product that we use.

7 We can't get away from it. It's out here paving
8 our streets. It is here, there and everywhere, and it
9 doesn't seem to -- you know, logic tells me that's a
10 material that creates some kind of an environmental problem,
11 then we shouldn't be doing it.

12 I was thinking about a specific case in driving
13 out across the desert this last week, where the Department
14 of Transportation had sprayed 20 miles of a built up sand
15 berm alongside the freeway with a petroleum, heavy-based
16 petroleum product. The sole purpose in that product was to
17 retain that sand so that water would run off of it.

18 So, what's the purpose of regulating contaminated
19 soil to avoid polluting water sources? Here it's been used
20 in a manner that that's the first and only exposure, and the
21 one reason you have to do it is to bring it into immediate
22 contact with water.

23 So, apparently that is all right. There doesn't
24 seem to be a problem with that.

25 Yet, if they were to go out and scrape up that

1 material, it immediately falls into this category of
2 non-hazardous petroleum contaminated soils, and then it must
3 go through a process, and in that process they all of a
4 sudden mix it with some other petroleum products, and then,
5 viola, it becomes non-contaminated soil, and it's put back
6 out for paving again.

7 That's where the logic really kind of loses me on
8 this whole thing of why are we in this business in the first
9 place?

10 My bottom line, and perhaps too reacting to
11 something that my esteemed colleague said earlier, my
12 starting point on these kinds of issues is I don't think
13 government has any business regulating this, and convince me
14 that it does, and other people have the view that government
15 has the authority to regulate everything, and convince me of
16 the things that shouldn't be regulated, and it's those kind
17 of conflicting views.

18 I need to be convinced by logic that this is
19 something that needs government regulation both by logic but
20 also by statute, and I'm even having -- logic out the
21 window, but I am having trouble with even the statutory
22 authority for us to be in this area.

23 First of all, is it necessary to protect health,
24 safety and the environment, and second, is someone else
25 already doing it, and is it our issue?

1 I think it's a water quality issue, and if someone
2 needs to regulate it, then that's what Water Quality Control
3 Boards are there for.

4 MR. BLOCK: If I might try to help to clarify a
5 little bit, the conclusion in the sense that forgetting that
6 the off-site, on-site contaminated soils itself is a waste
7 is basically that's how other agencies that deal with it,
8 they regulate it as a waste.

9 There is not really a lot of analysis that went
10 into that, because it is an issue that has been dealt with
11 before.

12 I can't speak to the issue about the oils sprayed
13 on the side of the road. I'm not familiar with what they
14 did, or why they did what they did, but the agency that
15 would regulate it as a waste once it was dug up.

16 The second thing I kind of wanted to comment on is
17 the jurisdiction, and this was in my remarks earlier, about
18 this is sort of a broad question, but it doesn't mean
19 necessarily that we are going to do anything when we get
20 down to deciding how we would regulate something if we had
21 jurisdiction, the issues you raised both regarding 1220 and
22 regarding whether even if 1220 wouldn't somehow keep us out
23 of regulating a particular material, then maybe we would
24 decide there isn't a reason to do that.

25 Those are valid issues which are not contradicted

1 by saying that in the abstract sense these are wastes that
2 we have some jurisdiction over, and the example that you
3 gave is, in fact, a very important one for making that
4 determination down the road.

5 Frankly, in looking at some of these issues
6 specific to contaminated soil, there are not a lot of areas
7 that aren't regulated by some other agencies, but there are
8 some. We heard some when we went on our tour, some
9 discussion about sham treatment operations that are, in
10 fact, really disposal sites.

11 We heard some issues about load checking and
12 making sure, in fact, that the material isn't hazardous
13 waste versus non-hazardous waste. There are some areas
14 there where it may make sense for us to do some things and a
15 lot of areas where it may make absolutely no sense, and I
16 think that's really kind of where the issue that I raised
17 about manufacturing comes from, because you start to wonder,
18 are we interpreting the definition of processing so broadly,
19 that we basically pull in everything everybody does
20 anywhere.

21 There are clearly some lines that are going to
22 have to be drawn but they are really lines of policy calls,
23 if you will, and what makes sense as to opposed to the issue
24 that I was asked to address, which was sort of a broad, are
25 we in the ball game to look at those issues.

1 So, that is kind of where I am coming from.

2 COMMITTEE CHAIRMAN FRAZEE: I guess I am probably
3 tainted by some real life experience, like most of my
4 decisions in government have been, but I had the experience
5 of installing some fuel tanks some 20 or 25 years ago, and
6 knowing that we had a corrosive soil situation, we took
7 particular care to install those tanks and back-filled them
8 with pure crystal silica sand, so there was no soil contact
9 with contaminant, with hot soil that would eat up the tanks.

10 So, twenty-plus years later when those tanks were
11 taken out, my nephew, who was then running the operation,
12 said, you know, I am really happy that you took care in
13 installing these tanks. They came out clean.

14 There was no leak, but when they went for the
15 test, they found a little gasoline in filling from the pumps
16 had spilled, went down through the cracks in the concrete
17 and penetrated that sand.

18 To make a long story short, you know, that little
19 bit of gasoline in sand, put out, would have remediated
20 itself on-site. But that's not what the rules and
21 regulations do.

22 What the rules and regulations ended up a cost of
23 \$40,000 and almost two years later before that site could be
24 filled and reused again, in front of a very important
25 building.

1 It's those kinds of things that we get into and
2 calling that silica sand that had some gasoline in it and
3 having to haul it off to a disposal site, you know, that was
4 not discards, per se, like you throw your garbage out. That
5 was something that the owner of the property would have
6 preferred to have that soil left on the site if they could.

7 But those kind of things, I think, are what drives
8 me in this regard of are we really doing the environment any
9 good? Probably more petroleum use was created and air
10 quality degradation by the trucks that have to haul this
11 stuff for 200 miles to get it away from the site than the
12 actual little bit of gasoline contamination that was there.

13 Sometimes it looks like we've lost our collective
14 minds on these kinds of regulations, and if I seem to be
15 driving at this one too much, it's driven by personal
16 experience.

17 MR. BLOCK: Obviously there are some issues there
18 that can create some concerns, although, again, those are
19 the kind of things that, I assume it was the Water Board,
20 that made those requirements, and I don't think there is
21 anything that we are talking about here that would be
22 requiring anybody to do any remediation or that sort of
23 thing.

24 We'd be dealing with it after it was taken
25 off-site.

1 COMMITTEE MEMBER RELIS: In the framework that you
2 have put forth, one is we are reading into statute or
3 looking at statute for direction.

4 The other, we are looking at a court case, but the
5 third, which you refer to is the fact that agencies have
6 been regulating the material. I wonder if you would amplify
7 what significance you give to that.

8 In one case we were told, or I think that these
9 projects that we have regulated historically have come to us
10 more from or referrals from local government, local
11 enforcement agents handing them to us, and somehow we got
12 into this business over a period, we have some 17, as I
13 counted, or maybe a few more, facilities that we have
14 permitted in the contaminated soils area, but I just want to
15 understand the regulatory side better.

16 MR. BLOCK: Perhaps that was not the best way to
17 explain that, but basically all I meant to say is you have a
18 definition that says all putrescible, non-putrescible,
19 semi-solid, solid and liquid wastes, and the Board, the PRC
20 doesn't define waste separate from solid waste.

21 It just simply uses that term. So, when we look
22 to decide what does waste in the abstract mean, the Air
23 Board, the Water Board, some other agencies do define waste
24 and do regulate these materials as wastes. So, to the
25 extent that we are looking for some direction for what this

1 statute means, that is kind of one of the places that we
2 look.

3 The issue that Caren raised was more specific to
4 why we have permitted some and why we haven't permitted
5 some, which is more an issue of -- that's the consistency
6 Statewide issue that we have been trying to grapple with.

7 COMMITTEE MEMBER RELIS: But we never, as far as I
8 know, and maybe I'm wrong here, did this Board -- my limited
9 four-year history, did we ever send out advisories or other
10 communications directing LEAs to look at this material
11 specifically going way back.

12 What role did we play, if any?

13 MS. TRGOVCICH: Up until approximately a year and
14 a half ago, we had provided relatively little direction to
15 LEAs in this regard.

16 LEAs would interpret the statute and the
17 requirements to determine whether or not at the local level
18 they would chose to apply the requirement to obtain a solid
19 waste facilities permit. When they made that decision, that
20 started a series of activities.

21 Once the permit application came in, the clock
22 started. The clock started for the Board, and the Board's
23 decision making abilities at that point were left up to
24 either concur or object to the issuance of the permit based
25 on certain criteria. So, there was no analysis around the

1 contaminated soil issue.

2 Approximately a year and a half ago, Board Members
3 were very concerned that they may be acting on these permits
4 without the benefit of the broader discussion over what
5 role, if any, should the Board play in this regulatory
6 arena, and so, the Board directed an issuance of an advisory
7 which went out to all LEAs that said stop requiring
8 operators to obtain permits in this area until we can
9 further exam it and determine what that role would be in
10 terms of authority, and once we do that, what the
11 appropriate level of regulatory oversight would be.

12 Is a permit required or something else?

13 COMMITTEE MEMBER RELIS: So, at that point we in
14 effect exercised at least the judgment that we were not sure
15 what we wanted to do in this case, that this was going to be
16 subject to a broader and deeper look.

17 MS. TRGOVCICH: Exactly, beyond the case by case
18 determinations that the Board was being requested to make.

19 So, at that point in time the advisory went out,
20 and in a sense, I don't want to use the word moratorium, but
21 the word was spread that the Board was using its
22 interpretative powers to look at and examine what its role
23 would be with respect to these types of operations. That is
24 what we are here doing today.

25 COMMITTEE MEMBER RELIS: So, at that point, just

1 again to pursue it, instead of being as we were, as I might
2 interpret, and I don't cast any value to this, but we may
3 have been more passive before that point, meaning a permit
4 gets brought forward, we deal with it, but not -- we weren't
5 dealing with permits of that nature in the context of an
6 analysis like this, if it was brought forward, we dealt with
7 it.

8 The clock started. We made a decision.

9 MS. TRGOVCICH: Exactly, and I've spoken with
10 several members who have expressed concern over the
11 appropriateness in that sense of objecting to the issuance
12 of a permit when, in fact, everything maybe in order, but
13 the consequences of handing down a decision that was
14 objectionable when it was based upon whether or not the
15 Board felt that this was even appropriate, but the
16 perception was that the operator had somehow not complied
17 with certain conditions or had not met certain standards,
18 and that was not the case.

19 So, the Board chose in that sense to go ahead down
20 the path of considering that permit and concurring in it
21 based upon the applicable standards at that time.

22 COMMITTEE MEMBER EGIGIAN: Mr. Chairman, as we go
23 back several years, and we are talking about permitting, and
24 when we first got very serious about permitting, I think I
25 asked the question, why can't we decide what areas go into

1 what parts of the permitting, exclusion or a full solid
2 waste one.

3 Okay. I was argued very heavily against not doing
4 that, because we wanted to have a framework that we could
5 use on everything that's brought before us that would
6 evaluate the situation to see where, if any, that particular
7 item was permitted.

8 In this sentence that I had here, we should make
9 decisions about what we should exclude after evaluating the
10 process involved, this should be a public policy choice and
11 not an overly legalistic one. So, whichever comes forward,
12 whether it be contaminated soil or Class A-1 trash going
13 into landfills, it should go through the same process to
14 find out if there is a health and safety situation connected
15 with it.

16 I think we are going off in a direction now where
17 we are trying to start excluding things, and I don't think
18 we should go that far at this point in time. I think we
19 should have more input into the situation from probably the
20 people that are here, and once we start getting that input,
21 then we can look at this more realistically rather than -- I
22 thought I understood this pretty well until Mr. Block
23 explained it to us.

24 I have no objection to the job that you did. You
25 did a good job, but I have this with every attorney.

1 I have a problem, because they seem to come down
2 both sides of the aisle, and at the end, when you get
3 through paying your fees, you forgot where you are.

4 I thank you for the information, but by the same
5 token, I think this needs to be walked through the way that
6 we decided as opposed to struggling to make decisions now.

7 MS. TRGOVCICH: In Mr. Block -- I'm sorry. In Mr.
8 Block's defense, I think that --

9 COMMITTEE MEMBER EGIGIAN: I'm not putting him
10 down.

11 MS. TRGOVCICH: Just to layout for you, we had
12 originally begun to develop an item which laid out
13 recommendations, but because the issues became so complex,
14 when we realized that we were going to be dealing with the
15 issues of recycle and discard, we decided to present for you
16 the two sides of opinion, the two sides that you are
17 referring to, Mr. Egigian, in order for you to have the
18 benefit of all that discussion to be able to make a
19 decision.

20 So, we had grappled with coming forward with a
21 recommendation, but felt that the issues were so sensitive
22 that we wanted to present the various sides.

23 MR. BLOCK: If I may also add onto that, my sense
24 is, looking at the audience that's out there, that whether
25 or not I raised those issues in the item, they were going to

1 be raised today by the people speaking.

2 So, our sense was to at least put a framework to
3 it so that those comments as they come in can be considered
4 in maybe a more organized fashion as opposed to all over the
5 map.

6 COMMITTEE CHAIRMAN FRAZEE: By the same token,
7 this Board expressing some views early on before we hear the
8 testimony gives those testifying an opportunity to direct
9 some of their information, and I may just give them a little
10 bit more of that so they have something to react to.

11 MR. BLOCK: I'm not sure they need any more.

12 COMMITTEE CHAIRMAN FRAZEE: Just in this whole
13 consideration of should something be regulated or not, in my
14 past life I served as Chairman of the Consumer Protection
15 Committee in the State Assembly for one term and served on
16 that Committee for a number of terms.

17 Over the years I've watched various professions or
18 businesses come in and say, please regulate me, and that
19 concerns me.

20 You begin to look through that. You know, what's
21 the purpose of it?

22 First of all, the standard line we hear from all
23 business everywhere, and I have spent more time or as much
24 time as anyone doing this saying, the problem with trying to
25 conduct business in the State of California is that we are

1 overregulated.

2 Then when I see businesses come in and say,
3 please, regulate me, then you have to do some serious look
4 at what is the motivation for this, and I think there are
5 two legitimate areas in that. One is people in that
6 industry are aware that there are some bad operators out
7 there that are defrauding the public for the purpose of
8 going back to the old definition to protect the health,
9 safety and welfare of our citizens, it's necessary to
10 regulate the entire industry, and I think that's a valid
11 argument.

12 So, many times, and I think I uniformly rejected
13 them, as you analyze the whole thing, these people were
14 quite often were very open about the reason that we want to
15 regulate you is because we want the lines of regulation
16 drawn towards our particular trade association or our
17 segment of the industry, because what it really amounts to
18 is we really want to keep a bunch of other people out of the
19 business.

20 That is part of our decision here looking and
21 putting these people in one or the other of the categories
22 who come in and want to be regulated for that purpose.

23 So, I hope that provides some context too as we
24 hear from the people.

25 COMMITTEE MEMBER EGIGIAN: Mr. Chairman, the

1 reason this got started is because we had -- once the law
2 was written, then we had some unscrupulous operators
3 painting the word recycling on the side of their truck and
4 going into the waste business and saying that we don't have
5 to comply with any of the laws.

6 We can throw the stuff all around. We can haul
7 rubbish. We can do anything we want just because we've got
8 the word recycle on the side of our truck.

9 So, this is how this started, and I didn't think
10 we were going to get into the areas that we are, but since
11 we have started, we can eliminate those that don't belong
12 here.

13 MR. CHANDLER: Mr. Chairman, one step a little bit
14 longer.

15 I want to speak to a point that Mr. Relis raised,
16 because I think it's important where he was asking staff for
17 where a grounding was in some of the interpretation of what
18 is a solid waste, and he referred to the definitions, and he
19 referred to some of the interpretations we have drawn on
20 from other State agencies who also reference the
21 interpretation that we attempt to analyze, which is the
22 Supreme Court decision on interpretation.

23 I heard one kind of interpretation of how you
24 viewed that and what the justices were attempting to do. I
25 would only or want you to at least note the analysis on page

1 89 and 90, which draws out the second interpretation, and
2 I'd ask counsel to speak to that very briefly, because I
3 think it's important that we not lose sight of that topic.

4 MS. TOBIAS: What I wanted to point out there is
5 that, as you were speaking, as Mr. Chandler said, A, on page
6 89, does talk about one way to look at the Rancho Mirage
7 Decision, and I think that was essentially the way you were
8 looking at it.

9 To go along with Mr. Egigian's worst fears, the
10 other way to look at this case, and to give you the other
11 side of the spectrum is down in B, where it says that the
12 California Supreme Court held in this case that nothing
13 becomes a solid waste unless it's discarded.

14 Then it says, I think importantly, however,
15 despite its broad language, that case may only be applicable
16 to the question of what is covered in the exclusive
17 franchise agreement, and any application of this
18 interpretation should be limited to the facts of the case.

19 The Rancho Mirage Decision does not contain any
20 analysis of the need for health and safety regulations and
21 any application of this decision in that context is
22 inappropriate. The CIWMB is not a party to that case, and
23 its authority to regulate is not addressed nor is it
24 controlled by that Decision.

25 So, again, I do think that it is the Legal

1 Office's job to give you the varying interpretations of how
2 that case may be read. The decision on where to go is a
3 policy decision that's made by the Board.

4 We just want to give you the parameters of the
5 spectrum.

6 MR. CHANDLER: Does Caren have any summary points
7 to make?

8 MR. BLOCK: If there is no other question, I think
9 Caren wanted to just finish with the options.

10 MS. TRGOVCICH: Just to summarize, after, I
11 believe, the last hour of staff presentation, we originally
12 anticipated a much shorter presentation.

13 We just wanted to layout for you as you listen to
14 those individuals seeking to provide you testimony to this
15 issue the various options that are available to the
16 Committee, and there may be others that will come to light
17 as the afternoon moves on.

18 The first option you may wish, because of the
19 precedential nature of some of these decisions to seek
20 additional input for consideration, that we would bring back
21 at an upcoming Committee meeting, and you may wish to frame
22 the types of areas that you would like staff to focus on.

23 Another option before you that's included in the
24 item is to recommend a limited decision on statutory
25 authority to the Board for consideration, going back to

1 Elliott's analysis. There were certain areas that in our
2 legal counsel's mind were very clear with respect to the
3 Board's statutory authority, and if you were to concur in
4 that analysis, you may wish to recommend those specific
5 limited areas to the Board.

6 I would just like to point out that in the context
7 of applying the methodology then to these areas, we would
8 only be able to do that for those specific elements, and we
9 would need to be able to hold off until the Committee and
10 Board acted on the remainder of its decision.

11 Third option before you is to recommend decision
12 for all of the four categories of contaminated soil handling
13 operations to the Board for action, and I simply want to
14 remind you of these various options, which I'm sure you are
15 well-aware of in order to revisit the schedule that was laid
16 out that I included in the beginning of the staff
17 presentation in terms of moving forward on this item, the
18 schedule that, if you wish, later on in the afternoon I can
19 put back up on the screen.

20 COMMITTEE CHAIRMAN FRAZEE: That would be helpful.

21 Now, let's go to the public hearing and again to
22 indicate at the present time we have four speakers
23 indicating.

24 If we have more, please, bring your speaker slips
25 forward.

1 The first person wishing to testify is Larry Cogan
2 from Forward, Incorporated.

3 MR. COGAN: Good afternoon, Members of the
4 Committee and staff.

5 First of all, I will applaud on at least the
6 intent to try to analyze in a general way all the issues
7 that affect the Board authority. It is obviously a
8 complicated issue.

9 The thing that I do want to remind everyone though
10 is that we are talking about contaminated soil here. I
11 think that others may get up and talk about the Board
12 authority issues, and other related matters, really
13 regarding other waste streams. They may not mention the
14 other waste streams but that may be the ultimate motive.

15 What I would like to focus us on today is that we
16 are talking about contaminated soil. From the perspective
17 of my client, Forward, Incorporated, a landfill in San
18 Joaquin County, it seems to be a relatively straightforward
19 issue in our minds. This is absolutely a solid waste.

20 For example, other than using contaminated soil as
21 cover material or foundation material in a landfill, the
22 material itself is unusable. In other words, people do not
23 take contaminated soil and lay it down on a street and call
24 it pavement.

25 They don't go down to the contaminated soil store

1 and buy two cubic yards to put it in their front yards as
2 landscaping, even though that it has been freshly excavated
3 from the neighborhood gas station. In other words, this
4 material is absolutely harmful to the environment and to the
5 public health in its state as contaminated.

6 I would note that it is deemed non-hazardous but
7 that does not mean that it is non-harmful. It is, in fact,
8 harmful to the environment.

9 The fact that it is contaminated is the very
10 reason that perhaps another regulatory agency, such as the
11 Regional Board, requires its removal.

12 The fact that it is non-hazardous versus hazardous
13 is really for the purposes of regulatory convenience as far
14 as defining regulations for storage, treatment or disposal.
15 I would also point out that and this is -- I don't really
16 want to go down this tangent, but if the Board were to
17 decide a discard theory in modifying and defining the term
18 solid waste, that they would also have to accept from the
19 Rancho Mirage Decision the notion that contaminated soil
20 must be a solid waste under that Decision, unless the
21 handler received it for free or paid for it, however, if the
22 handler were to, in fact, paid for it by someone else, then
23 it must be a solid waste under that Decision.

24 I think, I guess I would encourage the Board in
25 evaluating this to look at it from a much broader

1 perspective and look at it in part from the mandate to the
2 Board under Public Resources Code Section 40052, which
3 states that one purpose in the Integrated Waste Management
4 Act is to protect the environment, and it doesn't mean to
5 protect it to all ends or some ridiculous means.

6 But nevertheless, protection of the environment,
7 public health and safety are the very things this Board is
8 here to do to a reasonable and pragmatic end. I would
9 encourage the Board not to focus on the backend of whatever
10 handling might occur.

11 In other words, don't look at where contaminated
12 soil might end up and say, well, because it ended up in
13 pavement, therefore, there is some use to it, and it can't
14 be a solid waste.

15 I would argue that contaminated soil, again, in
16 its contaminated state at least until the point that it is
17 in the pavement, becomes converted, becomes processed,
18 becomes transformed, is, in fact, solid waste. I would urge
19 the Board to accept Public Resources Code 40191 as defined.

20 In other words, all putrescible and
21 non-putrescible solid, semi-solid, liquid waste, and leave
22 it at that, and let our common sense rule in the context of
23 contaminated soil.

24 I think that the Board definitely has the
25 authority over this particular waste stream to regulate it

1 from the time, certainly, that this material is removed for
2 the reasons that I have identified. You may decide
3 ultimately not to regulate this material, for example, as a
4 full permit, but what we are here today is to decide merely
5 the scope of the Board's authority.

6 In our view there is no question that the Board
7 has the authority to regulate this material. The next step
8 then would be to move on, according to the Board and staff
9 schedule, and decide where to slot the various operations in
10 the appropriate regulatory tiers.

11 I think that if at this point you start making
12 decisions, really broad impact decisions, as to what the
13 Board's authority is, you are going to find yourselves
14 inadvertently giving away big chunks of the Board's
15 authority, perhaps in other contexts that right now you
16 didn't even perceive that will come back to haunt you as
17 other speakers come up to this podium in subsequent years,
18 reminding you of what you did with respect to contaminated
19 soil.

20 I would note also that the Water Board and Air
21 Boards do not exercise exclusive jurisdiction with this
22 particular waste stream. For example, I would suggest to
23 staff that actually their list of the heights and scope of
24 other agencies' jurisdiction, that was listed on page 4 and
25 5 of the Agenda Item, was deficient in certain respects.

1 For example, there can be situations where there
2 is a need for regulation, and there is harm to the
3 environment where there is no air impact, and there is no
4 groundwater impact, or there is not even a surface water
5 impact.

6 The example would be in the high desert, if our
7 focus were simply to worry about water impacts or air
8 impacts. Then the argument could be made that every gas
9 station or other facility, for example, that has a diesel
10 spill, which doesn't have a particularly volatile substance
11 in it, that you merely scoop out all of that soil and just
12 take it to the high desert and just dump it around.

13 The problem is what happens when it starts
14 raining, and this material starts filtering down to the
15 native soil, and you start contaminating other native soil
16 that previous was clean?

17 The groundwater may be 400 feet below the surface
18 and not threatened, but now what's happened is we have
19 soiled other parts of our environment, and I think the
20 Integrated Waste Management Act would say, that is not a
21 result that you want to have happen.

22 So, I think there is definitely areas, certainly,
23 of contamination of the environment that are not actively
24 regulated. In fact, I argue that in the example that I just
25 gave where you are worrying about contamination to existing

1 native soil and perhaps exposure to the public to
2 contaminated soil which doesn't involve necessarily air
3 emission issues, but instead just an exposure, children
4 having access to soil, et cetera, that these are exactly the
5 types of things that the LEA should regulate, because there
6 is a regulatory vacuum.

7 No one else is doing it.

8 I think the -- I certainly will not fault anyone
9 else who comes up here who will want to make their pitch
10 just as I am doing as to how they would like the Board to
11 exercise its authority perhaps in a broader perspective as
12 to other waste streams. Again, I would ask you at this time
13 to focus your attention on contaminated soil.

14 Contaminated soil as a -- again, we believe this
15 is a solid waste that must be safely and correctly handled
16 until at least it is successfully converted to another form
17 and use. I would also argue that the Waste Board has the
18 authority and responsibility to even track it after
19 conversion to make sure that what was supposed to happen
20 did, in fact, happen.

21 In our -- from our perspective, to summarize, we
22 think it is a fairly easy decision in the context of an
23 environmentally harmful substance like contaminated soil,
24 you are going to have a lot harder decisions with other
25 waste streams. In fact, I think you will.

1 But with this waste stream, I would urge you to
2 just acknowledge the authority of the Waste Board and to
3 move ahead to the second phase.

4 If you have any questions, I would be happy to
5 answer them.

6 COMMITTEE CHAIRMAN FRAZEE: Thank you.

7 Next, Mr. Larry Sweetser, representing NorCal
8 Waste Systems.

9 MR. SWEETSER: Good afternoon, Board Members. My
10 name is Larry Sweetser. I'm the Director of Regulatory
11 Affairs for NorCal Waste Systems.

12 I think I want to echo a lot of what has been said
13 and probably some stuff to be said. There are no magic
14 answers to this thing.

15 Staff did a pretty good job of laying out point
16 and counter point. There are a lot of issues.

17 I fully agree with Mr. Cogan on the implications
18 of what we are about to embark on. So, I think it does
19 require some careful study.

20 It is something that a lot of people have a lot of
21 stake in and a lot of concerns about. I think looking at
22 the methodology in how we are dealing with this whole issue,
23 it is critical, starting with contaminated soils, on what's
24 going to be known.

25 Probably there is an easier waste stream to deal

1 with than some of the one's that come.

2 Everyone has their own opinions on interpretations
3 on this thing, and that's the advantage of the hearing is to
4 let people have their say as far as what their opinions are,
5 and the Board is going to be faced with that tough decision.
6 They are in an awkward position, a very complicated
7 decision, a precedent setting position.

8 You have to come up with an answer that the courts
9 didn't fully answer, like the Legislature didn't fully
10 answer. It's suddenly in your laps.

11 It's not an enviable position, but I think it's
12 something that the Board can manage. I think we did it with
13 compost. I think that was a good example coming up with
14 something that was reasonable for all parties.

15 I think that carrying forward some of the spirit
16 of that, I think, will help in addressing this issue. There
17 are a lot of implications of your decision not only on the
18 future waste streams particularly the next year but also
19 classification.

20 So, whatever guidelines you set up with
21 contaminated soil, given that this is the first test to that
22 methodology, also have to be looked at retrospectively with
23 the compost, because I don't think -- I think everyone is
24 satisfied. At least the major people are satisfied with the
25 compromise reached there, but we don't want to have to

1 revisit that based on a change in methodology.

2 So, I think that almost mandates further study.

3 Mr. Egigian's opening statement, I think, said
4 quite a lot as far as laying out the ground work and trying
5 to bring up the two major issues that the Board needs to
6 look at in terms of this. That's the authority of the
7 health and safety issue.

8 The authority issue brings up the whole question
9 of what is solid waste. That is not something that we dealt
10 with on the general methodology in the advisory committee.
11 We dealt with more of the health and safety issue, but that
12 authority issue is key for this issue before we can proceed
13 much further.

14 It adds a whole other dimension to looking at the
15 complications of this issue. Although one of the
16 interesting things on the authority issue that came out of
17 the general methodology group, in my opinion, was we took a
18 big step backward looking at the whole process, and I didn't
19 see that methodology limiting it just to the Waste Board's
20 purview.

21 We did take a look at the issues of other agencies
22 and how it fits in and who is doing what and who is not
23 doing what.

24 Mr. Cogan may have some examples as far as one
25 agency may be charged with certain responsibilities, but it

1 doesn't cover all aspects of that responsibility. I think
2 there are a number of examples to point to for that.

3 So, as far as the authority issue, there are a lot
4 of agencies that are involved in the decisions dealing with
5 solid waste.

6 The various aspects are air and water, and I think
7 as we go through this process that needs to be looked at,
8 also. The Board does have limitations on what it has with
9 authority with solid waste, but I think the other agencies
10 do fit into that.

11 In other words, we are all trying to get to that
12 delineation of responsibility. Nobody is looking for
13 over-regulation.

14 At the same time, we are not looking for
15 underregulation. I'm not going to stand up here and
16 volunteer to be one of the one's that wants to be regulated.

17 There is certain security in that, but at the same
18 time, I think I would volunteer to be regulated just like
19 the person down the street doing the same thing, and I think
20 that's what most of us are looking for, to have those clear
21 boundaries established.

22 Health and safety issue, I think, is one of the
23 critical one's. I think that kind of gets forgotten in this
24 whole process as far as one of the reasons that the Board
25 came into existence in the beginning was to deal with the

1 health and safety issues of solid waste.

2 That is where we came back to a lot in the
3 advisory committee. I think that's where a lot of activity
4 needs to focus as we go about this, too, how much impact is
5 there for health and safety, the public and the environment?
6 That is a critical one that needs to be looked at, not be
7 forgotten in the process.

8 The Rancho Mirage Decision -- I am not an
9 attorney. I am not going to get involved in that.

10 We've got plenty of paperwork on our side from
11 that at the Board, but the one thing to keep in mind with
12 that is that it's one of the strangest decisions where
13 everyone thinks they won.

14 So, all sides have good arguments as to why they
15 won that decision, so we have to be careful about basing too
16 much of this process on that one as well. So, there is that
17 decision to contend with.

18 I think one other thing to add on your comment,
19 Mr. Frazee, is that on looking at the different waste
20 streams and what agencies regulate them, it came to mind
21 that the whole example of hazardous materials and hazardous
22 waste, you can go into a store and buy a very toxic
23 pesticide and take it home in your grocery bag with your
24 milk and bread and eggs, but when you try to get rid of that
25 material, you are in your own little universe.

1 I don't think anybody likes that process or even
2 understands it. I'm not claiming there is a lot of logic to
3 this thing sometimes, but hopefully when this process is
4 set, some sort of logical guidelines, not so much for
5 contaminated soils, but I think the tiers to come --

6 I think there are enough on contaminated soil, I
7 think there are enough issues to warrant the Board's
8 authority in many areas, including possibly some of the
9 on-site activities, depending on what it is. I think what
10 it needs is a little bit more further discussion between the
11 various parties and Board staff to get quality input into
12 that particular process.

13 So, I think we are looking for essentially the
14 option of getting that input in and making sure we are
15 making the right decision. I don't think anybody wants to
16 revisit this issue later.

17 Thank you very much.

18 COMMITTEE CHAIRMAN FRAZEE: Thank you.

19 Questions?

20 If not, the next person on the list is Rob
21 Brenheimer.

22 MR. BRENHEIMER: Thank you, Mr. Chairman and Board
23 Members.

24 Maybe as opposed to the last speaker who didn't
25 want to speak so much on the Rancho Mirage case, I think

1 that's where I want to focus some of my discussion today.

2 It has -- it is the only case, it's the only
3 Supreme Court case that talks about the definition of solid
4 waste. The definition of solid waste is critical to what
5 the Board is trying to do in regulating some of these
6 facilities.

7 Before I get into it, I want to backtrack and look
8 at what the direction of the Legislature was to the Board
9 when they required them to implement some regulations.

10 They had the general purpose which was alluded to
11 by a previous speaker in the purpose of the Act in
12 protecting the environment, but they also put some
13 constraints on that.

14 They said, regulations shall include standards for
15 design, operation, maintenance and ultimate reuse of solid
16 waste facilities but shall not include aspects of solid
17 waste handling or disposal, which are solely of local
18 concern or which are handled by the Air Board or Water
19 Board.

20 I think that many of the aspects that in
21 particular to different recycling facilities are of local
22 concern or are handled by the Air Board or the Water Board.
23 I think that is an important point to bring out, and that is
24 there may be some environmental concerns out there that
25 aren't within the purview of the Waste Board to regulate.

1 In regard to the Rancho Mirage Decision, and maybe
2 we can put back up the definition of solid waste --

3 Do you have that?

4 In the analysis put out by Board staff on whether
5 or not Rancho Mirage applies, which I think clearly it does,
6 and I won't get into that, because I know that later
7 speakers will talk about why it does apply, but in talking
8 about how Rancho Mirage analyzed solid waste, in the opinion
9 put out by Board staff it says, however, this interpretation
10 ignores a grammatical problem that this interpretation
11 causes, and they are talking about where other discarded
12 solid and semi-solid wastes applying to some of the
13 specified areas in the definition, they used the word
14 discarded and abandoned and things like that, so you have a
15 double discarded which seems to be a little confusing.

16 Conversely, it's equally grammatically difficult
17 with the word paper and other words in there to think
18 without the word discarded every piece of paper is then
19 solid waste. Certainly the notes that I am speaking from
20 today aren't solid waste.

21 I am still using them. The Waste Board has no
22 right to regulate the paper that I'm using.

23 The word paper in the definition of solid waste,
24 it only makes sense if the word discarded applies to it. I
25 think it was said that the word discarded was only alluded

1 to in general terms by the State Supreme Court.

2 I think to the contrary the State Supreme Court
3 was very clear in their declaration that discarded applied
4 to the definition of solid waste.

5 The State Supreme Court said that Section 40191,
6 subdivision A, defines solid waste as being several
7 enumerated types of materials and, quote, and they put this
8 in italics, "other discarded solid and semi-solid wastes,"
9 unquote, the restrictive modifier, "other discarded;"
10 plainly refers to all the enumerated materials in the
11 statute, thereby meaning that an item is not waste until it
12 is discarded.

13 I don't think that's general language. I think
14 that is very clear. An item is not waste until it is
15 discarded.

16 We're talking today about contaminated soils, but
17 as Elliott Block indicated, some of the decisions that are
18 made today have precedential value for the Board on how they
19 are going to address the issues of recycling facilities and
20 other types of facilities and operations that are going to
21 be handled as this process moves forward.

22 I don't think I'll go further into how it is going
23 to affect recycling facilities until we get to that next
24 month or whenever we decide to do that.

25 Before I conclude, I want to point out another

1 issue kind of separate from this Rancho Mirage issue, which
2 is, in the analysis set out by Board staff, there is a
3 recognition that a solid waste facilities permit can not be
4 implemented for recycling facilities because those types of
5 facilities are excluded from the definition of a solid waste
6 facility, and as such, they are labeling some of the tiers
7 to be solid waste operations.

8 I think that that is a distinction without a
9 difference, and truly what's going on here is the
10 development of a tiered permitting for a solid waste
11 facility which the Legislature has said if you are a
12 recycling facility, you are outside of that purview.

13 With that, I think I would like to close. I
14 appreciate the opportunity to address the concerns on behalf
15 of the Association of California Recycling Industries. I
16 also appreciate all the hard work I know staff has put in to
17 prepare this item to bring before everybody.

18 It's kind of a hot potato, and I'm sure we will be
19 here next month talking about some of these same issues.

20 Thank you very much.

21 COMMITTEE CHAIRMAN FRAZEE: Thank you.

22 We will take just a brief break for the reporter.
23 Is this your point to change paper?

24 (Thereupon a discussion was held off the record.)

25 CHAIRMAN FRAZEE: If we could come to order again,

1 please.

2 Our next individual to testify is Tim Flanigan.

3 MR. FLANIGAN: Thank you, Mr. Chairman and Members
4 of the Board. My name is Tim Flanigan.

5 I'm with the law firm of Flanigan and Flanigan,
6 and I'm here on behalf of the Institute of Scrap Recycling
7 Industries.

8 I will make my comments very brief. They really
9 have to do with the legal interpretation today, some things
10 that concern me, and I guess the basic thrust has to do with
11 the Supreme Court case that has been bandied around here
12 today. Your lawyers are being very good lawyers and are
13 trying to be very judicious and giving you varying opinions
14 on this.

15 I was independently involved in the case because
16 my firm wrote amicus briefs both at the appellant level and
17 at the Supreme Court level. I think a couple of things.

18 If I were your lawyer, I was up here, and I was
19 advising you, and you were sitting on the Board, and I don't
20 mean to be factious when I tell you this, I would say any
21 Board Member ought to read this himself or herself and
22 memorize it, because it's the only Supreme Court case that's
23 addressed the authority of the Board.

24 Now, staff is right in the sense that it comes by
25 way of a certain set of facts that don't apply to

1 contaminated soils. But the majority opinion, it was a five
2 to two opinion, the majority opinion, if you read it talks
3 about the definition.

4 I mean the whole thing is about the definition of
5 solid waste, the whole case, and Chairman Frazee was right.
6 That's the first thing that the justices have to grapple
7 with.

8 It is a landmark case. It is the first case to
9 affect the new Act, the Integrated Waste Management Act.
10 It's a very important case.

11 If you don't read it and understand it, and I
12 assume that you have read it and understand it, but just for
13 sake of argument, if you don't, believe me, the Office of
14 Administrative Law will read it and understand it, and
15 subsequent courts will read it and understand it, and any
16 regulations that you put out of the body are going to be
17 interpreted through this case.

18 This case gets to a very fundamental issue. It
19 says what is solid waste?

20 The Act that gives you authority defines solid
21 waste. If what you are looking at is not solid waste, then
22 under the Act you don't have authority. It's that simple.

23 This case defines solid waste. Now, you get there
24 by route of some facts that happened down in Rancho Mirage,
25 but when you read the case, the definition applies across

1 the board in terms of the language you saw up here. It is a
2 very important case.

3 I know people laughingly get up and say, well, I
4 am not a lawyer, and I don't understand these things. It's
5 plain English.

6 You don't have to be a lawyer to read this case.
7 It is only five pages long.

8 I gave it to my 15-year-old daughter for a high
9 school project. She read it and understood it right off the
10 bat and did very well with it.

11 Okay. So, it doesn't take lawyers to read cases.

12 This is a very telling, very specific, very
13 important case for this Board and for the interpretation of
14 what is solid waste and what is not and for what authority
15 this Board has and what it does not have. All I do is
16 encourage you to please read the case.

17 The Board has already -- or the Supreme Court in
18 this case has already grappled with a lot of the problems
19 that you folks are grappling with right now in terms of your
20 own basic authority. So, I think I would start there, and
21 then I would go back from there.

22 For instance, the one thing that did disturb me is
23 that in the analysis there is an issue raised that you could
24 either look to the court as controlling or you could look to
25 an argument that the court might have missed, which was the

1 issue of the grammatical interpretation of discard.

2 Believe me, the court didn't miss that. The court
3 addressed it, and if you would have read the volumes of
4 material that were sent into the court, that was thoroughly
5 discussed by both sides in that case. The court knew
6 exactly what it was doing when it addressed it.

7 Under the Constitution, the Supreme Court is given
8 the authority to interpret law. When a statute is looked to
9 for interpretation, the Supreme Court has the final say on
10 that, unless the Legislature wants to change it.

11 That applies to any regulation that comes out of
12 the Board that is given authority through statute to make
13 that regulation.

14 So, I really do appreciate the time, and you are
15 very thoughtful to people, and I appreciate your listening
16 to me. I just encourage you to read the case yourself if
17 you haven't already done it.

18 Thank you very much.

19 COMMITTEE CHAIRMAN FRAZEE: Thank you.

20 Let me just indicate for the record that I
21 misspoke earlier, probably because I get confused when I
22 drive down Highway 111 where all of these cities are, but I
23 think I referred to this case by Indian Wells, which is next
24 door. Just to correct the record on that.

25 Now, Alex B. Nichols is our person to testify.

1 MR. NICHOLS: Good afternoon, Mr. Chairman and
2 Members of the Board. My name is Alex Nichols.

3 I work for a firm called Insight, Environmental
4 Consultants, which is out of Bakersfield and Twentynine
5 Palms. We represent two clients that currently handle
6 petroleum contaminated soils.

7 One of those clients, Resource Renewal
8 Technologies, is the reason that I am here today and have
9 followed this process for the last two years or so.

10 They have been very, very interested in what the
11 Board is doing. I'd like to give you a little background in
12 how we get to this position today, which is a position I do
13 not envy you guys for being in.

14 Resource Renewal Technology started a couple of
15 years ago with the concept that they would take resources
16 that would normally have gone into the waste stream, ended
17 up in a landfill somewhere, and if I can use the broad word
18 instead of taken to a landfill, recycle those materials into
19 some other type of process.

20 The first process that they selected having a lot
21 to do with their background was to take petroleum
22 contaminated soils, use it as a raw material in a
23 manufacturing process and manufacture a product that is
24 referred to commonly in the market as asphaltic concrete.

25 Just for education, it has nothing to do with

1 cement. It is concrete in that it is asphalt and the
2 asphaltic oil.

3 The sand and the gravel that are heated in a
4 burner which turns it into the road paving material which is
5 frequently referred to as asphaltic concrete.

6 I might add that currently we are in the process
7 of permitting for them, adjacent to this site, a rubble
8 recycling facility that would take used brick, used block,
9 used asphaltic concrete, standard concrete, paving
10 materials, grind it up and use it as raw materials for use
11 in making asphaltic concrete again, or in making concrete
12 products, blocks or bricks or whatever.

13 Very heavily steeped in their attitude of wanting
14 to recycle to take things that would normally go to a
15 landfill and use in a process to put them back into the
16 public use again.

17 The Insight Environmental Consultants became
18 involved in their project when they first started to permit
19 a couple of years ago. We were brought in to handle all of
20 their permitting, both waste, air, water, Regional Water
21 Board, all of the permits.

22 At that time, before tiered permitting, we were
23 successful in arguing on their behalf that Integrated Waste
24 Management Board had no jurisdiction, that we argued that
25 they were basically recycling.

1 The Local Enforcement Agency issued a letter that
2 the Resource Renewal Technology facility would be excluded
3 from needing a permit from the Regional Board.

4 We have followed this process because RRT as well
5 as Insight, and I think many of the people that are here
6 today, believe that this really needs to be a level playing
7 field that everybody is on. I know of some facilities that
8 have gotten a full permit from the Integrated Waste
9 Management Board, certainly the cost for Insight to argue
10 for an exclusion was significantly cheaper than the cost for
11 Insight going through and getting RRT a full permit.

12 That, in their belief and mine and many other
13 people's, is not the level playing field that we think that
14 everybody should be on.

15 RRT is very firm in their belief that there
16 probably should be a permit process of which they ought to
17 be part of. We were quite happy to see the tiered
18 permitting concept come down the pike, because that really
19 addresses the issues. Let's issue the level of permit which
20 is appropriate for the type of facility.

21 Several years ago, we argued for the exclusion
22 based on the attitude that we did not think the full permit
23 was an appropriate permit for this type of facility. We are
24 a little surprised to find in discussions with staff that
25 because probably of our involvement there is an interest now

1 in excluding asphalt manufacturing plants from the
2 permitting process, because they are manufacturing
3 facilities and not, quote, unquote, "handlers of petroleum
4 contaminated soils."

5 This bothers us a little bit for several different
6 reasons. Number one, we feel that all facilities that
7 handle petroleum contaminated soil should be regulated for
8 the aspect that a couple of people mentioned, it keeps
9 everybody in the business honest.

10 It provides a framework for the person who decides
11 that he is suddenly going to use this as a soil amendment
12 from going out into the middle of nowhere and dumping load
13 after load after load of petroleum contaminated soils, to
14 till that into somebody's agricultural operation and use it
15 as a soil amendment.

16 We have seen this happen in Kern County just a
17 couple of miles from the site of Resources Renewal
18 Technology and one of the bioremediation facilities.

19 It allows other operators that are in the
20 business, if you will, to take soils at next to nothing,
21 because they have very little cost involved, and put them at
22 a very strong competitive advantage against the other
23 facilities that have gone through the permitting processes.

24 So, we would encourage you to consider all
25 facilities that handle petroleum contaminated soils should

1 have some type of a permit through the tiered program.

2 The other rather curious aspect that I would
3 remark about having a permit, to be very, very frank with
4 you, comes from the marketing standpoint. Caren made a
5 comment a little earlier that I'd like to address and that
6 is that there is a perceived need, particularly in Kern
7 County, to handle petroleum contaminated soils.

8 A lot of material that is processed through these
9 different types of facilities, such as remediation or
10 thermal whatever, could quite happily remain in place
11 on-site wherever they are at. But oil companies, electrical
12 generation facilities, biomass facilities have been burned
13 over and over and over again where they see that material is
14 not properly disposed of.

15 They are called back in by a government agency to
16 pay again, to remove that from one site and redispense of it
17 somewhere else. They are so gun-shy with environmental
18 regulation that they are bending over backwards to make sure
19 that, in this case, petroleum contaminated soils are handled
20 cradle to grave, they have a certificate that relieves them
21 of the responsibility, and they do it in a very, very
22 professional manner.

23 Consequently if you are a client who is going to
24 take petroleum contaminated soils to one of these
25 facilities, and if you are a large client, such as a Unocal

1 or a Chevron, Texaco, you will send your environmental audit
2 team to the facility to audit the place where you would like
3 to take your material.

4 Typically we see the audit teams come in with a
5 checklist. Do you have a permit from Air Quality, yes or
6 no? Check it off, yes. Copy the permit, that's fine.

7 Do you have a permit from Regional -- do you have
8 waste discharge requirement from Regional Water Board?
9 Check it off, yes. Copy of the permit, that's fine.

10 If you exclude manufacturing facilities from this,
11 when the question is asked, do you have a permit from
12 Integrated Waste Management Board, the answer of course is
13 no, unless we could get your legal counsel to write an
14 opinion that this is the greatest thing since sliced bread,
15 and it's the appropriate way to handle petroleum
16 contaminated soils and, therefore, should not be regulated
17 by the Board.

18 My client then has to get into a discussion with
19 his client as to why he doesn't have a permit from
20 Integrated Waste Management Board.

21 Human nature being what it is, rather than that
22 auditor writing a couple page dissertation as to why he is
23 excluded from having a permit, it is easier for that auditor
24 to check no, walk away. My client then is no longer
25 considered as a place for disposal of the soils, because he

1 can't check yes in every box.

2 It is so much easier if these auditors check yes.
3 So, on behalf of the clients, the concept of having this
4 level playing field which keeps everyone honest, we would
5 encourage you to proceed with including manufacturing
6 facilities that produce asphaltic concrete in a tiered
7 permitting program with other people that handle the
8 petroleum contaminated soils.

9 COMMITTEE CHAIRMAN FRAZEE: Just on your final
10 sentence, are you qualifying that by those asphalt producing
11 facilities that use contaminated soils as feedstock or all?

12 MR. NICHOLS: Our personal opinion is all
13 petroleum contaminated soils.

14 COMMITTEE CHAIRMAN FRAZEE: Okay. But an asphalt
15 concrete producing plant that does not use any contaminated
16 soil then would not have to have a permit?

17 MR. NICHOLS: That's correct.

18 The RRT facility does have the capability of
19 producing standard asphaltic concrete without the petroleum
20 contaminated soil.

21 COMMITTEE CHAIRMAN FRAZEE: Then do we not lead
22 ourselves into the unequal treatment between those two kinds
23 of facilities, because the one that doesn't use contaminated
24 soil, their feedstock was all the same make-up of material,
25 otherwise it wouldn't meet the test.

1 It is rock and sand and oil, of some form or
2 another. That is the same feedstock, but it's just in the
3 form that it is in.

4 So, when or where do you stop on this? Do you
5 keep going?

6 MR. NICHOLS: I understand your concern.

7 Typically in an asphalt concrete facility, you are
8 using virgin sand, virgin aggregate and asphaltic oils,
9 which are provided by our refinery that meets particular
10 specifications. In effect, at the Resource Renewal
11 Technology facility, they are not making asphaltic concrete
12 totally from petroleum contaminated soils.

13 They are blending that stream into an existing
14 stream of virgin aggregate, virgin sand and spraying it with
15 asphaltic oil. In this case, the petroleum makes up a
16 portion of the asphaltic oil requirement. The sand makes up
17 a portion of the sand requirement.

18 I don't see it as a conflict, because the issue
19 here is whether or not the facility is bringing in petroleum
20 contaminated soils, and a standard asphaltic concrete
21 production plant would not be.

22 COMMITTEE CHAIRMAN FRAZEE: I guess the real
23 question is did those items get mixed together on-site or
24 were they mixed together somewhere else and brought in in a
25 partially mixed state?

1 MR. NICHOLS: I think at all facilities everything
2 is brought in in individual piles, stockpiled individually,
3 because depending on your mix design, for what CalTrans
4 wants for their asphaltic concrete, you would use different
5 gradations of rock.

6 You would use different percentages of sand
7 depending on the type of mix that you are making.

8 So, those are all brought in and stockpiled
9 separately, as in some of the pictures you saw today were
10 from the RRT facility. All of their material is stockpiled
11 separately by generator as well.

12 COMMITTEE CHAIRMAN FRAZEE: I guess it's hard to
13 make the distinction.

14 To put it in another context, if you had two
15 bakeries, one buys bread mixes already mixed, and it bakes
16 bread out of it. The other one brings in the flour and all
17 the other things that go into it.

18 There isn't any real difference between those two.
19 It's just where the mixing took place, and that is -- you
20 know, trying to make that distinction between these two
21 kinds of facilities and saying, yes, this one must be
22 permitted and the other one doesn't.

23 It just extends our dilemma in knowing what is
24 going to be permitted.

25 COMMITTEE MEMBER RELIS: Mr. Nichols, I have two

1 questions.

2 One, you described this checklist, okay, suppose
3 the Board was not on the checklist, who would be on the
4 checklist?

5 MR. NICHOLS: Always on the checklist we see Air
6 Quality Management District or Air Pollution Control
7 District, whichever entity that is that is regulating local
8 air quality.

9 We always see Regional Water Quality Control
10 Board, and those are the two major entities.

11 COMMITTEE MEMBER RELIS: They are always on the
12 list?

13 MR. NICHOLS: Always.

14 COMMITTEE MEMBER RELIS: Okay. On another point
15 that you made concerning these -- the level playing field
16 argument or your concern that there would be soil spread in
17 a way that would be a very cheap alternative to running
18 through your operation, now, that isn't permitted, as I
19 understand, under law at all, is it?

20 Would there be any conditions under whether that
21 would be allowed?

22 MR. NICHOLS: This is the sort of thing that Caren
23 alluded to earlier, that depending on what the level of
24 petroleum contamination is, there is really nothing to
25 prohibit petroleum contaminated soils from staying where

1 it's at, to be picked up and taken someplace else.

2 I think it was Mr. Block that made the comment
3 when he was on the field trip that some of these things may
4 be constituting disposal, and this is the scenario that we
5 see where a guy brings 20 truck loads of petroleum
6 contaminated soil that has a soil amendment and disked it
7 into the soil, has no permit whatsoever, that's really
8 probably a disposal operation rather than a remediation
9 operation.

10 It's done very quickly. It's done without any
11 permits, and that sort of an operation can do so with the
12 trucking costs and the price of a disk.

13 COMMITTEE MEMBER RELIS: Now, let me ask that
14 question and pursue this then with staff, because we had
15 this come up in the compost regs, and we were trying to
16 prevent certain types of operations, and there, of course,
17 our compost called for in statute regulating of facilities
18 and we have done it.

19 But what -- there the LEA would be looked to as
20 either hearing about it and putting a stop to it, so the LEA
21 would be out there regardless of whether they were in our
22 tiered system or not.

23 Isn't that correct under the compost regs?

24 In other words, you'd look to them for
25 enforcement.

1 MR. BLOCK: I'm not sure that the compost regs,
2 per se, address that, but if you are dealing with something
3 that would qualify as disposal, then under just our
4 regulations that deal with that would perhaps be covered,
5 and the LEA could take some action.

6 But the issue would be finding a --

7 COMMITTEE MEMBER RELIS: I heard a perhaps.

8 MR. BLOCK: It's going to depend on the material,
9 how much is there.

10 There is a factual determination that needs to be
11 made as to whether it's disposal or not.

12 I am just being a lawyer when I say perhaps.

13 COMMITTEE MEMBER RELIS: Okay. I don't know that
14 I -- maybe there is nothing more you can say on that.

15 MS. TRGOVCICH: Just maybe to follow on what Mr.
16 Nichols said is that it really depends on where you are in
17 the State as to whether the type of activity that you are
18 asking a question around, storage which could be disposal,
19 the line is not clear where that would be regulated and
20 where it would not.

21 It is very inconsistent as to whether or not --
22 you know, as I went through that multiple jurisdiction, that
23 little organizational chart there whether or not it was
24 determined to be a threat to water quality, whether there
25 were any air district controls over it, depending upon where

1 you are in the State.

2 In the case that Mr. Nichols refers to, or one of
3 them, there was an instance where the material was just
4 spread out. I don't even believe that it was disked in, and
5 it was taken care of by the Regional Board. I believe that
6 was the case.

7 MR. NICHOLS: What had happened is that the
8 bioremediation facility which was half a mile away saw it
9 happening and was concerned because, again, the competitive
10 disadvantage here and called the local LEA, and they put a
11 stop to it, but the material that was taken there remained.

12 It still remains today, and everybody has kind of
13 thrown up their hands as to how do you take care of illegal
14 operations?

15 Personally, I don't think you can adopt
16 regulations that take care of the illegal operator. It's
17 the nature of the illegal operation.

18 MR. BLOCK: I also might add, because I remember
19 from discussions of that particular case, that all the LEA
20 was involved -- I believe they were actually doing it under
21 their authority as the public health and using the nuisance
22 rules, and really what I was alluding to when I used the
23 word perhaps is there were issues about defining whether or
24 not this was, in fact, disposal or something else.

25 So, earlier when I alluded in my presentation some

1 issues about where we might fit in, this is one of the areas
2 that's been raised as to having some definition so that we
3 can draw some lines, what is disposal and what isn't, that
4 sort of thing.

5 COMMITTEE CHAIRMAN FRAZEE: Nothing else?

6 Thank you, Mr. Nichols.

7 MR. NICHOLS: I would say, somewhat tongue in
8 cheek and somewhat not, that if legal counsel is willing to
9 write an opinion that this is a great process, we will be
10 happy to be excluded from it.

11 COMMITTEE CHAIRMAN FRAZEE: Thank you.

12 Next we have John Boss, representing SWANA.

13 MR. BOSS: Mr. Chairman, Members of the Committee,
14 John Boss with Amcon, but today representing the California
15 chapters of SWANA as their regulatory review chair of the
16 Legislative Task Force.

17 The policy that you are reviewing we think is a
18 very complex policy. We received your staff analysis about
19 six days ago.

20 I have distributed to our member chapters. We
21 really don't have enough to review, to give you comments.

22 We'd recommend that you adopt your Staff Option 1
23 and support that, to defer any decision for one month to
24 allow us to poll our members and actually give you formal
25 comments on that.

1 In general, we would certainly support the review
2 of your authority in applying in a very judicious manner
3 using common sense as to where you want to apply it relative
4 to contaminated soils. We would also support any
5 regulations that you would adopt that would allow maximum
6 flexibility to continue to use contaminated soils for daily
7 and final cover purposes for landfills.

8 Thank you.

9 COMMITTEE CHAIRMAN FRAZEE: Thank you.

10 Next is Kathie Currie, representing California
11 Biomass Energy Coalition.

12 MS. CURRIE: Thank you for the opportunity to
13 provide you with comments today.

14 We support a lot of the comments that went before
15 us in terms of the applicability of the Rancho Mirage
16 Decision as to what the Board is doing here.

17 I would, though, like to address a few issues that
18 are raised in the staff report. First of all, I understand
19 that they are not advancing either of these interpretations
20 at this point to be the correct interpretation and kind of
21 forced into, or Elliott was forced into, the position of
22 having to defend one versus the other. It's an awkward
23 position to be in.

24 The report indicates that the applicability of the
25 Rancho Mirage Decision may be in question for basically

1 three reasons. But it dealt with essentially property
2 rights, the exclusive franchise contract, but it did not
3 address the Board's authority to regulate and that the Board
4 was not a party.

5 I don't think that any of those rationales mean
6 that the decision is not controlling on the Board's actions
7 today. First of all, as has been pointed out earlier today,
8 the fact that the case also dealt with the property right
9 does not obviate the fact that it very specifically and
10 exclusively dealt with the definition of solid waste as a
11 general and generic issue up front before it ever reached
12 the issue of whether or not the exclusive franchise contract
13 should be upheld in that case.

14 It addressed it completely independently of any
15 other underlying issues.

16 Secondly, although the court was not addressing a
17 specific regulation or the Board's authority to regulate, it
18 did rely upon cases that had addressed that specific issue,
19 the American Mining case, the Darlene Delaware case, each of
20 those dealt with an agency's authority to regulate solid
21 waste and whether or not a material is solid waste if it's
22 not discarded.

23 So, there is, directly on point, they do provide
24 the court really, or the decision with the additional scope,
25 I guess, of addressing regulations versus simply a contract

1 and a property right.

2 The third issue that was raised was that the Board
3 was not a party to that proceeding, and here I will take
4 advantage of what the staff has done and say, I don't know
5 what the resolution of this is offhand today, but I would
6 say that the fact that the Board was not a party to that
7 court action does not preclude applying that court action or
8 does not preclude the fact that that decision might be
9 controlling on this Board.

10 First of all, you have the right to intervene in
11 any action in which you might be an interested party, and
12 you could have filed an amicus brief supporting any position
13 that the Board has in terms of avoiding any future
14 limitations on its jurisdiction. So, I think the decision
15 probably was controlling on this Board, at least on that
16 ground.

17 Even if you were to decide that the decision
18 itself is not controlling on this Board's actions, the
19 analysis that the court went through certainly is applicable
20 here. They looked directly at the definition of solid
21 waste.

22 As Mr. Flanigan said earlier, they considered the
23 argument that the staff or the staff's report raises in
24 terms of its grammatical error, and they decided that was
25 not enough reason to broaden the scope of the definition of

1 solid waste.

2 The question of whether or not this interpretation
3 raises a grammatical problem is a poor basis upon which for
4 the Board to act in ignoring the Supreme Court's decision.
5 You kind of have to jump through several hoops to get to
6 this grammatical problem.

7 The fact that the definition of solid waste uses a
8 term several times or uses similar terms repetitively does
9 not mean that they have created a double negative. It
10 doesn't mean that they have taken something out of the
11 statute that should have been kept in.

12 A discarded abandoned vehicle is a discarded
13 vehicle. It is an abandoned vehicle. It is both of those
14 things, and the fact that you call it both, that you say
15 discarded abandoned doesn't mean that you have created a
16 double negative and taken this vehicle out.

17 It's a waste, and it doesn't create any
18 enforcement issues. It doesn't create any jurisdictional
19 issues for the Board.

20 I want to raise a couple of points about the
21 application of this frame work to the specific facts.
22 First, we do not believe that manufacturing is processing,
23 and we do not believe that the Board should broaden its
24 jurisdiction to encompass those types of activities. I
25 think if you do that, you will be in sort of a comical

1 position of having entered a process that is intended to
2 streamline your process and in the end only complicated it
3 by bringing in a whole other realm of regulated industry,
4 and that would be the manufacturing industry.

5 The second point is it seems to me, in reading the
6 analysis, that the concept of discard was improperly
7 applied. The analysis created as a base line the idea of
8 whether or not it was the generator's intent to receive back
9 this material.

10 If the material was coming back, then it was not
11 being discarded. I think that's not the appropriate test.

12 Any store owner that sells a product or a material
13 doesn't intend to receive that material back. It's not a
14 waste just because they don't intend to receive it back.

15 I think the more important question is what is the
16 end use of that product. Is it disposal or is it a
17 beneficial use?

18 If it's a beneficial use, then it's clearly not
19 discarded, and it's not within the Board's jurisdiction.

20 I'd like to also point out that in every instance
21 in which the analysis considered a particular activity,
22 without outside of the constraints of whether or not the
23 activity included the discard issue, in every instance they
24 concluded that there was a waste without any further
25 analysis.

1 There was the simple statement, it is a waste,
2 without any justification for why you would handle it as a
3 waste. I think the whole purpose of this exercise was to
4 develop standards or some kind of criteria for when you
5 determine something is a waste as opposed to allow the
6 conclusory determination that something is a waste.

7 That concludes my remarks, unless you have any
8 questions.

9 COMMITTEE CHAIRMAN FRAZEE: No questions.

10 Thank you very much.

11 Rick Best, representing Californians Against
12 Waste.

13 MR. BEST: Rick Best, with Californians Against
14 Waste.

15 Before I start, I wanted to simply ask that I be
16 added to the list. Apparently I didn't receive this
17 document.

18 I think it may have been because I didn't send the
19 form back. So, I just want to make sure I'm on the list.

20 I sent it in last week when I realized that I
21 didn't get the Agenda Item.

22 I just want to begin by saying that I think I
23 support option one in terms of giving some time to further
24 consider this issue as, the previous Board Chairman has
25 often used the analogy whether things are half-baked or

1 three-quarters baked or a quarter baked, I think we have the
2 ingredients put together, but I don't think we've put it in
3 the oven yet, and I'd like to see some more time to try and
4 at least think through these issues and try to come up with
5 an understandable solution.

6 Secondly, I think that it is very important, as I
7 think the staff has realized, that this has tremendous
8 impacts how we deal with other facilities that we need to
9 address this issue as much as we can in terms of the
10 authority issue first before proceeding with the specific
11 facility types.

12 I won't repeat many of the comments regarding the
13 solid waste and the Rancho Mirage interpretation. I'd
14 support many of the comments that have gone on thus far.

15 I simply just want to raise the issue that one of
16 the options raised in the staff analysis was whether there
17 can be two separate interpretations of the Rancho Mirage
18 case, one, relating to the franchise issue, and one relating
19 to the Board's permitting authority.

20 Not being a lawyer, I think it is hard to
21 understand that you can take one definition and come up with
22 two completely different definitions or two different
23 interpretations of it. I think the interpretation of Rancho
24 Mirage certainly, whatever your interpretation of that is,
25 should be the same as when you are looking at the Board's

1 regulatory authority.

2 I think that the issue to consider is that the
3 Rancho Mirage case focused on the issue of discarded and
4 what does that mean. In that case there was a focus on
5 value, and I'm not subscribing to any specifics, but I think
6 that other issues that have been raised is the intent of the
7 material that has been separated for beneficial use, I think
8 the Board is going to need to look at those kind of issues,
9 and the reason I think that is important is, as Mr. Frazee
10 indicated in his comments, I don't think it makes sense to
11 have a case where if material is kept on-site that it's not
12 discarded, and if it goes off-site, it is discarded.

13 That doesn't make sense to me in terms of what
14 discarded means. To me discarded means that this material
15 doesn't have a beneficial use. You are going to ultimately
16 dispose of it or not, and not simply where the material is
17 going to be handled.

18 Finally, I have raised in other testimony the
19 issue of the potential impacts. I don't think that the
20 Board should be looking at the potential impacts necessarily
21 when it decides how to regulate something, but I think you
22 certainly can turn it around, as Mr. Frazee indicated, as to
23 what is the purpose of the Board taking action on this
24 issue.

25 The Board certainly has an issue in terms of

1 wanting to see environmental protection, but when you are
2 talking about, as suggested in the staff analysis,
3 potentially regulating all manufacturers as processors and
4 ultimately solid waste handlers, I think that goes far
5 beyond the intent of the Act, far beyond what we want to see
6 in terms of really limiting the ability of developing
7 recycling in California, ultimately potentially requiring
8 all manufacturers to be defined as a solid waste facility.

9 I think that would be far beyond the regulatory
10 attempt of AB-939, and certainly I urge you to carefully
11 consider that.

12 So, with that, I simply want to say I think it's
13 appropriate that this issue be put over to next month so
14 that we all have a chance to further consider the issue.

15 COMMITTEE CHAIRMAN FRAZEE: Thank you.

16 We have Evan Edgar, representing CRRC.

17 MR. EDGAR: Good afternoon. My name is Evan
18 Edgar. I'm the Manager of Technical Services for the
19 California Refuse Removal Council, and I'm on every list.

20 That's why I'm here today, because of the fact
21 that I'm on every list, and it has been a full list and been
22 fully permitted for many years.

23 I represent the solid waste industry, and we are
24 champions of the tiered permits because of the fact that we
25 have been overregulated in many cases for many years. In

1 fact, I was in Kern County. I was one of the pioneers of
2 soil remediation facilities.

3 I was a solid waste manger down there, and we had
4 these different facilities, and I wanted to get a permit.
5 So, in the late 80's, I came to the Waste Board, and they
6 forced me to get a solid waste facilities permit.

7 In the back of the room I picked up a chart, and
8 on this chart they mentioned water treatment facilities,
9 going down the list, they mentioned many in Kern County that
10 I am very familiar with.

11 What I learned, being a champion of the tiered
12 permit over the last couple of years, is that there is a
13 certain level of regulation that is appropriate. Nobody
14 wants to get a full permit when it's not needed.

15 We have a certain guiding principle that Mr.
16 Egigian mentioned at the beginning of this Committee
17 hearing. We have public health and safety, regulatory
18 equity and economic efficiencies.

19 I believe that the Waste Board delivered those
20 guiding principles within the compost regs, and we applaud
21 the Waste Board for doing that. They have done an excellent
22 job, and tiered permitting does work where the Waste Board
23 has authority, and I believe they have authority where there
24 is a solid waste.

25 I believe that the tiered permitting was routed

1 with traditional facilities. Back in 1991 and 1992 and
2 1993, a survey done by the Palsie committee looked at
3 recycling MRFs and transfer stations and the landfills.
4 They didn't really look at non-traditional facilities.

5 Then in early 1994, they started encompassing the
6 realm of non-traditional facilities, and I believe that is
7 what the problem is where we are at today. I believe by
8 using contaminated soils as a guiding light for this legal
9 argument, what is a Rancho Mirage, and what is not, and what
10 is solid waste, and what is not is a tough one.

11 I believe that decision needs to be routed in
12 traditional facilities. I believe you get a clearer answer.

13 I believe there is a lot of case work done. I
14 believe you can deliver a package such as what we had for
15 compost regulations.

16 I believe that some of these contamination
17 facilities that I've seen deserve a level of permitting. I
18 believe we have five different tiers in which we could use.

19 I don't think anybody is begging for a full
20 permit. I don't think anybody wants to get regulated under
21 a one-size-fits-all.

22 I think we have notification and registration and
23 standardize, some of those areas can regulate some of these
24 non-traditional facilities, and as we go along, I'm sure we
25 are going to slot these accordingly.

1 Today I sat here, and I went last on purpose, to
2 just to listen to how many people really talked about
3 contaminated soils. It wasn't too many.

4 Most of the people here talked about the bigger
5 picture of the legal authority of the Waste Board. To have
6 contaminated soils be that guiding light is dangerous, and
7 it may set a precedent that's not worthy of what the Waste
8 Board could do down the road with traditional facilities.

9 So, as more of a caution at this point, I think we
10 need more time in order to understand the legal decision and
11 the legal framework that Elliott put out there. He did a
12 great job of being devil's advocate.

13 He put a lot of questions out there that needed to
14 go in print. I think we need time to understand them and
15 get a sense of what it means to the traditional facilities
16 and the traditional solid waste stream. I believe that this
17 contaminated soil waste stream should not be the guiding
18 light.

19 So, we would concur with recommendation one, put
20 it back in the oven. Let's bake it a little bit more and
21 maybe come back next month with a better understanding.

22 I believe that the panel that we had over the last
23 couple of months has been a good panel to flush out a lot of
24 the technical issues. I would recommend that the GMAC
25 reconvene prior to next Committee meeting to discuss these

1 issues and maybe come back with a recommendation.

2 Thank you.

3 COMMITTEE CHAIRMAN FRAZEE: Thank you very much,
4 and you are not last.

5 We have Karen Jarrell, representing Jefferson
6 Smurfit Corp.

7 MS. JARRELL: My name is Karen Jarrell. I'm with
8 Jefferson Smurfit Corporation.

9 We are a recycler and a manufacturer using
10 recycled content products or a manufacturer of recycled
11 content products. I am also Chair of the California
12 Manufacturers Association's subcommittee on recycling solid
13 waste and packaging.

14 It should be noted that while CMA has not
15 discussed the particular Agenda Item before you today, we
16 have talked about in our meetings the general topic of
17 whether manufacturers use solid waste versus recovered
18 materials. What you are saying if manufacturers have to be
19 permitted as a processing facility, that indeed our products
20 contain solid waste, and we do not believe they contain
21 solid waste. They may contain recovered materials, but
22 certainly not solid waste.

23 So, we would object to using, or this portion at
24 least, this particular portion of the staff analysis that
25 suggests manufacturers should be a processing station.

1 COMMITTEE CHAIRMAN FRAZEE: Thank you very much.

2 Anyone else want to be heard?

3 If not, any further discussion by the Board?

4 COMMITTEE MEMBER EGIGIAN: I could make comments,
5 but I will wait.

6 COMMITTEE CHAIRMAN FRAZEE: The day is young, Mr.
7 Egigian.

8 I think we should do as suggested, option one.

9 COMMITTEE MEMBER RELIS: I would support that.

10 I think that I would like some more time, and I
11 think I will reread the case. I did read it before.

12 I also think that we may have an opportunity to go
13 visit some facilities, and I think that is always helpful in
14 matters like this.

15 I would second, if that was a motion.

16 COMMITTEE MEMBER EGIGIAN: If you are going to
17 reread it, you may need a 15-year-old girl to interpret it.

18 I don't have the mentality of a 15-year old.

19 COMMITTEE CHAIRMAN FRAZEE: Just to wrap up a bit,
20 I concur with my colleagues' view that this needs to, as the
21 terminology was, to bake in the oven a little longer.

22 But returning to my original comments about
23 convince me that this needs to be an item that should be
24 regulated, my comfort level would be enhanced dramatically
25 by the Legislature looking at this item and amend 939 to say

1 contaminated soils are clearly intended to be regulated by
2 the Waste Management Board.

3 Then we take all of that off the table, and that's
4 our job here, whether you like it or not, to disagree with
5 that decision. Our job is to proceed with using the law as
6 enacted by the Legislature.

7 I think at this point it is rather vague as to
8 whether we have that authority or not, and that goes beyond
9 my logic view that tells me that it doesn't need to be
10 regulated. But if the Legislature says that it does, then
11 let's get on with it.

12 But in that process, if we are going to take that
13 route, then we need to be an advocate for bringing some
14 reason to that regulation and involving a process that is
15 not three independent operations with three different
16 regulatory agencies at least involved in it.

17 If you rank the issues that are brought to the
18 forefront with contaminated soils, I think that on the
19 bottom of that list number one becomes Water Board
20 considerations, water considerations. Number two becomes
21 Air Quality considerations, and number three is the area of
22 the responsibility of this Board.

23 To have a system that reverses that and puts us in
24 first place on that or even requires operators to go
25 independently and get three different permits is what, I

1 think, the public is upset with now.

2 So, in the process of doing that, it would have to
3 be a system of bringing all three of those concerns together
4 in at one stop, one-size-fits-all permit that takes care of
5 that.

6 COMMITTEE MEMBER RELIS: I fully agree with what
7 you said, and I hope we can use this month or this period to
8 get further clarification so that somehow whatever comes out
9 of this it accomplishes or moves into the direction of
10 precisely what you pointed out, Mr. Frazee.

11 COMMITTEE CHAIRMAN FRAZEE: Anything else?

12 MR. CHANDLER: I would like to ask a couple of
13 clarifying questions.

14 Are we to interpret from your statement that you
15 are directing staff to seek clarification from the
16 Legislature?

17 COMMITTEE CHAIRMAN FRAZEE: No.

18 I am just saying that that would improve my
19 comfort level considerably if we were directed by the
20 Legislature to do this rather than sort of reaching to
21 encompass.

22 MR. CHANDLER: The other issue that I want to
23 raise is Caren put up the schedule.

24 I think it is very appropriate for staff to have
25 clear direction or clear understanding from all of you as to

1 how the decision today to bring this issue back next month
2 in June affects the schedule that we have adopted with
3 respect to, for example, in June we have transfer stations,
4 MRFs and recycling centers set for June.

5 Are we impacting the schedule for just
6 contaminated soil and seeing next month this schedule as
7 earlier adopted? I would like the Committee to be clear on
8 what your expectations are for next month at it relates to
9 your previously adopted schedule.

10 COMMITTEE MEMBER EGIGIAN: I personally want to
11 stick with the schedule.

12 It might be difficult, but we should find a way to
13 stick with that schedule, because if we don't, I can see
14 this thing ending in 1997 sometime, okay, and we won't get
15 this problem taken care of.

16 COMMITTEE CHAIRMAN FRAZEE: I would agree.

17 I think the transfer station issue, and I would
18 not have said this before today, is probably from
19 interpretation of the Act and the court case is probably
20 easier than this one is.

21 I think you can draw some conclusions, and again,
22 they are all intertwined.

23 MR. CHANDLER: The transfer stations,
24 unfortunately, the MRFs and the recycling centers, you are
25 going to hear us give a presentation on the legal

1 authorities and further interpretation on contaminated soil
2 as we bring that back next month.

3 Then we are going to move right into --

4 COMMITTEE MEMBER RELIS: Let's understand that if
5 we do, and I am not saying that we shouldn't, but if we do
6 take up both matters at the same time, we are more back in
7 the initial framework that is where we sought to sequence
8 this, and now we are going to blend issues.

9 That's okay with me, but I think it's going to be
10 a lot on our plate in one day.

11 MR. CHANDLER: I am just reminded, back in March
12 we brought forward a number of alternatives on how we should
13 approach these, and option one was to take contaminated soil
14 first.

15 Another option that we made was to merge them all
16 together, option four, and it was your decision to not do
17 that, and I see us starting to --

18 COMMITTEE MEMBER RELIS: I think we are merging.

19 MR. CHANDLER: -- merge them back together again.

20 COMMITTEE CHAIRMAN FRAZEE: I came here to do the
21 People's business, and if that means doing it in more than
22 one day or one afternoon, I am here prepared to do that.

23 If that means doing one of them one week and the
24 other one another week, so be it.

25 MR. CHANDLER: Caren, do you have any questions,

1 or are you clear as to the direction that they want to see
2 both issues now brought back in June, contaminated soil and
3 starting to move forward on the schedule as previously
4 adopted?

5 MS. TRGOVCICH: With respect to the transfer
6 station, MRF and recycling facility item, that is going to
7 encompass some of the decisions that you may make on the
8 contaminated soil item and then take those decisions and
9 move them forward.

10 What I am grappling with is the ability, the
11 sequential consideration of those two items may be a plus.
12 It may be helpful for you to consider the issues that have
13 been raised today, the issues in this item, have staff come
14 back with further analysis, bake it a little more, add some
15 nutmeg, I don't know, in order to get an item back here and
16 then use that as a foundation to look at the next
17 classification, which is the transfer station, MRF and
18 recycling facilities.

19 I am feeling a little bit uncomfortable on being
20 able to do both of those at the same time, because we have
21 no time to turn around your direction from the contaminated
22 soil decision and apply that then to the transfer station,
23 MRF and recycling facility discussion.

24 MR. CHANDLER: Caren, the other option would be to
25 try to take a staff analysis forward as we could and then --

1 not forward to Committee but get it going and then hear the
2 item next month on contaminated soil, get the direction and
3 then incorporate that direction into an item that is fairly
4 well-developed on the recycling centers, transfer stations,
5 MRF and then come back the following week or two later, ten
6 days later, to reflect that input and direction into that
7 and try to hold to the schedule as much as possible.

8 I don't see how we could put a package forward on
9 recycling centers without having some of these issues,
10 because it would clearly have hit some threshold questions
11 around contaminated soil that we are looking to complete
12 before we can apply it over the next package.

13 MS. TRGOVCICH: And maybe just to give more
14 context, the schedule is a two-prong schedule, and you will
15 notice that on the right column the placement for
16 contaminated soil was scheduled for June, which was
17 contingent upon being able to move forward, and because of
18 the complexity of this item expanded so greatly we are not
19 able to get to that point right now.

20 So, on the placement side we will not be looking
21 at having a set of draft regulations coming forward in June,
22 because we will be getting direction from you on the
23 authority issue then. So, the right side of the schedule we
24 need to consider as well.

25 Placement of contaminated soil could occur in

1 July, pending Board action on the authority issue. So, if
2 we merge these together, you could potentially be looking at
3 multiple regulation packages in a single month as we start
4 moving down the road.

5 COMMITTEE CHAIRMAN FRAZEE: I think by the same
6 token, we could have started the other way around.

7 We could have started with transfer stations and
8 taken contaminated soils second. Maybe that would have been
9 better.

10 MS. TRGOVCICH: This was our easy one.

11 COMMITTEE CHAIRMAN FRAZEE: Anything else?

12 MR. CHANDLER: We will be back next month and
13 summarize with further analysis around the contaminated soil
14 and some of the questions that came today, I mean, option
15 one is seek additional input regarding the appropriate
16 interpretation of the statutory authority and wait to make a
17 decision on the Board's authority until next month.

18 That was the position that you adopted, and so we
19 will do that.

20 With respect to the schedule, we'll take the
21 recycling, MRF and transfer item as far as we can take it
22 and have that item as well prepared as we can for next month
23 as well, and there may be some open-ended aspects to that
24 item clearly without the direction on this issue, and we
25 will try to incorporate those into that item as shortly

1 thereafter as possible.

2 COMMITTEE MEMBER RELIS: If I might add, I know we
3 are in a hurry here, at least from the comments made today,
4 they are asking, people are asking for us to do this right.

5 That is number one in my mind.

6 COMMITTEE MEMBER EGIGIAN: Mr. Chairman, why don't
7 we instead of waiting for next month, let's call a meeting
8 earlier.

9 Let's have two meetings a month on this and give
10 the thing --

11 COMMITTEE MEMBER RELIS: I think we can do that.

12 COMMITTEE MEMBER EGIGIAN: I don't want the
13 placement to be screwed up.

14 I want to stay where it is and work with that
15 schedule. I know that you don't like it.

16 MS. TRGOVCICH: How could you tell that?

17 COMMITTEE MEMBER EGIGIAN: By the frown on your
18 face.

19 You have done a good job. Don't get me wrong
20 here, but I am afraid that typical government is setting in,
21 okay, that it takes a year to do something that you could
22 take care of in a month.

23 I don't want that to happen.

24 COMMITTEE CHAIRMAN FRAZEE: Okay. Is that
25 everything?

1 Thank you. We will stand adjourned then.
2 (Thereupon the Permitting and Enforcement
3 Committee meeting was adjourned at 3:30 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, VICKI L. MEDEIROS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Vicki L. Medeiros, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of June, 1995.



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