

MEETING
STATE OF CALIFORNIA
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

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El Dorado County Board of Supervisors Chambers
330 Fair Lane Drive
Placerville, CA 95667

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THURSDAY, SEPTEMBER 28, 1995
9:00 A.M.

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Denise Hansen
Shorthand Reporter

A P P E A R A N C E S

COMMITTEE MEMBERS:

Mr. Daniel G. Pennington, Chairman
Mr. Robert C. Frazee, Vice Chairman
Mr. Wesley Chesbro, Board Member
Mr. Sam Egigian, Board Member
Ms. Janet Gotch, Board Member
Mr. Paul Relis, Board Member

STAFF MEMBERS PRESENT:

Mr. Douglas Y. Okumura, Deputy Director
Ms. Marie LaVergne
Mr. Cody Begley
Mr. Garth Adams
Mr. Mike Kuhn
Mr. Tom Micka
Mr. Don Dier
Ms. Marlene R. Kelly, Secretary

ALSO PRESENT:

Mr. Ralph E. Chandler, Executive Director
Mr. Elliot Block, Legal Counsel
Ms. Dorothy Rice, Chief Deputy Director

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P R O C E E D I N G S

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3 CHAIRMAN PENNINGTON: Good morning and welcome to
4 the September meeting of the California Integrated Waste
5 Management Board. Are you all hearing me?

6 MR. MORGAN: Is there a plug on the bottom, a
7 little brown button?

8 CHAIRMAN PENNINGTON: Oh, this button down here?

9 MR. MORGAN: Push it in.

10 CHAIRMAN PENNINGTON: Can you hear me now? Okay.
11 Well, we'll start again.

12 Welcome to the September meeting of the
13 Integrated, California Integrated Waste Management Board.

14 Would the secretary call the roll, please.

15 COMMITTEE SECRETARY KELLY: Board Member Chesbro?

16 BOARD MEMBER CHESBRO: I don't think my
17 microphone is working, but I'm here.

18 COMMITTEE SECRETARY KELLY: Egigian?

19 BOARD MEMBER EGIGIAN: Here.

20 COMMITTEE SECRETARY KELLY: Frazee?

21 VICE CHAIRMAN FRAZEE: Here.

22 COMMITTEE SECRETARY KELLY: Gotch?

23 BOARD MEMBER GOTCH: Here.

24 COMMITTEE SECRETARY KELLY: Relis?

25 BOARD MEMBER RELIS: Here.

1 COMMITTEE SECRETARY KELLY: Chairman Pennington?

2 CHAIRMAN PENNINGTON: Here.

3 BOARD MEMBER CHESBRO: Some people probably
4 wouldn't mind that you couldn't hear me.

5 (Laughter.)

6 CHAIRMAN PENNINGTON: No comment.

7 BOARD MEMBER CHESBRO: I'll just shout.

8 CHAIRMAN PENNINGTON: Okay. We have a quorum.

9 Okay. Does any member have any ex parte
10 communications they wish to report this morning?

11 BOARD MEMBER EGIGIAN: Mr. Chairman, I talked to
12 a lot of people and said good morning to them, so if that's
13 considered ex parte I'll just put down everybody's name in
14 the audience there.

15 CHAIRMAN PENNINGTON: Thank you, Mr. Egigian.

16 BOARD MEMBER RELIS: Mr. Chair.

17 CHAIRMAN PENNINGTON: Yes, Mr. Relis.

18 BOARD MEMBER RELIS: I had a discussion with
19 Mr. Trehitt related to the Placer County MRF right before
20 this meeting and I visited the facility and met with the
21 officials of Placer County yesterday.

22 CHAIRMAN PENNINGTON: Okay.

23 BOARD MEMBER CHESBRO: Mr. Chairman.

24 CHAIRMAN PENNINGTON: Mr. Chesbro.

25 BOARD MEMBER CHESBRO: Yes, Mr. Chairman. I had

1 conversations with Rick Best representing Californians
2 Against Waste about the Kiefer Road Landfill item and the
3 Western Placer MRF.

4 I also spoke several days ago with Larry Sweetser
5 representing NORCAL and Nortech over the Western Placer
6 Materials Recovery Facility, and then just a few moments
7 ago I had a conversation with Denise Delmatier, Jack
8 Gualco, and Larry Sweetser.

9 BOARD MEMBER RELIS: Mr. Chair, I'd like to add
10 Larry Sweetser to the list of the people I met with
11 yesterday.

12 CHAIRMAN PENNINGTON: Okay.

13 BOARD MEMBER GOTCH: Mr. Chair?

14 CHAIRMAN PENNINGTON: Yes.

15 BOARD MEMBER GOTCH: I met with Yvonne Hunter of
16 the League yesterday regarding Placer County. And I got
17 two letters from the County of Sacramento Environmental
18 Management Department regarding Kiefer Landfill Permit and
19 another letter from Rick Best, Californians Against Waste,
20 regarding West Placer's Materials Recovery Facility.

21 CHAIRMAN PENNINGTON: Okay. And the Chair met
22 yesterday with Rick Best and Yvonne Hunter and a whole list
23 of other people; however, I did fill out my paperwork
24 before I left the office yesterday so all is filed and in
25 the computer.

1 All right. As a reminder to the public, if
2 anybody wishes to speak on any item there are speaker
3 slips, I believe, outside the door over on the right
4 hand -- on my right-hand side. Just outside the door there
5 are speaker slips. If you'll fill them out and hand them
6 to the Board Secretary and we can make sure that you get a
7 turn to address the Board.

8 I have two items that have been pulled from the
9 agenda, Item 57 and Item 52.

10 And we'll go on to Committee reports. Ms. Gotch
11 from the Legislative Committee.

12 BOARD MEMBER GOTCH: Mr. Chair, the Legislation
13 Public Education Committee did not meet this month, so I
14 have nothing to report.

15 CHAIRMAN PENNINGTON: Okay. Thank you. Local
16 Assistance by Mr. Chesbro.

17 BOARD MEMBER CHESBRO: Yes. Mr. Chairman,
18 Members of the Board, the Local Assistance and Planning
19 Committee received the usual updates from the divisions
20 where the programs are that the Board reviews, or the
21 Committee reviews.

22 The Committee considered 39 filing documents
23 which represent 34 jurisdictions. All of the plans are on
24 the consent calendar.

25 One note I'd like to site is that Item 27, the

1 Source Reduction Recycling Element for the City of Escalon
2 in San Joaquin County was inadvertently omitted from the
3 Committee's agenda, but with the agreement of the members
4 of the Committee we agreed to have it go ahead to the
5 Board's agenda in order to not delay it. It was
6 recommended for approval and has been placed on the consent
7 calendar.

8 After this month's board meeting the Board will
9 have approved 302 SRREs, conditionally approved 50 and
10 disapproved 8, and that has improved our percentage now to
11 98 percent. We were -- we've been hovering about 95 but we
12 are now up about 98 percent approval rate, which I think we
13 could continue to have a great deal of pride in and
14 certainly local governments in this state as well should be
15 very proud of.

16 The Committee received an update on the Rigid
17 Plastic Container Program, and specifically on the joint
18 study presented by Castadia, the Castadia Consulting Group.
19 Castadia outlined three tasks that have been completed.

20 The first task was the Waste Characterization
21 Analysis to estimate the amount of RPPCs in California
22 disposed of in California. Twelve landfill stations have
23 been selected for what's called the "summer sort," and that
24 includes six sites in Northern California and six sites in
25 Southern California.

1 A total of 425 samples have been collected from
2 the residential, commercial, industrial, and self-hauling
3 waste streams. Each sample weighed about 200 pounds. And
4 twelve more sites will be selected in waste studies
5 conducted in the October-November period representing the
6 winter sort. They've got to make sure that the seasonal
7 variations in the waste stream have been taken into
8 account.

9 The second task was the decontamination phase
10 which sounds like some sort of nefarious thing involving
11 hazardous materials, but it really involves taking out
12 materials that don't fit the definition of rigid plastic
13 containers, and those materials were brought to the
14 facility in Sacramento in order to remove such things as
15 rings, caps, and other residuals. And then the ratio of
16 the clean RPPC weight to the total sample weight will be
17 used to estimate the total RPPCs disposed of in the waste
18 stream.

19 Lastly, the consultant in coordination with our
20 staff has developed a draft cover letter and survey to
21 collect recycling data from the recycling industry, which
22 includes: municipal recycling programs, private collection
23 facilities, material recovery facilities, processors,
24 brokers, and domestic controllers. The survey was also
25 presented to our Recyclary Advisory Committee for their

1 comment.

2 I provided -- I believe you have handouts. Did
3 those get handed out?

4 CHAIRMAN PENNINGTON: They did.

5 BOARD MEMBER CHESBRO: You have handouts that
6 describe those activities.

7 The Committee also received an update from the
8 In-house Prevention Committee. The Board has revised the
9 adopted In-house Waste Prevention Policy last March and the
10 In-house Waste Prevention Committee reported for the
11 Committee that the board -- that our Committee has made
12 several strides in reducing the amount of waste generated
13 in the workplace.

14 Examples of this are the double-sided documents
15 that have become the norm throughout the organization;
16 reuse of one-sided paper for our fax machines, and also
17 writing pads, which I think all of you have copies of,
18 which we have produced and distributed throughout the
19 organization; review and modification and procedures to
20 minimize waste generation, and the practice of waste
21 prevention in all procurement decisions of the Board.

22 There are still some difficult challenges
23 primarily involving the building management company in our
24 efforts to have landscapers "grasscycle," use worm castings
25 in one of the planting beds, and locate an on-site

1 composting bin for the food waste from the cafeteria.

2 All in all, the In-house Waste Prevention
3 Committee has done an outstanding job. And I'm very
4 confident that we will be able to take the lessons that we
5 have learned and make them part of the education effort
6 that we use with other state agencies in the private
7 business to show them the kinds of savings, the kinds of
8 programs and how they work, so that we can be assisting
9 local governments through the institutions in their
10 community doing the best job that they can for waste
11 prevention.

12 That concludes my report.

13 Thank you.

14 CHAIRMAN PENNINGTON: Thank you, Mr. Chesbro.
15 Did I hear at the Committee level the other day that Maggie
16 Coulter is leaving us for a while?

17 BOARD MEMBER CHESBRO: She's taking a leave of
18 absence.

19 CHAIRMAN PENNINGTON: She's going to go to
20 Honduras?

21 BOARD MEMBER RELIS: That's what I've heard, yes.

22 BOARD MEMBER CHESBRO: And I did -- thank you for
23 noting that, I did note at the Committee that she has been
24 really the driving force behind our -- behind our Waste
25 Prevention Program and I commended her there, and I think

1 it's appropriate that we do so here at the Board Meeting,
2 that we've really made a tremendous amount of progress
3 thanks to her contribution.

4 Thank you for pointing that out, Mr. Chairman.

5 CHAIRMAN PENNINGTON: She's a very dedicated
6 person. As you know, I was at the Department of Housing
7 before I came to the Waste Board and she worked there with
8 me before she came to the Waste Board. And she used to
9 take off and go down to Honduras and build homes down
10 there. She's a very dedicated person. We're lucky to have
11 had her and I hope she comes back to us.

12 The next report is from Mr. Relis, the Market
13 Development Committee.

14 BOARD MEMBER RELIS: Thank you, Mr. Chair.

15 The Committee heard two items, both of which are
16 on consent today, I believe. We have no change there; five
17 and six, regarding approval of the recycling market
18 development zones -- loans to two companies, and regarding
19 the approval for specialized creditor assistance.

20 I'd like to complete my report by saying last
21 week I attended the workshop, one of two which this Board
22 participated in and helped organize for the -- related to
23 the Chicago Board of Trade marketing recycled materials on
24 the commodities market.

25 Beginning October 17, that is, next month, the

1 Chicago Board of Trade will formally begin a trading
2 process for paper, plastics, and glass. This is a landmark
3 development.

4 The presentation by the Chicago Board of Trade
5 staff in L.A. was excellent. I believe we had at both
6 meetings about a hundred and twenty or so people in
7 attendance, many of those were major players in the
8 marketplace and I believe we'll see this trading accelerate
9 rather rapidly.

10 So, it's a milestone and I just wish to report on
11 that.

12 CHAIRMAN PENNINGTON: Thank you, Mr. Relis. Next
13 is the Permitting Enforcement Committee chaired by
14 Mr. Frazee.

15 VICE CHAIRMAN FRAZEE: Thank you, Mr. Chairman.

16 The Committee met on September 20th and
17 recommended approval on the following items for the agenda
18 today, Item 46, the Western Placer Facility; Item 48, a
19 Minor Waste Tire Facility for Ever-Wear Tire Products in
20 Los Angeles County; and Item 49, Consideration of Sites for
21 Remediation under the Waste Tire Stabilization and
22 Abatement Program; Item 50, Consideration of Policy for the
23 Solid Waste Disposal and Codisposal Site Cleanup Program.

24 And then under the tiered permitting effort, Item
25 53, will be an update on the Consideration of the Amount of

1 Residual Waste that would Constitute Solid Waste Handling
2 and Recycling Operations; and Item 54 is the Kiefer
3 Landfill Permit activity -- application, I should say.
4 Everything else went on the consent calendar.

5 But I think we should note Item 47, which is
6 listed as a Consideration of Concurrence in the Issuance of
7 a Revised Solid Waste Facilities Permit for the East Quincy
8 Transfer Station, Plumas County, we should indicate for the
9 record a point of clarification on this item.

10 The Committee unanimously voted to concur with
11 the staff's recommendation to begin work on the initial
12 study for the proposed permit in order to comply with CEQA.
13 Once this is in complete staff agreement we'll get back to
14 the Permitting and Enforcement Committee and subsequently
15 to the full Board.

16 In approving this item on the face of the consent
17 agenda the Board would become the lead agency for CEQA and
18 a 60-day time frame for permit concurrence or
19 nonconcurrence will be held in abeyance. And that
20 concludes my report.

21 CHAIRMAN PENNINGTON: Thank you.

22 Policy Research and Technical Assistance
23 Committee, chaired by Mr. Egigian.

24 BOARD MEMBER EGIGIAN: Mr. Chairman, Policy
25 Committee did not meet this last month and we have nothing

1 to report.

2 CHAIRMAN PENNINGTON: Okay. Thank you.

3 And the final Committee report is the
4 Administration Committee, which is chaired by me.

5 The Administration Committee met on September
6 19th and considered two items. The first is the
7 Consideration of an Appeal of a Used Oil Incentive Plan and
8 it's before the Board today for action.

9 The second item is the Consideration of the Used
10 Oil Recycling Program Claims Process Procedures Manual, and
11 it's on the consent calendar. And that concludes my report
12 on the Administration Committee.

13 Now, we have a report from the Executive
14 Director.

15 MR. CHANDLER: Thank you, Mr. Chairman. And good
16 morning, Members of the Board.

17 I'd like to speak to two items this morning.
18 I'll do so briefly. The first has to do with an item that
19 is actually on consent and I think it's highlighted, which
20 is Item No. 42, the Model Annual Report.

21 This Model Annual Report continues to demonstrate
22 the Board's commitment to providing local government with
23 cost effective easy-to-use tools for complying with State
24 directed integrated waste management requirements.

25 Over the past year the Board has approved and

1 conditionally approved about 400 source reduction recycling
2 elements. Local jurisdictions are required to submit
3 annual reports describing implementation of their diversion
4 goals and identify program highlights in their SRREs, as
5 well as identifying progress reports meeting those
6 diversion goals.

7 This Model Annual Report is designed to be
8 user-friendly, self explanatory, flexible, and easy for
9 jurisdictions to complete and enhance.

10 The Board staff is proposing to make the Model
11 available in an electronic format compatible with local
12 needs.

13 Staff estimates that the jurisdictions which
14 choose to use this model will see significant savings in
15 time, money, and expended resources.

16 The Model has received extensive internal review
17 at the Board and external review by local jurisdictions,
18 from whom we have received a very positive feedback.

19 Included in the Committee's recommendation is a
20 request for staff to explore the use of emergency
21 regulations to consolidate existing reporting requirements
22 into a single annual report for jurisdiction.

23 As you know, current regulations require separate
24 annual reports for the SSR -- excuse me, SRREs, the
25 household hazardous waste elements, the county siting

1 elements and summary plan, and petition for reduction, all
2 possibly on different submittal dates.

3 Staff is exploring this question and expects to
4 report to the Board on the feasibility of consolidating
5 these plans at its next Committee meeting.

6 Board Member Frazee spoke in his Committee report
7 to the East Quincy Transfer Station. I'd like to expand
8 just briefly on that. It is on your consent calendar, but
9 I believe it's worthy of highlighting that for a couple of
10 reasons.

11 While the item is listed, as Mr. Frazee
12 indicated, on your agenda along with consent agenda as
13 quote, "Concurrence in the Issuance of a Permit," the staff
14 recommendation approved by the Permitting and Enforcement
15 Committee before you today would actually stop the clock on
16 the permit until staff concludes the necessary
17 environmental review.

18 I think it's important to point out that this
19 review has brought about changes made to the California
20 Environmental Quality Act, Senate Bill 919 in 1993. Among
21 other things, this bill provides that public agencies could
22 no longer reject permit applications as incomplete if CEQA
23 has not been completed prior to the application.

24 This permit is the first to come before this
25 Board that has been impacted by the statutory change. In

1 this particular case the Planning Department of Plumas
2 County did not complete the necessary environmental review
3 for this project.

4 The Permitting and Enforcement Committee has
5 recommended that the Board accept staff's recommendation to
6 stop the clock on this permit until such time as our staff
7 can conduct the necessary environmental review for the
8 project. Once completed the proposed permit will be
9 brought back before the Board for consideration.

10 This unusual procedure is necessary because while
11 the Board is not authorized to object to a proposed permit
12 based on a lack of CEQA compliance it is still required to
13 comply with CEQA in making discretionary decisions.

14 And finally, I'd like to speak to the adjustment
15 method regulations and bring you an update on the progress
16 with the adjustment rate regulations.

17 The adjustment method removes the effects of
18 changes in population and economics on the amount of waste
19 disposed prior to measuring achievement of the diversion
20 goals. This method was developed through an inner agency
21 agreement with Dr. Eugene Sing at UCLA. The method was
22 developed and tested with extensive public input and
23 review, and the regulations were sent out for formal public
24 review and comment.

25 This extensive public involvement has decreased

1 the amount of time needed for the regulation process. The
2 45-day public review period ended on September 18th. Eight
3 comment letters were received, and in staff's determination
4 they do not require revisions to the regulations. No one
5 attending the public hearing on September 18th had any
6 comments on the regulations.

7 Staff will bring the regulations to the October
8 committee and board meetings for consideration. And if the
9 Board adopts the regulations in October they should be
10 approved by the Office of Administrative Law by
11 January 1st, 1996, when local jurisdictions will be in a
12 position and required to use them.

13 Mr. Chairman, Members, that concludes my report
14 this morning. Thank you.

15 CHAIRMAN PENNINGTON: Thank you, Mr. Chandler.

16 Now, we have some welcoming remarks from Mark
17 Nielson, Chairman of the Board of El Dorado County Board of
18 Supervisors.

19 MR. NIELSON: Thank you very much.

20 Good morning. It's an honor and a pleasure to
21 have you visiting the County of El Dorado. On behalf of
22 the Board, and if I may say so, the citizenry of this
23 County, I extend our warmest regards to you and hope that
24 your day is pleasant.

25 I understand you're going to visit one of the

1 emerging triumphs of this County, and that is this
2 wonderful facility that is a product of these two
3 gentlemen.

4 I must say the Board and I are very proud of our
5 efforts in this regard, to the efforts to achieve your
6 objectives that you're charged with by statute and that we
7 welcome you in this County.

8 We have an outstanding environmental program.
9 Jon Morgan is a wonderful person. He's intelligent,
10 perceptive. He even tolerates the changes on our Board of
11 Supervisors very well. He works well with the principal
12 operator on the western slope, who's represented here by
13 Dave Dutra, and between the two of them and a very
14 cooperative board, not just our board but preceding boards,
15 have welcomed these opportunities. And I know we are
16 making real progress. I can speak with some assurance on
17 that.

18 I know that our County is not necessarily
19 representative of the State, and so our makeup is
20 profoundly different than most of the parts of the State.
21 So I'm not extolling our virtues at the expense of anyone
22 else. I realize that we can't replicate, nor would we wish
23 to replicate this area elsewhere, nor would some areas like
24 us replicated in that fashion.

25 But I do welcome you and I thank you so much for

1 honoring us with your visit. And I thank you very much.

2 CHAIRMAN PENNINGTON: Thank you, Mr. Nielson. I
3 appreciate you letting us use your fine facility here.

4 Okay. Next we have El Dorado County Integrated
5 Waste Management Programs David Dutra, the Chairman of
6 El Dorado County Legal Task Force, and Jon Morgan, the
7 Manager of the El Dorado County Solid Waste and Hazardous
8 Materials Division.

9 MR. MORGAN: Thank you, Mr. Chairman and Members
10 of the Board.

11 Again, I'm Jon Morgan with the Environmental
12 Management Department.

13 I think we were told we would be given 15 minutes
14 today and I know we are going to go into O.T. so, we'll try
15 to do the best we can.

16 I have about 10 or 15 slides, and I know that
17 Dave has equally as many, and we have one of our
18 representative schools here today to show what they're
19 doing. Just a few slides to speak on what the County does.

20 The Environmental Management Department is made
21 up of four divisions: Environmental Health, Air Pollution,
22 Vector Control, which is mosquito abatement of South Lake
23 Tahoe, and Solid Waste and Hazardous Materials.

24 And then our division is considered the operator
25 of Union Mine Landfill and that's probably unique in this

1 State because we're not the LEA. We're considered the
2 operator. Everything we do -- everything we do is -- we
3 function as to the operator and it's all franchised out.

4 We're responsible for Integrated Waste Management
5 Planning; contract management, that is, the franchises; and
6 all the public works projects; projects at the Union Mine
7 Landfill; household small business hazardous waste
8 programs, which I'll have a few more slides in a minute.
9 And then we do underground tank contaminant site and
10 manager response.

11 In terms of waste management areas there's really
12 two counties in so many regards. The population of Lake
13 Tahoe is roughly 30,000 people. The tonnage per day varies
14 a lot because of the tourism.

15 Since 1992, I believe, we have exported to Story
16 County, the Lockwood Landfill. I believe there are seven
17 or eight counties in California now doing that. We were
18 the first, good or bad. It's based on economics solely.
19 We are paying 6.68 a ton right now out there, not including
20 transportation. So it's a heck of a good deal. And I've
21 been there twice, and it's a great landfill. They have a
22 gold mine out there.

23 The West slope, more than a hundred thousand
24 people, which includes the city of Placerville County, we
25 generate almost as much as South Lake Tahoe. It varies on

1 the season. Probably a lot more stable down here. It's
2 served mostly by the Union Mine Landfill.

3 I have a few slides on our closure and expansion
4 project. We recently had the landfill permitted with the
5 assistance of our LEA, and everybody worked real hard the
6 past five years. We have two and a half million dollars in
7 consulting fees and nearly \$13 million this spring in
8 capital improvements out there.

9 This is an old slide. I left it on purpose
10 because it shows all the diligence we put into this. It's
11 now a 30-year capacity within the same footprint. We got
12 creative with all our engineering all this stuff, and in
13 conjunction with the MRF, which will begin a -- a MRF which
14 will bale the waste and will bale it at the landfill site.
15 We have one permit step to deal with -- can you go back
16 one? I didn't finish.

17 I think we're probably the only County in the
18 State which is going to build a septic truck proceeding
19 station and leachate disposal.

20 We're in construction right now, and I apologize.
21 It's half done, and we're going gangbusters out there, and
22 I wish we had time to go see it because it's very
23 fascinating. We're up to about \$7 million out there and we
24 built a sewer line three miles from the landfill up to the
25 main trunk line and EID that -- the utility which provides

1 public utility service and we're almost there. We should
2 be open by spring time.

3 We had a lot of "get lost" messages from
4 Sacramento County because our septic haulers who pump
5 throughout the county take it to Sacramento County. We had
6 some historical problems but they're not being treatable at
7 our local utility district. Next slide.

8 This is a landfill. I mentioned we spent almost
9 \$13 million. That's the Union Mine Landfill, roughly a
10 50-acre footprint, more or less. We've straightened the
11 roads out, we've provided fire hydrants out there, we have
12 then built a sewer line up to the main trunk line in El
13 Dorado, we placed 17 acres of clay in the inactive site,
14 and we had a number of mine shafts out there, that's why
15 it's called the Union Mine Disposal site, it's not because
16 it's a clever name but it was one of the largest gold mines
17 in the County historically.

18 And we built a leachate -- the last couple years
19 this is the clay -- this is the clay we put in some of the
20 inactive portions. It's worked wonderfully. We used to
21 have a lot worse leachate problem then we do now. After
22 this year we'll have no leachate problem.

23 This is some of the -- the focus has been
24 terrible today. Anyway, I'm showing how we spent the
25 money. This is about a million dollar project. Next

1 slide.

2 This is the Springfield shaft. This is the
3 granddaddy around the Union Mine area, at least at one
4 time. It was two thousand feet deep. We've had a number
5 of tunnels which connected to it, and we have since plugged
6 this and all the other shafts anywhere near the landfill
7 site.

8 And this is how big the project got plugging the
9 Union Mine, excuse me, that Springfield shaft, and the
10 timbers went down to two thousand feet and we removed them
11 and capped it full of several hundred yards of concrete.
12 It's been quite a project, but it's finally over.

13 Not a very good slide, but this is some of the
14 water mains and sewer lines which are coming out of Union
15 Mine going into El Dorado, and in the distance there is
16 where the leachate plant is being built right now, and I
17 again apologize for not having that.

18 Very familiar to you obviously, we used this
19 slide program, a much bigger version, to our service
20 organizations in the County, and this is what we show on
21 the next one.

22 When AB 939 passed we had some great staff here
23 and we got a number of high schools to provide their free
24 students to help us sort our waste and find out what we
25 really have around here and figure out what we are going to

1 do. And these are the students -- and at the time
2 separated them into 30 different categories and they had a
3 lot of fun doing it, we had a lot of fun. We did it at
4 Union Mine Landfill and down -- up at Tahoe.

5 The current events for us, our most -- our most
6 proudest project right now, if I can say it like that, is
7 our Hazardous Collection Program.

8 We created a partnership with three different
9 fire departments. You can keep going. The El Dorado Hills
10 Fire Department right at the County line, and there it is
11 right there. Keep going. And the El Dorado County Fire
12 District and Camino near Pollock Pines and Camino, and one
13 more, the Lake Valley Site in South Lake Tahoe.

14 What we've done -- we've spent on sustaining
15 that, we've had one-day events, we've spent about a quarter
16 of a million dollars a year doing that, with the great work
17 of Gerri, one of our employees back there. We've opened
18 three facilities, which are open every other Saturday year
19 round, and we've saved a hundred thousand dollars in
20 disposal fees being open every other week.

21 It doesn't make much sense but -- it took a lot
22 of training. Our department people are demanding. We
23 teach them all to -- slow down a little bit. Go back one.

24 They have a lot of codes to comply with, as we
25 do, as anybody does who touches hazardous waste. And we

1 have little storage lockers at each site, and we're open,
2 again, every other Saturday.

3 The fire department personnel pack the waste and
4 then we have a vender, at this time Burlington
5 Environmental, come get it as needed, usually every other
6 week or every month.

7 We also have one at Lake Tahoe which is a big
8 challenge because of the snow. Next one. These are the
9 Lake Valley staff. This is a pretty current slide, isn't
10 it Gerri?

11 MS. SILVA: Yes.

12 MR. MORGAN: They're probably our favorite. They
13 just love doing it and they have a certified used oil
14 center. And we've built a lot of this infrastructure by
15 the way, with used oil and HHW grant money from the Waste
16 Board, so we're very in much gratitude to your Board for
17 that.

18 I think they've done a great job in turning what
19 was a very sour process, that is, the one-day events
20 one-day a year into an every other Saturday program, and
21 fire department personnel are very happy because they can
22 meet their public.

23 We get as many as 40 cars on a Saturday at
24 El Dorado Hills. So they're very busy.

25 At this point in time Dave's going to take over

1 and -- we're trying to screen through this thing so we can
2 stay under our 15-minute deadline.

3 MR. DUTRA: Thank you, Jon.

4 Mr. Chairman, Members of the Board, it is indeed
5 a pleasure to share with you our company and some of the
6 programs that we've developed and implemented in El Dorado
7 County.

8 El Dorado Disposal Service is an integrated waste
9 management company providing residential and commercial
10 services to the western slope of El Dorado County.

11 We have developed as a program in 19 -- in
12 February of 1992 an intermediate processing center and
13 curbside recycling program.

14 The curbside recycling program was unique. It
15 required specially designed trucks to allow the drivers to
16 do a five sort at the curb, which reduced the amount of
17 material processing. We have weekly collection, 15 gallon
18 containers, and a very aggressive promotional program.

19 This is a typical 15-gallon container that is set
20 out on a weekly basis by the residents. In addition to the
21 traditional curbside container we also implemented a blue
22 bag recycling program for the rural parts of the county
23 that are more difficult to service with a curbside truck.
24 We also have a yellow bag recycling program in the
25 community of El Dorado Hills.

1 These programs collect recycled glass, cans,
2 steel and tin cans, plastic, newspaper, cardboard, used
3 motor oil, and milk jugs. The trucks were specially fitted
4 with a compactor to accommodate the needs in reducing the
5 size of plastic containers.

6 This is a truck that's similar to what we have.
7 We have five such of these vehicles. The driver steps up
8 into an alcove area, glass is sorted by color, steel or
9 metal products are sorted, cardboard and newspaper. This
10 material is then transported to our 12,800 square foot
11 intermediate processing center and then paper products are
12 dumped on to the floor.

13 And, again, this program was developed in
14 February of '92 and the chairman of our -- Board Member
15 Wesley Chesbro attended an open house and provided us with
16 some very nice and kind words.

17 The paper is then loaded into a feed hopper and
18 then conveyed over a line where the majority of the work
19 force is provided by the Mother Lode Rehabilitation
20 Enterprises. And M.O.R.E. is a nonprofit organization that
21 provides employment opportunities for the disabled adults.

22 This program has worked out very well. The IPC
23 has been a premier quality provider for newspaper and
24 corrugated three years running; A quality grade.

25 The facility serves El Dorado County and the City

1 of Placerville's residential recycling program; El Dorado
2 Countys' blue bag recycling program; El Dorado Hills
3 Community Services yellow bag recycling program; community
4 drop-off locations; commercial cardboard recycling program;
5 a tire recycling and appliance program; and annually
6 recovers an estimated 4,466 tons.

7 We also developed a load-out facility that allows
8 the vehicles to dump the recyclables that have been sorted
9 into bins below. And we actually are able then to get a
10 weight on every material that's collected out of each of
11 the jurisdictions.

12 That material is then stored in debris boxes
13 which are transported to Sacramento to market. Paper is
14 baled; newspapers are baled. The bales are weighed, placed
15 into roughly 5,000 square foot warehouse facilities for
16 loading, and eventually they're shipped to market. I think
17 the values have increased such that it is necessary to take
18 special precautions.

19 Curbsides in itself is not enough to accomplish
20 the goals.

21 The program is reducing the waste stream an
22 estimated seven and a half percent. But in addition to
23 that, in 1992 we approached the Board of Supervisors with a
24 concept paper and later followed by a feasibility study,
25 and literally two years of working out financial financing

1 arrangements, engineering and designing to begin
2 construction on what was an existing facility, 60,000
3 square foot facility to be used for a regional solid waste
4 processing and transfer station.

5 This facility was once a welding, robotic welding
6 manufacturing facility with the largest employer in Diamond
7 Springs. Construction started in May and as you will see
8 this afternoon it is still under way.

9 We removed over 200 feet of concrete tilt-up
10 walls. These walls are placed on the back side and later
11 recovered and placed on the ground for a work pad area.

12 So that's a unique way of recycling or waste
13 diversion, and you'll see that as well. A great deal of
14 grading and planning went into retrofitting this existing
15 facility.

16 This facility is estimated to save our ratepayers
17 some \$2 million had we had to replace this or construct
18 this facility elsewhere. The floor was reinforced; an
19 additional 10,000 square feet was added to the facility to
20 accommodate commercial and residential tipping; in
21 addition, a storage facility for the discovery of household
22 hazardous waste is also being placed on there. And this is
23 quite a project for the County.

24 If I can share with you just some of the
25 statistical information on our IPC and our MRF.

1 The IPC now processes, as I mentioned, 4,400 tons
2 a year of which 28 percent of it is OCC and 50 percent of
3 it is ONP.

4 The facility right now produces 2.23 percent
5 residual waste. And we believe that that's an
6 accomplishment while also maintaining the premier quality
7 provider.

8 The materials recovery facility will be operated
9 by Western El Dorado Recovery Systems. It will employ some
10 thirty people the first year serving a population of over a
11 hundred thousand. It has a design capacity of 400 tons a
12 day. It's initial through-put will be somewhere in the
13 neighborhood of two to two hundred and fifty. And residual
14 waste will be baled and placed in a bale landfill at the
15 Union Mine Landfill.

16 It is estimated that the tipping fee will be in
17 the neighborhood of \$54. And it is on a budget plan right
18 now of \$4.1 million, 7.1 acres, and the total is 48,000
19 square feet of warehouse space.

20 I encourage you while you're there to take a look
21 at also our latex paint and recycling program. We
22 processed some 1275 gallons of paint during the first nine
23 months of its operations and that's expected to double
24 during the second full year of its operations.

25 I've shared with you only a brief look at some of

1 the programs that we've developed, some of the highlights.

2 And we'd be happy to answer any questions that
3 you have. Right now I'm going to turn it back to Jon and
4 he will introduce.

5 Thank you.

6 MR. MORGAN: I have one overhead to show to
7 further clarify who's where, and I just handed out a
8 handout to the Board Members.

9 The County has again wandered off into different
10 franchise areas. And the MRF tour you will have today will
11 be outside of Placerville in Diamond Strait right here.

12 We also recently opened up a MRF in South Lake
13 Tahoe, as well as Placer County, aka Tahoe Truckee Sierra
14 Disposal Unit at the eastern region landfill in Placer
15 County.

16 Interesting thing about South Lake Tahoe MRF, it
17 is a joint-power authority with Douglas County, Nevada,
18 El Dorado County, and the City of South Lake Tahoe have
19 been very, very successful. We did that project for \$2.5
20 million, I believe.

21 One of the things I wanted to share with you
22 today is we, through a Department of Conservation Grant and
23 a matching grant from the County, we have a parcel fee in
24 this County of \$17 per parcel, as well as some tipping fee
25 surcharges with franchise fees and development fees.

1 That's how we fund our programs is -- we have a school
2 program where we have, I believe, 17 schools and 10
3 districts doing some very special recycling. And one of
4 the schools, Camino School, will be sharing what they're
5 doing, with you today.

6 Dickson Schwarzbach, who is a member of our task
7 force -- we have other task force people of our County task
8 force in the audience, if they can raise their hand. And
9 without their help we couldn't get as far as we've gotten
10 so fast. And Dickson is also a contractor with the County
11 Office of Education.

12 MS. SCHWARZBACH: We have some people who are
13 very anxiously awaiting their opportunity to speak to you,
14 so, I'm going to be quick here.

15 This has really been a partnership in that we
16 have matching fundings from the Department of Conservation
17 in El Dorado County. We also have significant in-county
18 support from the County Office of Education. And we also
19 have a lot of staff support from El Dorado Disposal and
20 South Lake Tahoe Refuse who have gone out and helped
21 schools get their programs started.

22 As Jon said, we have 17 schools, 10 districts.
23 Each school got approximately \$1400 to primarily buy
24 materials that they needed. They bought bins, they bought
25 sheds, they bought banners, and you'll see some of those

1 materials here today.

2 We also had a one-and-a-half day workshop where
3 we found out about what opportunities were available. And
4 also they just exchanged ideas on what they're trying in
5 different schools and how they are working. And so that
6 was very helpful.

7 I've got a newspaper article which describes some
8 of the other schools and what they're doing, and you can
9 take a look at that later, and I'll pass that out.

10 I selected Camino School as one of our main
11 schools because they have a special approach, which I think
12 is a good model.

13 Their School Site Council, which is a staff and
14 parent organization which provides leadership, took on the
15 recycling program. And Jan Mannion is a parent at Camino
16 School and a member of that School Site Council and has
17 worked with the staff and with the students to put this
18 program on.

19 So I'm going to introduce Jan and I'll pass out
20 this article.

21 MS. MANNION: Good morning. Thank you, Dickson,
22 for inviting us.

23 We're really proud of our recycling program at
24 Camino School. And the success is due in large part to
25 students like these who work very hard. And I selected

1 these kids because they are among our best recycle cops.
2 And I'll introduce them to you now.

3 First is Russell Eide. He's in 5th grade. Kaely
4 Mannion, 5th grade. Whitney Egbert, 5th grade. Andre
5 Taylor, 6th grade. Tristan Brooks, 6th grade. Jeremy
6 LeVos, 5th grade. Denise Karapinar, 3rd grade. And
7 Josefina Gomez, 5th grade.

8 So, we'll start with Kaely Mannion who will tell
9 you how we got started.

10 KAEELY MANNION: I'm Kaely Mannion. And at the
11 beginning of last year Camino School started our recycling
12 program. El Dorado Disposal came to our school and showed
13 what materials can be recycled. We all watched a video
14 showing how important recycling is. One class did a waste
15 audit to see how much could actually be recycled.

16 Now, Whitney will tell you how we recycle at our
17 school.

18 WHITNEY EGBERT: Lunch time is the main recycling
19 time. After kids finish eating they dispose of their
20 recyclables and their non-recyclables. There are bins for
21 uneaten fruits and vegetables for composting, milk and
22 juice cartons, aluminum, and lunch bags. All those get
23 recycled.

24 Besides the lunch recycling all the classes
25 recycle their paper, and some classes have worm bins, worm

1 bins for composting.

2 And now Andre will tell you about the milk
3 cartons.

4 ANDRE TAYLOR: Starting last February Crystal
5 Milk Company started recycling milk cartons and juice
6 boxes. Before recycling the cartons kids empty the liquid
7 and put the cartons into the recycling bin. This really
8 reduced our trash.

9 DENISE KARAPINAR: This banner hangs in the lunch
10 room above all our recycling bins.

11 JOSEFINA GOMEZ: We have a gift for you.

12 (Laughter.)

13 RUSSELL EIDE: I'm a lunch monitor. And it's my
14 job to make sure all the recyclables are put in the right
15 bins. Some kids have zero garbage because they use
16 reusables.

17 MS. MANNION: Jeremy, before we -- before we tell
18 them anymore why don't you show them how you do your
19 recycling at lunch time.

20 So anybody that has their little bag you can show
21 them how we walk through the line and the -- everything is
22 marked for aluminum, fruits and vegetables, group
23 composting, there's the milk cartons and the paper bags.

24 JEREMY LEVOS: We wear these gloves because
25 sometimes kids put things in the wrong place and we have to

1 go through the trash to get it out.

2 TRISTAN BROOKS: Each classroom has bins for
3 white and colored paper. We take these bins down to the
4 big containers and dump them. Once a week M.O.R.E.
5 workshop people pick up our papers for recycling.

6 JEREMY LEVOS: There are also recycling bins in
7 the teacher's room and the offices. I collect the bins and
8 take them to our recycling spot. It all gets picked up
9 every Monday.

10 KAEELY MANNION: Some classes have worm bins for
11 vermicomposting. We feed them leftover fruits and coffee
12 grounds from our lunches -- accept for the coffee grounds.

13 (Laughter.)

14 The red worms turn the organic matter into rich soil.

15 RUSSELL EIDE: We think it's very important for
16 kids to get in the habit of recycling. It's something
17 everybody should do.

18 Before we started recycling at Camino we had five
19 dumpsters that were picked up twice a week. We changed one
20 to a cardboard dumpster and we eliminated another. So
21 instead of five dumpsters per week we have only three. We
22 saved \$2000 last year.

23 DENISE KARAPINAR: We have a gift for you.

24 JOSEFINA GOMEZ: And thank you for letting us
25 come.

1 (Applause.)

2 MS. SCHWARZBACH: Thank you very much.

3 CHAIRMAN PENNINGTON: Thank you.

4 MR. MORGAN: If I could conclude while they're
5 handing out their materials.

6 Again, I'm Jon Morgan with El Dorado County. I
7 certainly appreciate the Board coming to our small town, if
8 you will, compared to the big places like Sacramento,
9 Orange County, and Los Angeles.

10 If I could do a little side note. El Dorado
11 County is a very strong member of a regional council group
12 of counties. We functioned as their staff for this year
13 for their environmental services, their power authority,
14 and we are very thankful and learned a lot doing that.

15 And as we implement things for -- on behalf of
16 our 22 counties and/or 15 counties who are our power
17 authority it's been real difficult for these little
18 counties like Sierra County and Alpine County and Modoc
19 County to do anything because it takes staff time, and even
20 as cohorts in this process they have a difficult time
21 calling us back for things.

22 So, if anything, if you could have patience with
23 our small counties. We're the biggest one there and it's
24 easy for us because we have the population and the revenue.
25 So you can see a direct correlation.

1 Thank you.

2 MR. MORGAN: Thank you.

3 CHAIRMAN PENNINGTON: Thank you. Very
4 impressive.

5 I'm sorry Camino School got away before we could
6 properly thank them. What a wonderful job they are really
7 doing. And how important what they're doing is to our
8 future.

9 Okay. Next we have a presentation on Subtitle D
10 from Evan Edgar.

11 MR. EDGAR: Good morning, Mr. Chairman, Board
12 Members. My name is Evan Edgar. I'm the manager of
13 Technical Services for the California Refuse Removal
14 Council.

15 Today's presentation is entitled "Where Subtitle
16 D meets AB 939." And you saw a micro scale of it today of
17 El Dorado County. But there's a bigger picture. I
18 represent the CRRC Sierra Nevada Group. And we're a group
19 from Alturas all the way to Sonora; from Reno to
20 Placerville. And for the last two years I've been in front
21 of the Waste Board on some critical issues with the CRRC
22 Sierra Nevada Group.

23 Over the last two years we've talked about
24 AB 688, about closure of some of the smaller landfills in
25 the counties, Subtitle D, World Cooperative Marketing,

1 export fees, and a facility cost model. We had a lot on
2 our agenda. As you see today there's a lot of fruit to be
3 borne by some of the interaction between local government
4 and the private sector.

5 CRRC is a statewide nonprofit trade association.
6 We have private waste companies in California and Nevada,
7 we're locally owned, we're community based. We've worked
8 with the locals on all aspects of integrated waste
9 management.

10 We're involved with the waste processing, MRFs,
11 disposal, composting, hauling. We are truly integrated to
12 meet the challenges of AB 939.

13 We have decades of experience. We began
14 recycling years ago, and with the advent of AB 939 we're
15 doing more and more.

16 I do have a package that I included in your board
17 package, so if you can follow along. Right now I'm on page
18 3. But with -- what I want to do today is a quick
19 introduction, like a regional case study, a regional case
20 study of what's happened over the last five years in this
21 region where AB 939 met Subtitle D.

22 As you get a better understanding of what the
23 smaller communities have faced -- Jon Morgan was able to
24 explain what the rural counties are doing with respect to
25 RCRC, which is Rural Council Regional Government. They

1 formed a joint-power agreement and they too had to
2 regionalize their expertise and resources in order to meet
3 the challenges.

4 On the private side we have done the same. We've
5 been meeting on a routine basis in order to -- in order to
6 cooperate where we can and share our information, what has
7 worked in these small regions.

8 What this regional case study will do:
9 Illustrate the benefit for public and private partnership,
10 establish new benchmarks for solid waste services in rural
11 counties, focus on the methods that have worked. We have
12 utilized best practices. We offer practical solutions on a
13 cost effective manner within each community. And we
14 continue to review the services for improvement, while at
15 the same time we update the RCRC, as well as the Waste
16 Board today, on all the activities in this community.

17 Today's introduction I hope to be back in front
18 of the Waste Board in about six months to give you an
19 update on the continued activities of this group.

20 On page four I list the members of the CRRC
21 Sierra Nevada Group from Modoc County all the way down to
22 Tuolumne. It doesn't really match with the RCRC JPA. They
23 don't really match. And they don't really match with the
24 different cooperative marketing areas that the Waste Board
25 has identified.

1 John Brooks has been working with CRRC and RCRC
2 on rural cooperate marketing. He identified six different
3 regions in California. Well, today's region is only the
4 Sierra Nevada.

5 And on page five, well, actually on page six, I
6 highlighted Area No. 1. There are six other areas that can
7 learn from the example that Sierra Nevada has performed in
8 the last five years. So it could serve as a model. And we
9 do have some demonstrated successes. And I'd like to talk
10 about them today.

11 First, Subtitle D. I see new -- I see three new
12 Board Members up there that didn't live through Subtitle D.
13 And that was effective October 9th, 1993. That was a
14 federal law that really had a lot of challenges to the
15 smaller communities.

16 The Waste Board did a great job with respect to
17 becoming an approved state which gave a lot of
18 flexibilities, and being an approved state there's an
19 opportunity for local government to, to have different
20 programs; one of them was alternative daily cover. That
21 was allowed under being an approved state, as well as some
22 financial mechanisms and some funding mechanisms that the
23 Waste Board has reduced from a two tons factor to a one ton
24 factor.

25 So over the last -- basically 1994, the Waste

1 Board being an approved state for Subtitle D was able to do
2 a lot to help out the rural counties and private sector.
3 For smaller landfills it didn't become effective until
4 April 9, 1994.

5 And on the chart on page nine it kind of gives
6 you some critical dates. If you're over a hundred tons a
7 day it could happen sooner. If you're under a hundred tons
8 a day it was deferred about six months, which was
9 April 9th, 1994.

10 It was the clear intention of the Federal EPA
11 with the passing of Subtitle D to close smaller landfills
12 and promote regionalization.

13 From 1970 to 1986 the EPA tracked landfills and
14 they decreased from 18 thousand to 6 thousand. Meanwhile,
15 in 1986, they realized that 51 percent of the landfills,
16 which handled less than 18 tons per day, only handled two
17 percent of the waste stream; a big percent of the landfills
18 handled two percent of the waste stream, and they thought
19 they were poorly sited, they were old burn dumps, they'd
20 been out in remote areas for a long time and they may have
21 some problems.

22 The Regional Water Quality and Control Board did
23 their SWAT testing for groundwater quality from 1986, over
24 15 years, and they determined some of these smaller
25 landfills did have problems.

1 Plus, with Subtitle D, it incorporated full cost
2 accounting. As of October, 1994, I mean 1993, you had to
3 start paying the bills of running these smaller landfills.
4 Well, it was determined that it was going to cost over a
5 hundred dollars a ton for landfills under a hundred tons a
6 day.

7 So what EPA realized was that the smaller
8 communities had these poorly sited landfills and they were
9 going to be expensive to run. So that was the knockout
10 blow for landfills in smaller regions.

11 What the latest report from the Waste Board, the
12 landfill capacity report said in 1994, said there are 69
13 landfills, over a hundred thousand tons per year, which is
14 about 27 -- 275 tons per day, that received 91 percent of
15 the waste stream. The other 9 percent of the waste stream
16 was received by 132 landfills. Once again, regionalization
17 is happening. You have to have volume in order to pay for
18 a subtitle to get improvements.

19 What Federal EPA estimated is you need a
20 population of about a hundred and twenty thousand people to
21 run a landfill in the Subtitle D era. SWANA estimated you
22 need about 300 tons per day, while EMCON associates did a
23 study for a new landfill. Starting from scratch it could
24 cost easily over a hundred and twenty bucks per ton for
25 landfills over 500 tons per day.

1 What I found out over the last 10 years working
2 for county government it takes 10 years and \$10 million to
3 site a new landfill. So a lot of these county governments
4 from Tuolumne up to Modoc didn't have the time or the
5 energy to wait 10 years or 10 million bucks to site Union
6 Landfills, what they did instead, they looked for
7 regionalization.

8 And Lockwood Landfill in Nevada is a Subtitle D
9 landfill that will be accepting waste for many years to
10 come. It's well sited, it has less rainfall, and it will
11 offer the capacity for the -- for the east slope of the
12 Sierra Nevada for many, many years.

13 There are three landfills in -- there are two
14 other landfills in Sierra Nevada region beyond Lockwood.
15 The Union Mine Landfill will be expanded, as well as Buena
16 Vista Landfill down in Amador.

17 Meanwhile, when Subtitle D was knocking on the
18 landfill, AB 939 came along and we started siting,
19 planning, and preparing to put MRFs online. It takes a
20 long time to go through the planning, the source reduction
21 recycling element, go through environmental impact reports,
22 go to local task force, and in 1995 -- well, we've proven
23 that we can do it.

24 There's a case study in front of you where we
25 have obtained local financing, we have obtained the

1 conditional use permit, we have good PR, we have trained
2 personnel, and we are complying with all the permits and
3 regulations, and we're reporting the disposal tonnages by
4 jurisdiction and diversion tonnages.

5 Along the way we figured that in order to obtain
6 MRF financing we had to negotiate agreements at the local
7 level. It wasn't by ordinance. It was just local
8 government. Carbone did not apply. But we needed that
9 type of agreement at the local level in order to fund the
10 MRFs in these small areas.

11 We needed to go to local banks to get -- to get
12 up to 20 year loans under agreement in order to fund these
13 MRFs; whereas, we did the best cost-effective job they
14 still cost money. And we needed these agreements in order
15 to fund these MRFs.

16 1995 was a goal-achievement year. Let's look at
17 what happened in 1995.

18 In Placer County, Tahoe, Truckee -- with Tahoe
19 Truckee Disposal they permitted a 475 ton-per-day MRF; it
20 was permitted in January, 1995, with the residual being
21 transferred to Lockwood.

22 El Dorado County, South Tahoe Refuse permitted a
23 370 ton-per-day landfill, permitted in April, 1995, with
24 the residual being transferred to Lockwood Landfill.

25 Tuolumne County and Cal Sierra Disposal, they

1 actually repermited it before they even opened it in
2 August, 1995, with a 200 ton-per-day landfill, I mean 200
3 ton-per-day MRF, with the residual being transferred to
4 Lockwood.

5 And, of course, we heard about Plumas County this
6 morning with their transfer station. With an 85
7 ton-per-day transfer station they're under the CEQA
8 process.

9 This afternoon you will be taking a site tour of
10 El Dorado County and El Dorado Disposal's MRF, which is 250
11 tons-per-day, and we hopefully will have it permitted by
12 November or December, 1995.

13 Meanwhile, Modoc County, Alturas Disposal is
14 hauling to Lockwood. Lassen County is working with
15 Lassen's waste system to build a MRF. They were hung up
16 for two years because PIA came to town, promises -- made a
17 lot of promises, and after two years they abandoned them,
18 so Jack Lensing up in Lassen Waste Systems was able to pick
19 up the pieces where they now are building a MRF.

20 Amador County, Amador Disposal Services, they're
21 up there building a MRF, planning on building a MRF, as
22 well as Butte County and Paradise Solid Waste Disposal
23 System are permitting a MRF with transfer of refuse to Neal
24 Road Landfill in Butte County.

25 Meanwhile we are getting trained. I think that

1 we have a really good load checking program. Every six
2 months we have a certified load checking program. We go to
3 the SWANA Programs. We are highly-trained operators. In
4 order to transfer the waste over to Nevada the last thing
5 they want is our household and hazardous waste or other
6 materials, so we go through, we go through different
7 load-checking programs and get certified in order to make
8 sure that we send highly processed and clean material over
9 to the Lockwood Landfill.

10 Meanwhile, we offer routine classes on medical
11 waste management, metallic discard management, OSHA
12 compliance, household and hazardous storage, as well as
13 injury, illness, and production plans.

14 So over the last five years a lot has happened.
15 We're going to make the mandates. 25.5 percent is
16 projected for California, while at the same time we try not
17 to forget the 50 percent goal. CRRC is a strong support of
18 the 50 percent goal.

19 We recognize the 50 percent goal and what the
20 current policy of the Waste Board has with regards to
21 AB 688 for rural communities.

22 I think the Waste Board should go on record once
23 again to remind a lot of counties that you don't get fined
24 \$10 thousand per day, it's up to \$10 thousand per day, as
25 well as it's tiered.

1 You have three different levels of penalties
2 should you not operate within good faith to implement your
3 source reduction recycling plan.

4 I think a lot of communities need to hear that
5 again, because that 50 percent goal is being bantered
6 around. The Waste Board has some workshops coming up. I
7 think that reaffirmation of the department policy would be
8 very beneficial to the local communities.

9 Meanwhile, SWANA is sponsoring a two-year bill,
10 AB 626, which has some analysis of the cost benefits study.

11 The key issues to the rural communities that
12 we're facing is cost effectiveness, cost benefit, accurate
13 disposal and diversion tonnages, and mandatory collection
14 and market development.

15 What really inspired this group to get together
16 was the fact that the Waste Board was looking at a rural
17 cooperative marketing plan and they thought nothing was
18 going on out there. They didn't really have the
19 information to make that decision.

20 So what -- we got together, the CRRC Sierra
21 Nevada Group, and put this document together to explain a
22 lot is happening within this region and that we could serve
23 as a model case study for other regions throughout
24 California.

25 We've done our work. We've worked with local

1 government. We have a good cooperate effort. And over the
2 next six months, as our MRFs come on-line and we work out
3 the bugs, we hope to have a private sector rural
4 cooperative marketing plan where we can pool our resources.
5 I know that Chicago Board of Trade will help out with
6 regards to price stabilization; we'll be utilizing that
7 service as well.

8 We came to a lot of realizations. The
9 realization was that the public partnership is working in
10 this arena. And that the Federal EPA policy as well did
11 its job; it regionalized solid waste disposal. Local
12 government will achieve a 25 percent goal. And the recent
13 upswing in the market price has had the renewed spirit for
14 the recycling industry out there.

15 So, in summary, I hope to be back in front of the
16 Waste Board in the summer of '96 to fully explain our
17 private sector cooperative marketing plan. We hope to meet
18 with RCRC and Waste Board staff on a routine basis. I'm on
19 the Rural Cooperative Marketing Plan Committee and we plan
20 to work with Market Development Committee and other local
21 government committees to make sure that this trend
22 continues.

23 We have an effective group, and I'm proud to
24 represent them. In the trial date we do have El Dorado
25 Disposal but -- we do have the gentlemen from Reno Disposal

1 in the back of the room, Ben Caramella, Dennis Freeman, and
2 Mark Franchi. They came down from Reno today because
3 they're our strong supporters of the regionalization.

4 So with that I'll be able to answer any questions
5 that you may have.

6 BOARD MEMBER RELIS: Mr. Chairman?

7 CHAIRMAN PENNINGTON: Yes.

8 BOARD MEMBER RELIS: I want to thank Mr. Edgar
9 for this report. I think it's a terrific overview for
10 what's going on in the context, and I mean from A to Z.
11 It's very clear. And it's something that I hope to use in
12 presentations I make. Thanks very much.

13 CHAIRMAN PENNINGTON: Do we have any comments?
14 Thank you.

15 MR. EDGAR: Thank you.

16 CHAIRMAN PENNINGTON: Okay. Next is the consent
17 calendar. It consists of the following items: Items 5
18 through 45, Item 47, Item 51, Item 56.

19 Are there any Board Members who are pulling
20 anything off the consent calendar? If not, I'll entertain
21 a motion.

22 BOARD MEMBER EGIGIAN: I'll move it,
23 Mr. Chairman.

24 CHAIRMAN PENNINGTON: Move for a second?

25 BOARD MEMBER GOTCH: I'll second it.

1 CHAIRMAN PENNINGTON: Go ahead and call the roll,
2 please.

3 COMMITTEE SECRETARY KELLY: Board Member Chesbro?

4 BOARD MEMBER CHESBRO: Aye.

5 COMMITTEE SECRETARY KELLY: Egigian?

6 BOARD MEMBER EGIGIAN: Aye.

7 COMMITTEE SECRETARY KELLY: Frazee?

8 VICE CHAIRMAN FRAZEE: Aye.

9 COMMITTEE SECRETARY KELLY: Gotch?

10 BOARD MEMBER GOTCH: Aye.

11 COMMITTEE SECRETARY KELLY: Relis?

12 BOARD MEMBER RELIS: Aye.

13 COMMITTEE SECRETARY KELLY: Chairman Pennington?

14 CHAIRMAN PENNINGTON: Aye. Thank you. Motion
15 carries.

16 I want to announce that we are going to recess at
17 11:30 and we'll be back at 1:30. We are taking a tour of
18 the Western El Dorado Recovery Systems Material Recycling
19 Facility in Diamond Springs. The public can attend if they
20 would like to. There are directions there in the back of
21 the room or I think on a table outside the door. Also
22 outside the door are -- I want to remind you there are
23 speaker slips in case anybody wants to speak on any item
24 that comes before the Board today.

25 And with that, the individual item agenda will be

1 taken in the following order: Item 55 will be heard first,
2 followed by Item 54, then Items 48, 49, 50, 52, 53, and 46.

3 So we start with Item 55.

4 This is Consideration of an Appeal of a Used Oil
5 Incentive Claim which has Previously Been Denied.

6 MS. LAVERGNE: Good morning, Mr. Chairman and
7 Members of the Board. My name is Marie LaVergne, Deputy
8 Director for the Administration and Finance.

9 The Used Oil Incentive Claim for the California
10 Lubricants in the amount of \$19,408 for the quarter of
11 January through March 1994, this claim was denied due to a
12 late postmark and was reviewed by the appeal panel, which
13 has been established by the Board.

14 California Lubricants has 28 locations in the Bay
15 Area. So it's a multi center claimant. Statute at the
16 time of the required submittal provided for a 30 day time
17 frame to be submitted to the Board after the end of the
18 quarter. This claim was 10 days late.

19 The appeal panel process, which was approved in
20 June of 1994, did review the claim looking for what's
21 considered extenuating circumstances.

22 The Appeal Panel is made up of three members:
23 The Chief Deputy Director, the Deputy Director for the
24 Diversion Planning and Local Assistance, and the Deputy
25 Director for the Administration and Finance.

1 In reviewing the claims we look for any kind of
2 consistency and very extenuating circumstances, such as,
3 the claimant was in the process of moving locations, there
4 was a death in the family and the person who prepares the
5 claim was out of the office at the time, family death.
6 Issues like that. Changing computer systems, there's been
7 a few of those as well.

8 No information was provided to the Appeal Panel
9 at the time regarding any extenuating circumstances for the
10 lateness of this claim.

11 This multi claimant also had submitted the two
12 previous claims and four subsequent claims on a timely
13 basis. Therefore, the Appeal Panel had denied the claim.

14 I'm available to respond to any of the questions
15 that you may have regarding this matter.

16 CHAIRMAN PENNINGTON: Do any Members have any
17 questions concerning this? No.

18 In terms of public comments, consumers from Jiffy
19 Lube International were not able to attend. Apparently
20 they did supply us with a letter which is in our Board's
21 packet and was made a part of the record or -- is made a
22 part of the record.

23 We note that this went before the Advent
24 Committee and was reported at the Advent Committee on a 2-1
25 vote; in favor by 2-1 vote. If there are no questions --

1 BOARD MEMBER RELIS: Mr. Chair.

2 CHAIRMAN PENNINGTON: Yes.

3 BOARD MEMBER RELIS: Since there was a difference
4 of opinion over this I just would like to get a little bit
5 of the flavor of the Committee's thoughts on the matter,
6 both the pro and --

7 CHAIRMAN PENNINGTON: Mr. Egigian was one of the
8 pro members as well as Ms. Gotch. I would like for them to
9 address their pro stance. Thank you.

10 BOARD MEMBER EGIGIAN: Mr. Chairman, it seems to
11 me, as long as I've been on this Board, that some of the
12 dates, the due dates that were set down by our elected
13 officials, don't take into consideration that businesses
14 with a large amount of establishments like this one, 35
15 facilities, sometimes because of the change in personnel
16 that are in charge of these duties are not always on time.
17 And, and we -- in this situation there was a question of 10
18 days. Okay?

19 Now, our job here on this Board on this used oil
20 situation is to try to get as many businesses on the
21 outside contributing towards this effort to make it
22 successful.

23 The past history has shown that they have turned
24 in these records, are aware of them, and for reasons that
25 were explained by the young lady that was before our

1 Committee they were 10 days late.

2 Now, when you get -- if this was one
3 establishment, one gas station that turned in their report
4 10 days late, I would understand it. But here's an
5 organization that's both -- has many stores in the Northern
6 California area and more stores in Southern California, and
7 because of 10 days I didn't feel that we should mess up
8 what we have going, as far as getting people involved in
9 this program and being successful.

10 So, therefore, for 10 days I argued that we
11 should pay these people. And they came before us to ask us
12 to re-evaluate this situation.

13 We had a situation a little earlier with a city
14 down south on another type of a program that they were
15 either late or had the description wrong and they appealed
16 it and we went for it.

17 I think that this Board being an independent
18 Board that works on the basis of trying to succeed in doing
19 what the State has asked us to do 10 days is not too long.

20 We should -- I recommend that we should pay them
21 the money. I recommend that we should tell them to be more
22 alert in the future.

23 So, Paul, that's my argument on it.

24 BOARD MEMBER GOTCH: Mr. Chairman?

25 CHAIRMAN PENNINGTON: Yes.

1 BOARD MEMBER GOTCH: Since the time of the denial
2 the time allowed for filing has been extended from 30 to 45
3 days. So if they -- since that time they would now fall
4 into the allotted amount time. It came in at 40 days. And
5 the bottom line is that we want this oil recycled and I
6 think that we want to work with them in assisting them with
7 this. So I agree, also, with the other facts that
8 Mr. Egigian gave.

9 CHAIRMAN PENNINGTON: Yes. If you would like,
10 because I was the dissenting vote, and my dissent was more
11 based upon one that at the time the law says they had to do
12 it in 30 days. And I guess that the law has been changed
13 since then. But if you get a ticket for going 60 in a 55
14 and that's the speed limit that's what it is. And if it
15 gets changed after you got the ticket it still stands.

16 We have done this in the past and we got docked
17 for it by the State auditor. And so I just felt that there
18 was not enough extenuating circumstances for us to go out
19 and get hit again by overriding a law.

20 VICE CHAIRMAN FRAZEE: Mr. Chairman?

21 CHAIRMAN PENNINGTON: Go ahead.

22 VICE CHAIRMAN FRAZEE: Yes. My question had to
23 do with the previous occurrence when the auditor general
24 cited the Board for paying a claim after the due date. Can
25 you describe the circumstances?

1 MS. LAVERGNE: Yes, I can. It was their first
2 claim. It was for the second quarter of 1993, April
3 through June, and there was a lot of confusion that I think
4 occurred because of the newness of the program and the
5 verbal conversations going on between the board staff and
6 the claimant. And it was a good faith effort in reviewing
7 all those confusing times during the period of time when
8 they actually submitted a claim; the claim was paid.

9 VICE CHAIRMAN FRAZEE: Was it the same claimant?

10 MS. LAVERGNE: Yes.

11 VICE CHAIRMAN FRAZEE: And what was the auditor's
12 general statement in regard to it, if you can paraphrase?

13 MS. LAVERGNE: Pretty hard-line in terms of, the
14 statutory requirement was very clear of 30 days, which
15 covers the limit. There were other issues as well.

16 MR. CHANDLER: Mr. Frazee, what I would like to
17 add is that prior to making this claim directing that that
18 first claim be paid, I, as the Executive Director,
19 discussed the issue with the Board and I did that
20 individually starting with the Chair and then with the
21 Board Members individually to let them know that I was of
22 the opinion that due to the newness of the program and
23 confusion around what constituted an appropriate or
24 completed claim, that while it was being processed late and
25 beyond the deadline, I felt much like Mr. Egigian just

1 over-arching policy need here to be flexible in the program
2 and with this applicant, that was their very first claim.

3 I also support the staff's recommendation of this
4 particular claim in that we didn't see any extenuating
5 circumstances here to warrant why this next claim was, in
6 fact, late after they were well aware of the deadlines.

7 They have since come forward with a letter that
8 seems to allude to what those extenuating circumstances may
9 have led to, the buy-out of the California Lubricants by
10 Jiffy Lube and the other transactions that were going on at
11 the time when she was being asked to process all of this.

12 But with respect to the first claim I want to
13 make sure that the record reflected that as the Director in
14 processing that first claim I did discuss that with the
15 Chairman at the time and other members of the Board.

16 VICE CHAIRMAN FRAZEE: And that was not a result
17 of the Board overriding an appeal? It was just the
18 claimant coming before the Board and it was granted?

19 MR. CHANDLER: We did not have the appeal process
20 fully in place where the administration staff could review
21 the extenuating circumstances on it.

22 BOARD MEMBER CHESBRO: Mr. Chairman?

23 CHAIRMAN PENNINGTON: Yes, Mr. Chesbro.

24 BOARD MEMBER CHESBRO: Is my understanding
25 correct, Ms. LaVergne, that this is essentially

1 reimbursement of money that's been paid into the fund?
2 It's not -- you're not talking about any kind of grant or
3 loan or public funds, but funds that have been paid into
4 the fund that are being reimbursed to this business?

5 MS. LAVERGNE: That's correct.

6 BOARD MEMBER CHESBRO: Well, I'd like to make the
7 point that if this were a loan or a grant and they missed
8 the deadline it would be a different thing. But since
9 we're talking about money that they've paid out -- and that
10 was the exception that I took to the auditors, the way the
11 auditors report was written it created an impression that
12 there was some sort of misuse of public funds involved.

13 From my point of view, this money belongs to this
14 business. It's a fairly technical point to say that they
15 didn't make the deadline.

16 Now, we have to have a system admittedly. And
17 the legislature had to recognize that the deadlines in the
18 law were unreasonable by changing it, you know -- it might
19 be another story too. But I think we're in the process of
20 trying to make the system work and the legislature has
21 recognized that and this money essentially does belong to
22 that business.

23 So I would support this. But I also respect the
24 point that technically, technically they're wrong. That's
25 a valid point. But I think that my other concerns override

1 that for my vote.

2 BOARD MEMBER RELIS: Mr. Chair?

3 CHAIRMAN PENNINGTON: Yes.

4 BOARD MEMBER RELIS: I have two questions,
5 basically. Does this or -- were we to override the Appeal
6 Panel's recommendation, would this be precedent setting in
7 any way? Would other appeals come to us? Could they come
8 to us of a like nature and we would be having to understand
9 what extenuating circumstances are?

10 MS. LAVERGNE: I guess I'll attempt to respond to
11 that being one of the Appeal Panel members. It could. I
12 think, yes, establish a change. We try very hard to be
13 consistent when we're looking at any of the appeals.

14 I think, something -- that even if they had come
15 forward and they couldn't because it was confidential
16 information at the time in terms of the sell-out and the
17 legalities that was going on at the time subsequent -- that
18 was a year before the actual sale occurred of the
19 California -- of California Lubricants Jiffy Lube
20 International. And the four subsequent claims after that
21 one were all timely.

22 So one of the reasons that I understand, as
23 someone mentioned in the Administration Committee, was
24 because of the confusion that was going on with the sale of
25 those 28 centers.

1 So, from my own personal perspective -- and I
2 don't know if you might want to hear from either Dorothy or
3 Judy, but I probably would still be concerned that there
4 are other claims that we have denied -- there have been
5 few, but there have been other claims that we have denied
6 their appeal because they have not convinced us of
7 extenuating circumstances.

8 BOARD MEMBER RELIS: The second point is from a
9 fiduciary -- I take it whether -- maybe you could respond
10 to this, if we were to again override the appeal, would
11 there be any difference in the processing of this claim
12 that would in any way reflect on our diligence in
13 evaluating the validity of the claim or -- you follow the
14 point? I mean, if we carefully reviewed the claim so that
15 we couldn't be criticized for rushing this through or
16 something like that.

17 MS. LAVERGNE: Yes. I believe we have carefully
18 reviewed it. And, again, as Mr. Chandler mentioned, this
19 particular claimant was very aware of the statutory
20 requirements.

21 But from a fiduciary responsibility it is a
22 fairly large claim, it's \$19 thousand compared to a lot of
23 the other claims that come in. The funds are available.
24 I'm not quite sure if I'm answering your question or not.

25 BOARD MEMBER RELIS: You've answered it.

1 BOARD MEMBER EGIGIAN: Mr. Chairman?

2 CHAIRMAN PENNINGTON: Yes.

3 BOARD MEMBER EGIGIAN: I just want to remind the
4 balance of the Board that was not in our committee meeting
5 that, this young lady that made the appeal for Jiffy Lube,
6 I asked her whether or not she could talk to her
7 advertising people and to include our program by name, the
8 Waste Board, in their advertising. She said she would go
9 back and recommend it to them.

10 So this might be something that would have cost
11 us many, many thousands of dollars if we succeed and if our
12 staff will work with them to make sure that Jiffy Lube's
13 advertisements on the radio are heard constantly many, many
14 times a day that the program be announced and whose behind
15 it and so forth.

16 Mr. Chesbro made a good point. This money has
17 been paid in. It's not out of the general fund that the
18 business is paid back, this money from the oil people that
19 have paid it into the process.

20 So, Mr. Chairman, if you're ready, I'm ready to
21 move it.

22 CHAIRMAN PENNINGTON: I'm ready if the rest of
23 the Board is.

24 BOARD MEMBER EGIGIAN: I move that we go ahead
25 and pay them their money and alert them that they cannot do

1 this hereafter, be late, now that they have 45 days.

2 BOARD MEMBER GOTCH: Second.

3 CHAIRMAN PENNINGTON: Okay. It's been moved and
4 seconded.

5 If the secretary would call the roll, please.

6 ... COMMITTEE SECRETARY KELLY: Board Member Chesbro?

7 BOARD MEMBER CHESBRO: Aye.

8 COMMITTEE SECRETARY KELLY: Egigian?

9 BOARD MEMBER EGIGIAN: Aye.

10 COMMITTEE SECRETARY KELLY: Frazee?

11 VICE CHAIRMAN FRAZEE: No.

12 COMMITTEE SECRETARY KELLY: Gotch?

13 BOARD MEMBER GOTCH: Aye.

14 COMMITTEE SECRETARY KELLY: Relis?

15 BOARD MEMBER RELIS: No.

16 COMMITTEE SECRETARY KELLY: Chairman Pennington?

17 CHAIRMAN PENNINGTON: No.

18 The motion is a standoff.

19 BOARD MEMBER EGIGIAN: Standoff.

20 CHAIRMAN PENNINGTON: It looks look the motion
21 fails. Okay.

22 Next is Item 54. Consideration of Concurrence in
23 the Issuance of a Revised Solid Waste Facility Permit for
24 the Kiefer Landfill, Sacramento County.

25 BOARD MEMBER CHESBRO: While they're coming up,

1 Mr. Chairman, I'd like to declare another ex parte
2 communication. I had a conversation with Yvonne Hunter
3 regarding the Western Placer MRF.

4 CHAIRMAN PENNINGTON: Okay.

5 Mr. Okumura.

6 MR. OKUMURA: Good morning, Mr. Chairman, Members
7 of the Board.

8 Agenda Item No. 54 is for Consideration of
9 Concurrence in the Issuance of a Revised Solid Waste
10 Facility Permit for the Kiefer Landfill in Sacramento
11 County.

12 At the August board meeting, board members voted
13 to extend this item to today's board meeting and directed
14 staff to address three specific issues. These issues will
15 be addressed in today's staff presentation and be made by
16 Mr. Cody Begley.

17 MR. BEGLEY: Good morning, Mr. Chairman, Board
18 Members.

19 Issue number one, financial information on what
20 the County has budgeted for diversion activities and
21 functionality.

22 Issue two, written details on enforcement by the
23 County LEA stated regarding improved enforcement to resolve
24 a minimum standard violation regarding cover and better
25 management practices.

1 Third. The policy language on prevent or
2 substantially impair as presented by Elliot Block.

3 The following addresses the Board's concerns:

4 The first issue. The LEA submitted documents to
5 the Board which indicates how the LEA will assure that
6 compliance with State Minimum Standards will be achieved
7 and maintained at the landfill.

8 Board staff have reviewed this document and found
9 that it adequately supports the Board's concerns. I have
10 placed some copies of this document on the table outside.

11 Issue two. The County of Sacramento submitted a
12 document which provided the necessary budgetary information
13 supporting solid waste management's program that will
14 assist the County in meeting its waste diversion goal.

15 Board staff reviewed the document. We found that
16 it adequately addressed the Board's concerns.

17 The third issue. The prevent or substantially
18 impair issue would be addressed by Elliot Block from the
19 County's legal office.

20 Board staff have reviewed the proposed permits
21 supporting documentation and have found them to be
22 acceptable for consideration of concurrence by the Board.

23 In conclusion, staff recommends that the Board
24 adopt Solid Waste Facility Permit Decision No. 95-640
25 concurring in the issuance of Solid Waste Facility Permit

1 No. 33-AA-001.

2 Elliot Block from the legal office will address
3 the prevent or substantially impair issue. Thank you.

4 MR. BLOCK: Good morning Board Members. Very
5 briefly, at the end of agenda Item 54, actually after the
6 resolution in the addendum that's been included, it's about
7 four pages long, it briefly goes through the statutory
8 requirements of prevent and impair, and it's a history of
9 how the policy would be dealt and then the policy itself is
10 quoted in full on page 172 of your packet.

11 I will also note that the prevent or impair
12 finding that was included in last month's agenda item has
13 some wording that's been modified. It now specifically
14 indicates staff findings that there is no substantial
15 evidence to show that this facility would prevent or
16 substantially impair meeting the diversion goals.

17 That change in language from last month's is not
18 a change in the facts or staff's analysis, rather, it's a
19 reflection of our change in semantics, if you will, that
20 obviously caused some misunderstanding at last month's
21 meeting.

22 The facts are not different. The staff has not
23 found in the contracts or the financial statements that
24 would indicate that this facility would prevent or
25 substantially impair diversion goals, and their finding is

1 consistent with that.

2 CHAIRMAN PENNINGTON: Okay. Thank you.

3 We have some people who wish to address the Board
4 on this issue. Starting with Mr. Kelly Smith, the
5 Coalition for Alternatives to Kiefer Landfill.

6 MR. SMITH: I'm Kelly Smith. I'm representing
7 the Coalition for Alternatives to Kiefer Landfill.

8 Chairman Pennington, Members of the Board, I have
9 one handout just on status. I'd like to start out by
10 saying -- thanking the Board for taking the time, taking
11 the effort to assure that a landfill facility, a garbage
12 dump, second largest in the -- in the state in Northern
13 California is permitted according to the requirements that
14 you're enforcing the state regulations, state statutes.

15 But I -- I really came today with the idea to
16 leave it at that and -- and with a few details to support
17 your concurrence in the facility with the improvements that
18 are made, that have been made in this permit in the
19 month-long interim that you granted.

20 But I have to ask that, since we've gone this
21 far, since we've done this much, let's finish the job and
22 do it right.

23 There are several things that are outstanding
24 that I have to respond to. In your report back -- the
25 information that you wanted several improvements today and

1 really an issue on the impede and impair determinations
2 that you have to make that I think need to be -- are not
3 glossed over, are fully examined and are important not just
4 for this facility, not just for other facilities that will
5 seek permitting without any kind of planning guidance, but
6 also for those facilities that you'll be reviewing in the
7 Integrated Waste Management Plan, which will be flooding to
8 you very shortly, which will identify all of the facilities
9 in the state and which all subsequent permits will have to
10 conform with.

11 So I've handed out a status of the deficiencies
12 that we identified in this permit at your meeting last
13 time. And generally the status is that most of these
14 things have been improved, conformed with, we could more or
15 less bite off on because there are a few things.

16 The first one is the enforcement of your -- it's
17 been ruled that you have the authority evidently from the
18 County LEA. The intention of which I think we would, we
19 would seek is that, is that based on the history of not
20 real adequate enforcement on the part of the LEA on the
21 permit standards and the State Minimum Standards, that some
22 assurance would be provided that with this new permit that
23 that pattern would be changed. And I really find this
24 submittal nonresponsive to tell you the truth.

25 There's one paragraph in there that says that

1 there will be a focus on certain items, and that's --
2 that's a good start, but I really think that the Board
3 needs to direct it at staff follow-up to assure that, that
4 this permit is -- especially the daily tonnage average and
5 those kinds of things are adhered to based on the fact that
6 under the last permit for many, many years daily tonnages,
7 as much as twice what was permitted in the permit, were
8 allowed to go into that facility with the garbage trucks
9 going over the road to get it there, with the other impacts
10 that go along with, with taking that much garbage into a
11 facility.

12 So we'd really like some direction to your staff
13 to either follow-up -- initiate the follow-ups themselves
14 that the LEA is fulfilling its responsibility or back from
15 on a more regular basis to your staff to assure that.

16 The -- we had questions about the environmental
17 impact report. We'll leave that hanging. The -- the land
18 use compatibility and ad hoc for determination for
19 compatibility we understand it's been obtained, but I
20 haven't heard if that's true. That's required by statute.

21 I want you to know that it is an ad hoc
22 determination from the planning commission that any future
23 permit will be pushed to address a lot of the land use
24 impacts that never have been addressed for this facility
25 and a part of the county -- I mean you can look down the

1 road and see subdivisions going up, gravel pits next to
2 subdivisions, landfills across the streets from
3 agricultural uses. It's a mess. And it has to be looked
4 at before another permit is granted.

5 But the part -- the real issue with the Coalition
6 is whether this permit is -- establishes Kiefer Landfill as
7 the Waste Management Program for this County. And whether
8 it does so at the detriment of the alternatives to that
9 landfill, that by this permit and what it establishes, that
10 we're not going to have a chance to reduce that garbage
11 going in there. And that's what I'd like to dwell on.

12 You know that really that the impede or impair
13 language is -- there's a simple message that was said by
14 the legislature, your job is to review these permits in the
15 gap before there is planning and assure that oversized and
16 overpriced solid waste facilities don't jeopardize the
17 plans that these communities will be making to divert the
18 material from there.

19 This is -- this is a tough job admittedly. The
20 process has come along so far that by the time that a
21 permit gets to you that it's hard to reverse it and push it
22 back. You're acting largely in a vacuum of information
23 other than, than contentious facts and figures thrown
24 before you.

25 So it is, it is a tough job. But despite these

1 difficulties you have a clear responsibility to reject
2 permits which impede and impair your Board's chief mission
3 to reduce garbage in landfills, and the need for landfills.

4 And you must thereby act to diminish or restrict
5 monopolistic and predatory practices such as the flow
6 control of waste and permits which work to squash the
7 essential diversity and flexibility of landfill
8 alternatives.

9 These are practices that are risks by permitting
10 an oversized and inappropriate soil, and these risks should
11 dictate that you err on the side of caution and to stop
12 that kind of action from being taken.

13 You've been told in the staff report and
14 otherwise that you must have a determination that, that a
15 permit will impede or impair alternatives to disposal.
16 However, Board Members, despite the importance of your
17 position you are not profits and the statutory impede or
18 impair evaluation does not require you to unmistakably
19 foresee permits that will jeopardize future diversion
20 alternatives.

21 The law can only require common sense. It means
22 that you make judgments in good faith, to the best of your
23 abilities with the information that you have in front of
24 you. Clearly, information such as financial contract
25 commitments would require an impede or impair finding.

1 But you are not prevented from considering other
2 evidence which might amount to the threshold significance;
3 the threshold which must be the genuine standard for impede
4 or impair evaluation.

5 The Coalition for Alternatives to Kiefer Landfill
6 has presented evidence in the hearing before you, your
7 Committee, and your Full Board that Kiefer, the Kiefer
8 Permit works to impede or impair diversion alternatives.

9 The City of Sacramento's budget allocation to
10 Kiefer Landfill essentially functions as a put up or pay
11 agreement.

12 Your staff report today, which hasn't been
13 presented, provides preliminary figures that the County
14 jurisdictions that -- that preliminary figures from county
15 jurisdiction that the permit grossly oversizes the landfill
16 for the projected waste stream. That's the waste stream
17 that's projected in the SRREs that you never had before you
18 in a comprehensive nature in the integrated plan.

19 Combined with these facts, the history of
20 Sacramento County's delinquency in meeting legally required
21 integrated waste management planning, and the tradition of
22 foot-dragging on diversion programs it might be reasonable
23 based on this to presume the Kiefer Landfill is Sacramento
24 Counties solid waste management priority to the detriment
25 of any other program which would divert material from it.

1 Do these cumulative facts indicate that the
2 permit before you would impede or impair alternatives which
3 might reduce the need for Kiefer Landfill? Possibly. But
4 we will admit not necessarily.

5 How can we be sure that it won't? Hopefully in
6 an Integrated Waste Management Plan. A proper plan would
7 evaluate the future of the landfill and at that time, until
8 the first time, waste streams, costs, and other
9 considerations affecting the landfill would be analyzed.

10 Thanks to the Board's delay in adopting the
11 Kiefer Landfill Permit the Coalition was able to meet with
12 the director of Sacramento County's Public Works Department
13 to discuss the future of the landfill.

14 He agreed with the Coalition's position that an
15 Integrated Waste Management Plan be adopted before any
16 permit to expand the landfill is advanced. Thus, the
17 current permit becomes what it should be, a provisional
18 permit in lieu of a comprehensive waste management plan for
19 Sacramento County.

20 Your consideration of how the landfill impedes or
21 impairs diversion will again need to be examined when the
22 integrated plan is brought before you.

23 At this time you can provide important guidance
24 to the counties, which we'll soon be presenting to you with
25 an Integrated Waste Management Plan for approval.

1 Any permits for solid waste facilities must be
2 identified in the integrated plans. The plans must
3 evaluate the identified facilities in sufficient detail to
4 assure that they will not impede diversion programs that
5 are contained in them.

6 The same impede or impair criteria that you are
7 now using in the gap periods provide the same -- the same
8 basis for evaluating those facilities in the Integrated
9 Waste Management Plans, and now is the time to look at how
10 that will work. Because that's how this process was
11 intended to work. And the Coalition looks forward to
12 working with you in evaluating Sacramento County's plan.

13 I wanted to add one thing. I noticed from the --
14 somewhat a sequel here I guess to this, this action that in
15 your LEA advisory that subsequent to concurrence if the
16 Board and the LEA -- or the Board or the LEA, you guys or
17 the LEA receives information on existing contracts or any
18 other information relative to concurrence in the permit
19 which may potentially prevent or substantially impair
20 achieving the goals, that the board staff or the LEA,
21 that's your staff or the LEA, shall review the contract or
22 other information and the SRREs and any other relevant
23 information, and if after the review there's evidence that
24 the facility's operation may prevent or substantially
25 impair a jurisdiction's ability to achieve the diversion

1 mandate the matter shall be referred to the Board for
2 resolution.

3 I think that's pretty clear. And I emphasized
4 the may's and the shall's for obvious reasons.

5 I think you have a policy that, with this
6 facility, if the County acts in any fashion that would
7 preclude or jeopardize the steps that are necessary to
8 divert waste from the landfill in conjunction -- for
9 example, if it establishes some contract with the City of
10 Sacramento or some other jurisdiction to guarantee so much
11 garbage going in there, that obviously it means that that
12 garbage is going to be garbage that's otherwise diverted in
13 their SRRE, that notice of that provided to you or to the
14 LEA will require you to re-examine this permit. And
15 that's, that's a real good assurance.

16 If we can get some assurance on some of the
17 enforcement, we have a couple other odds and ends like
18 sufficient funding for closure under this permit, then we
19 would agree that you would be -- it would be proper to
20 confirm this permit, and in doing so you will have done
21 your job thoroughly, as far as protecting the environment
22 and pushing towards diversion alternatives. Thanks.

23 CHAIRMAN PENNINGTON: Thank you. Next person is
24 Mr. Peightal.

25 MR. PEIGHTAL: Good morning ladies and gentlemen.

1 My name is Ted Peightal. I'm a 10 year resident of Rancho
2 Murieta. I retired there after serving 40 years with the
3 Dow Chemical Company.

4 We appreciate the delay that the Board has
5 provided. And in that time frame we've been active in
6 pursuing what we think are common goals. We have obtained
7 a written commitment from the County that they will in fact
8 diligently pursue an Integrated Waste Management Plan,
9 which we think is important.

10 And we also have, have received an undertaking
11 from the LEA, which Mr. Smith has explained, we find to be
12 less than adequate. Nevertheless, we agree that an
13 operating permit is needed. But we also believe that it
14 should be limited and that vigilance in its enforcement is
15 required.

16 We encourage the, the California Integrated Waste
17 Management Board and its staff to assure that enforcement
18 of the maximum allowable quantity of landfill on a daily
19 basis is not used as permission to average this quantity.
20 I think you are all already aware that in the prior permit
21 the maximum amount was violated.

22 And we also encourage the Board to assure that
23 sufficient funds are permitted in the current budget year
24 for closure of the landfill.

25 So, to conclude, we thank the Board for its

1 efforts on this permit. We encourage and -- that you
2 assure adequate follow-up to the limits of the -- of the
3 permit, and we believe that what we ask is in the interest
4 of the California Integrated Waste Management Board's
5 objective. Thank you.

6 CHAIRMAN PENNINGTON: Thank you. Our next is
7 speaker is Marleen Merchant.

8 MS. MERCHANT: My name is Marleen Merchant. I
9 represent the Coalition for Alternatives for Kiefer
10 Landfill as well.

11 I would like to reinforce with the Board that we
12 appreciate the ability for the public to make our concerns
13 known about the issues that stem from Kiefer Landfill. But
14 on the other hand, as an educated population of citizens,
15 we've come before several boards now, and now you, to
16 further bring our concerns about enforcement to your Board.

17 While the LEA has shown a remedial effort on
18 these grounds to assure you that they will police this
19 landfill, when you see the facility and when you've lived
20 through the facility as the population at large has had to
21 do and as Sacramento County has had to do, I feel that the
22 LEA needs support from another agency to give it the
23 resolve to enforce the necessary, the necessary permit
24 restrictions that are -- are given to the landfill. And
25 several of them were mentioned, and I will repeat them

1 again.

2 That the overall tonnage has been exceeded, the
3 cover has been exceeded -- or not exceeded the water
4 quality issue is still at hand, which I know is not your
5 Board's concern. But in all places the LEA has the
6 responsibility to enforce those actions on a timely manner.

7 And I suggest to you that we are before you today
8 to, to encourage you to give the LEA the strength to
9 enforce the permit restrictions on a timely manner. And
10 when I say timely, a week, when it says a week it should be
11 a week. If we can ask our industry representatives to
12 comply with deadlines then we need to ask our county
13 industries to comply with deadlines.

14 And so I am reinforcing with you the fact that
15 your Board and staff substantiate the LEA's position to
16 enforce what needs to be done on these kinds of facilities.
17 This is a very large facility. And it needs to be policed
18 on a stronger level.

19 And in that regard, the other issues that the
20 County needs to face is, in fact, that this facility has to
21 be inside the Integrated Waste Management Plan so that
22 issues such as impede and impair are of less noticeable
23 needs to be looked at. If, in fact, that had all taken
24 place in front of us we might not be here today discussing
25 this permit.

1 The Integrated Waste Management Plan is essential
2 to this project, as is the enforcement actions that keep
3 the facility a community member reasonably within the
4 confines of what it has to do as a business.

5 Thank you.

6 CHAIRMAN PENNINGTON: Thank you. Next is Jan
7 James.

8 MS. JAMES: My name is Jan James. One thing nice
9 about being last is that everybody already said everything.

10 All I wanted to say today was, again, thank you
11 very much for giving us the opportunity last time to go
12 back to the County, discuss some things we needed to
13 discuss at the county level, get things set up so that when
14 the expansion permit comes through we have the proper
15 county channels to go through, and hopefully we won't have
16 to come back here and see you again.

17 And in case we don't see you again, I just want
18 to say, thank you.

19 CHAIRMAN PENNINGTON: Yvonne Hunter.

20 MS. HUNTER: Mr. Chairman and Members, Yvonne
21 Hunter. I'm with the League of California Cities.

22 And I need to emphasize the League does not have
23 a position on this project. So I'm not up here to speak
24 one way or the other on the project.

25 However, there were some things said by Mr. Smith

1 that compelled me that I had to pop up here. And it
2 relates to the whole issue of prevent and substantially
3 impair.

4 As someone who worked extensively with the other
5 interests on AB 2296, which established the process to
6 plan, approve, and site facilities during the gap, what I
7 heard from Mr. Smith was historical revisionism at its
8 best.

9 First of all, the gap and the prevent and impair
10 only applies -- was initiated because some folks, not the
11 League and CSAC, felt that local government had to be
12 protected from itself. My God, you might do something
13 stupid in siting a landfill before you have your source
14 reduction and recycling element approved by the Board, and
15 you might sign a contract that said you are going to send
16 all of your solid waste including recyclables to be buried
17 at this landfill, and you'd have no opportunity therefore
18 to divert recyclables.

19 It was explicitly stated in the discussions that
20 we needed to do this before you had your road map, your
21 strategy plan, which was the source reduction recycling
22 element, which at that time was tied to the County
23 Integrated Waste Management Plan as a package -- excuse me,
24 it would be delivered to the Board. Subsequently, those
25 have been disconnected. It was an interim measure. That's

1 number one.

2 Number two. Mr. Smith referred alternately
3 between impede and impair and prevent and impair. Earlier
4 on the standard was impede and impair. And some of us
5 still use that phrase. It is not impede and impair.

6 The standard is based upon substantial evidence
7 in the record, I'm not an attorney but I'm told that is a
8 legal standard for determination, it would prevent or
9 substantially impair. That means a much more narrow
10 restriction.

11 So for Kelly to talk about impede and impair,
12 that's not what it is. It's a much tighter standard. When
13 he suggested the Board needs to err on the side of caution
14 in whether or not the facility will prevent or impair I
15 respectfully disagree. You must find based upon whether or
16 not the permit, whatever permit, whether it's Kiefer,
17 whether it's Yolo County Landfill, whether it's some other
18 landfill, it prevents or impairs.

19 And you can't take a crystal ball -- you said
20 very accurately, we're not asking you to be visionaries, I
21 think although some of us think you're visionaries, you
22 take a visionary approach to solid waste management. But
23 in this instance you're not supposed to take a crystal ball
24 and say, well, what if --

25 (Short break.)

1 MS. HUNTER: I forget where I left off.
2 Therefore, I have no doubt that you'll understand the
3 difference between a hypothetical, what if, and what is
4 actually in the permit today.

5 Kiefer is a landfill. It's not a diversion
6 facility. And the comment that it's -- it's the Board's
7 responsibility to look at facilities that are oversized and
8 overpriced, I'm sorry, I don't think that's your
9 responsibility. That's a local decision.

10 The only way under the prevent and impair
11 criteria that that would play any role during the gap is as
12 part of its oversized and overpriced, and I have no idea
13 whether Kiefer is or not, is if it will gobble up
14 recyclables, recyclable material that the communities would
15 otherwise need to achieve their 939 goals.

16 And finally -- I think I scribbled this down
17 correctly. He said relative to prevent and impair Kiefer
18 will possibly but not necessarily impede and impair. Well,
19 if it possibly would, and this is someone who want's you to
20 invoke that standard, if it possibly will, then it doesn't
21 meet the criteria in law.

22 So those are the concerns we have. I know there
23 will be another item on this agenda, and our concern is how
24 the Board implements this policy, the message it sends to
25 cities and counties who are planning these and the

1 precedent that it sets.

2 So, I just wanted to have those issues on the
3 record.

4 Thank you.

5 CHAIRMAN PENNINGTON: Thank you, Yvonne. Next is
6 Denise Delmatier. Denise, do you want to --

7 MS. DELMATIER: Mr. Chairman, as I have stated in
8 previous testimony on this subject matter and on this
9 permit, I am going to reserve my comments for Item No. 46,
10 and I will agree with the comments thus far.

11 CHAIRMAN PENNINGTON: All right. Thank you.
12 Okay.

13 Board Members have any questions?

14 BOARD MEMBER EGIGIAN: Mr. Chairman?

15 CHAIRMAN PENNINGTON: Yes.

16 MR. MAXFIELD: Just a minute. Mr. Chairman, I'm
17 Patrick Maxfield from Sacramento County of Public Works,
18 and I'd like to make a statement regarding --

19 CHAIRMAN PENNINGTON: I need a slip from you.

20 MR. MAXFIELD: Pardon?

21 CHAIRMAN PENNINGTON: I need a slip.

22 MR. MAXFIELD: Okay. I'll fill out one.

23 It's regarding some testimony that was made here
24 today. And I just want to clear for the record that our
25 public works agency has agreed that we will not go forward

1 with a permit expansion for Kiefer until the Integrated
2 Waste -- or until the Integrated Waste Management Plan for
3 our County is approved.

4 However, we do have a provision, that if that
5 Integrated Waste Plan is not approved by January 1, 1997,
6 that we then could proceed forward with the permit
7 application. And the reason for that is that we expect
8 that the planning process will be complete by that date,
9 and assuming that all goes well it will be complete by that
10 date.

11 However, many things can happen as you know in a
12 planning process that could delay that planning document
13 for quite some time. So we did not want the permit
14 expansion to be pushed clear out into the future by that
15 kind of an agreement. So I just wanted to clarify that
16 point.

17 CHAIRMAN PENNINGTON: Okay. Thank you very much.
18 Mr. Egigian.

19 BOARD MEMBER EGIGIAN: Mr. Chairman, I will save
20 it for later. Thank you.

21 CHAIRMAN PENNINGTON: Okay. Any questions?

22 VICE CHAIRMAN FRAZEE: One of the issues that was
23 raised and I think, if not considered appropriately, is a
24 concern, and that's closure funding. Are those assurances
25 provided?

1 MR. DIER: Mr. Frazee, Don Dier, Manager of the
2 Permits Branch. And, in fact, as we were preparing the
3 item for the Permitting Enforcement Committee last month,
4 we did, in fact, review the adequacy of the funding for
5 closure.

6 And as a result of that review we determined that
7 they were adequately funded at this point in time. In
8 fact, because of the changes occurring in this permit they
9 are, in fact, overfunded from where they should be at this
10 point in time.

11 VICE CHAIRMAN FRAZEE: I think that's an
12 important point because the Board has taken action in at
13 least one other instance of withholding grant money or
14 loans for their usage deficiency by that jurisdiction in
15 providing adequate closure on one of the facilities. So I
16 think -- I wanted to make that point. We're being
17 consistent.

18 MR. DIER: Yes, we are.

19 VICE CHAIRMAN FRAZEE: Okay. Thank you.

20 BOARD MEMBER RELIS: Mr. Chairman?

21 CHAIRMAN PENNINGTON: Mr. Relis.

22 BOARD MEMBER RELIS: Yes. As maker of the
23 motion, I think, back in August, I'd like to say a few
24 words about making progress.

25 In the intervening month we had three basic

1 questions raised that we wanted some more work done. And
2 one of those was the clarification and restating of the
3 prevent and impair language, and what the history of the
4 Board's involvement in that issue has been.

5 The second is the LEA clarification. We heard
6 testimony today, still concerns about the LEA's performance
7 down the line. We did get a report from the LEA of
8 intended actions to be taken.

9 At least speaking as this member and knowing what
10 our policies are on enforcement I believe this Board will
11 exercise diligent enforcement. That's part of our local
12 enforcement agency review process that's been elevated in
13 accordance to the Board.

14 So I would hope the parties who are concerned
15 about this will watch us, but still I expect it will be
16 very, very vigorous on the enforcement. And I appreciate
17 the LEA's work.

18 And finally, we asked that budget information be
19 prepared that would let the Board know more fully what
20 indeed the County of Sacramento has -- intends to do
21 budget-wise to implement its diversion programs, and those
22 are spelled out in this document that they provided us
23 with -- and they're substantial outlays certainly.

24 And so I for one feel the concerns I raised have
25 been satisfied.

1 CHAIRMAN PENNINGTON: Thank you. Anybody else?
2 Mr. Chesbro.

3 BOARD MEMBER CHESBRO: Mr. Chairman, the concerns
4 that I expressed at the last meeting really fell into two
5 areas, and one of them had to do with the adequacy of the
6 local diversion planning process, and the other had to do
7 with the question of consideration of bringing a facility
8 into compliance at the time we were reviewing its permit.

9 On the first one, I've been troubled, and I think
10 the Board has been troubled by the fact that the SRRE has
11 not been submitted by the County.

12 I expressed at the last meeting on the other hand
13 that Butte County has had an exemplary record of
14 implementing programs, certainly getting off the ground in
15 a wide variety of fronts. And so it is sort of a mixed
16 bag. I think you've got a planning shortfall while you've
17 had a lot of good faith effort in getting programs off the
18 ground at least to achieve the 25 percent.

19 I'm reassured that the commitment has been made
20 to attempt to get the Integrated Waste Management Plan in
21 place prior to the consideration of review of the expansion
22 permit, which will be coming before us in the future.

23 We have -- all the information was submitted
24 today, as well as a compliance schedule, which has been
25 worked out between the Board and the County. And I'm going

1 to accept that as good faith effort and believe that it
2 doesn't constitute prevent or impair either, for any of the
3 legal reasons that have been debated once again here today
4 or in substance.

5 But I will say that when the expansion permit
6 comes back that will be another point at which that will be
7 looked at. And I think that given what's been said here
8 today that would have to be given heavy consideration in
9 the discussion. And that will be the test as to whether
10 the good faith of the County has assured us of its
11 continuing.

12 The second question is a much broader one than
13 just this permit that I've raised several times before the
14 Board, and that is the question of, to what extent do we
15 use permit review as an opportunity or does the LEA use
16 permit review as an opportunity to bring the facility into
17 compliance with State standards.

18 Now, that's not something you can apply with some
19 simple or broadbrushed way because you might have a case
20 where the permit is substantially approving compliance but
21 not approving the revised permit -- won't solve the
22 environmental problems either.

23 So, you know, I don't think you can have a Board
24 policy that simply says we are not going to approve the
25 permit unless every T is dotted or every I is dotted -- t

1 is crossed, I is dotted.

2 What I would like to see us today -- give some
3 direction to staff with regards to the future review -- and
4 staff to work with the LEA with regards to the future
5 review of that expansion permit to seek compliance with all
6 State standards at that point and to use that permit as a
7 rule for State standards for facilities.

8 That can't be a condition of the permit but I
9 think it could be direction to staff to work with the LEA,
10 it's just part of the motion. And that would be my
11 suggestion. If we include that, and based on the
12 assurances, the many assurances it has before I'm prepared
13 to support the permit today.

14 BOARD MEMBER EGIGIAN: Mr. Chairman?

15 CHAIRMAN PENNINGTON: Okay.

16 BOARD MEMBER EGIGIAN: Mr. Chesbro, if we include
17 the other part it is a condition. We're putting conditions
18 on this permit. I think you ought to make that into a
19 separate motion. And I can certainly support something of
20 that type.

21 BOARD MEMBER CHESBRO: Okay. That's fine.

22 BOARD MEMBER EGIGIAN: I move this item,
23 Mr. Chairman. Staff recommendation.

24 VICE CHAIRMAN FRAZEE: Second.

25 CHAIRMAN PENNINGTON: Did you have something,

1 Ms. Gotch?

2 BOARD MEMBER GOTCH: No. I was more or less
3 going to go along with the other comments that were made.
4 And I feel that Sacramento County has provided the
5 information that we requested at the August meeting, and
6 the fact that it has met with the Coalition's request for
7 the IWMP prior to future permits for expansion. So,
8 therefore, it appears to me that it's okay to issue this
9 permit.

10 CHAIRMAN PENNINGTON: Mr. Egigian has moved the
11 staff recommendation. Mr. Frazee has seconded it. Would
12 you call the roll?

13 COMMITTEE SECRETARY KELLY: Board Member,
14 Chesbro?

15 BOARD MEMBER CHESBRO: Aye.

16 COMMITTEE SECRETARY KELLY: Egigian?

17 BOARD MEMBER EGIGIAN: Aye.

18 COMMITTEE SECRETARY KELLY: Frazee?

19 VICE CHAIRMAN FRAZEE: Aye.

20 COMMITTEE SECRETARY KELLY: Gotch?

21 BOARD MEMBER GOTCH: Aye.

22 COMMITTEE SECRETARY KELLY: Relis?

23 BOARD MEMBER RELIS: Aye.

24 COMMITTEE SECRETARY KELLY: Chairman Pennington?

25 CHAIRMAN PENNINGTON: Aye. The motion carries.

1 CHAIRMAN PENNINGTON: Aye. The motion carries.
2 Mr. Chesbro.

3 BOARD MEMBER CHESBRO: Yes. I'd like to make a
4 motion to direct our staff to work with the LEA before we
5 review compliance with all State financial standards as a
6 precondition of considering the expansion permit. That --
7 I tried to leave the language broad enough in terms of
8 review, that we're not, we're not micro managing in
9 abeyance but -- that would be my motion.

10 BOARD MEMBER GOTCH: And I'll second that.

11 CHAIRMAN PENNINGTON: Okay. Gotch seconded it.

12 BOARD MEMBER EGIGIAN: Mr. Chairman, could we ask
13 our legal representative if this is okay with you.

14 MR. BLOCK: Nothing occurs to me that says you
15 can't do this.

16 BOARD MEMBER EGIGIAN: Okay.

17 CHAIRMAN PENNINGTON: Staff have any comment?

18 MR. OKUMURA: Maybe -- I'd like a little bit of
19 clarification of exactly what that means. As an example,
20 the gas issue is not something that you can fix in one day,
21 but it's going to take a series of improvements to get it
22 done. And that, if Mr. Chesbro's referring to making sure
23 that they are following those schedules or in fact there is
24 improvements, yes, we could commit to that. But to say
25 that everything is absolutely corrected would be very

1 BOARD MEMBER CHESBRO: I didn't -- the motion
2 does not say that the Board's, you know, Board's telling
3 staff not to review the permit if there's any question
4 about compliance or there's an absolute in full compliance.
5 But it is an issue that needs to be reviewed by the LEA and
6 the staff in the process in -- and consider it in the
7 recommendation that's made to the Board.

8 MR. DIER: If I may ask. Does the motion state
9 then that permits that come before the Board the facility
10 must be in full compliance with all State standards?

11 BOARD MEMBER CHESBRO: No, it does not say that.

12 CHAIRMAN PENNINGTON: Okay. It's been moved and
13 seconded.

14 If the secretary will call the roll.

15 COMMITTEE SECRETARY KELLY: Board Member,
16 Chesbro?

17 BOARD MEMBER CHESBRO: Aye.

18 COMMITTEE SECRETARY KELLY: Egigian?

19 BOARD MEMBER EGIGIAN: Aye.

20 COMMITTEE SECRETARY KELLY: Frazee?

21 VICE CHAIRMAN FRAZEE: Aye.

22 COMMITTEE SECRETARY KELLY: Gotch?

23 BOARD MEMBER GOTCH: Aye.

24 COMMITTEE SECRETARY KELLY: Relis?

25 BOARD MEMBER RELIS: Aye.

1 COMMITTEE SECRETARY KELLY: Chairman Pennington?

2 CHAIRMAN PENNINGTON: Aye.

3 Okay. I think we have time to do Item 48 the
4 Consideration of the Issuance of a New Minor Waste Tire
5 Facility Permit for Ever-Wear Tire Products, Inc., Los
6 Angeles County.

7 MR. OKUMURA: Mr. Chairman, this item comes to
8 the full Board on a 3-0 vote in support of the permit.

9 However, because the Board is the issuing agency
10 it's been past practice to bring this Board to the full
11 Board. Staff presentation will be made by Mr. Garth Adams.

12 MR. ADAMS: Good morning, Mr. Chairman, Members
13 of the Board.

14 The item for consideration is the Issuance of a
15 New Minor Waste Tire Facility Permit with Ever-Wear Tire
16 and Products Company in Los Angeles.

17 The Arnson brothers primarily deal with truck,
18 industrial, earth mover, airplane and military surplus
19 tires.

20 The site has gone through the fire prevention
21 requirements. Fire authority has signed off on it. Vector
22 control has signed off on the site. CEQA issue has been
23 addressed. Staff have gone out and visited the site and
24 done a routine inspection. We found that to be a very well
25 run, very clean site.

1 Based on that we would recommend that the Board
2 adopt Permit Decision No. 95-695 approving the issuance of
3 a Minor Waste Tire Facility Permit No. 19-TI-0101.

4 CHAIRMAN PENNINGTON: Thank you. Any questions?

5 VICE CHAIRMAN FRAZEE: Just a statement,
6 Mr. Chairman.

7 CHAIRMAN PENNINGTON: Yes.

8 VICE CHAIRMAN FRAZEE: At the time the Committee,
9 Enforcement Committee approved this application we were
10 provided with photographic evidence of this facility, and
11 I'll have to say that I'm very impressed.

12 I think it's kind of a borderline case. In
13 reviewing this it looks more like a used tire sales yard
14 than it does a waste tire facility. And that if they want
15 a permit and we feel it's appropriate I think we should
16 give them one. But it was very neat and well organized and
17 a credit to the industry. All right. I will move it.

18 BOARD MEMBER RELIS: I'll second.

19 CHAIRMAN PENNINGTON: Any other discussion? It's
20 been moved and seconded.

21 If the secretary will call the roll, please.

22 COMMITTEE SECRETARY KELLY: Board Member Chesbro?

23 BOARD MEMBER CHESBRO: Aye.

24 COMMITTEE SECRETARY KELLY: Egigian?

25 BOARD MEMBER EGIGIAN: Aye.

1 COMMITTEE SECRETARY KELLY: Frazee?

2 VICE CHAIRMAN FRAZEE: Aye.

3 COMMITTEE SECRETARY KELLY: Gotch?

4 BOARD MEMBER GOTCH: Aye.

5 COMMITTEE SECRETARY KELLY: Mr. Relis?

6 BOARD MEMBER RELIS: Aye.

7 COMMITTEE SECRETARY KELLY: Chairman Pennington?

8 CHAIRMAN PENNINGTON: Aye. The motion carries.

9 Okay. Item No. 49 -- also, I was reminded that
10 when we talked about the items to be considered I said 52.
11 I just want to remind everybody that 52 was pulled.

12 Okay. Number -- Item 49, Consideration of Sites
13 for Remediation under the Waste Tire Stabilization and
14 Abatement Program.

15 MR. OKUMURA: Mr. Chairman, the five proposed
16 sites that were presented today are the first ones for the
17 entire public programs. In the past we have done tire
18 cleanups that have been brought to the Board. They have
19 been under the 2136 Program. These would be the first five
20 under the tire funds. Staff presentation will be made by
21 Mr. Tom Micka.

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

24 Today staff is presenting to the Board the first
25 five waste tire sites for remediation under the Waste Tire

1 Stabilization and Abatement Program.

2 Public Resources Code section 42846 authorizes
3 the Board to expend money through the California Tire
4 Recycling Management Fund to perform any cleanup,
5 abatement, or remedial work required to prevent substantial
6 pollution, nuisance, or injury to the public health or
7 safety at waste tire sites where responsible parties have
8 failed to take appropriate action as ordered by the Board.

9 At the April 1995 board meeting the Board
10 approved an \$800,000 contract for the stabilization and
11 abatement of illegal waste tire sites under the Waste Tire
12 Stabilization and Abatement Program.

13 We're recommending approval of the waste tire
14 sites being presented to the Board today.

15 Board staff have investigated each site and
16 determined that abatement is needed to protect the public
17 health and safety in the environment.

18 I can spend a few minutes and describe each site
19 or just refer to the agenda item where each site is
20 described in detail in attachments one through five.

21 CHAIRMAN PENNINGTON: I think we can just go
22 through it. If any Board Member wishes to question --

23 BOARD MEMBER EGIGIAN: Mr. Chairman, I don't want
24 to question anything but I'd sure like to make a statement
25 on this.

1 CHAIRMAN PENNINGTON: I'd certainly like to hear
2 it.

3 BOARD MEMBER EGIGIAN: I'm -- I'm a little
4 disturbed that we've become the trash hauler for every city
5 that has a tire problem, let this tire problem happen while
6 they could have done something to avoid it.

7 I don't think that we should continue to direct
8 our moneys in the areas of cleaning up these piles, because
9 we could be here until the year 2000, and there will be new
10 tire piles discovered.

11 I think if we're going to keep doing this I think
12 that we should have some discussions and maybe even a
13 little workshop on this within our own Board here as to
14 whether or not we want to continue doing this, and if we
15 want to continue doing it then it should be some way that
16 the local communities contribute -- shares the cost of
17 this. Because we didn't create that problem. They created
18 it by making it happen.

19 I don't know how much money we have pointed in
20 this direction but I'm sure that we can use it better in
21 other directions.

22 I know these piles are a hazard and they've got
23 to be cleaned up, but I don't think that we should -- this
24 Board with the funds, with the funds that we have, unless
25 the legislature wants to keep giving us funds on this

1 clean-up situation, that we continue.

2 So, I -- that's all I have to say.

3 CHAIRMAN PENNINGTON: Okay. Any other comments,
4 or would this Committee like to make a motion?

5 BOARD MEMBER GOTCH: I have a comment that I'd
6 like to make.

7 CHAIRMAN PENNINGTON: Yes, Ms. Gotch.

8 BOARD MEMBER GOTCH: But first of all I'd like to
9 thank staff for their efforts. Also, though, in the photos
10 that we were shown of the sites, I noticed the tire piles
11 are in some populated areas where a fire could have serious
12 repercussions on adjacent property owners.

13 And I was disappointed to see that many of the
14 tires were left by a hauler registered through our program.
15 And I hope that we have a mechanism to revoke the hauler's
16 registration so that they would not continue to create a
17 public hazard by dumping tires.

18 MR. OKUMURA: I think you make a good point. We
19 do have a mechanism. What we're currently doing is we're
20 moving forward with criminal complaints based on the fact
21 that there were more than one site and part of the site
22 clean-up is included in our -- where we included in our
23 cost in this application to clean up.

24 So we do have the mechanism and we fully plan to
25 implement that mechanism.

1 MR. CHANDLER: Mr. Chairman?

2 CHAIRMAN PENNINGTON: Yes.

3 MR. CHANDLER: I think we did have a pretty
4 lively discussion at the Committee Enforcement Meeting, as
5 it related to those sites before us in the context, of, I
6 think, some of the points that Mr. Egigian raised. And
7 that being -- I want to be real clear.

8 The funds that we're using here are funds that
9 the Board directed us to set this program up last year in
10 August of 1994. This program was established for this very
11 purpose.

12 That's not to say, as we bring forward to
13 Mr. Egigian's Policy Committee next month how we should
14 expand the current tire dollars under the program, that we
15 would like some direction and will be coming back with
16 options and recommendations around the use of those tires,
17 most importantly recognizing the need to remediate some of
18 these sites as well as build strong and emerging markets.

19 If this Board feels that this type of set-aside
20 program for remediation is not the way they want to go I
21 think we need those discussions to occur at the Policy
22 Committee Meeting, as we need staff to try to carry out the
23 direction on where the tire program truly is going and what
24 type of emphasize it should have.

25 I just want to emphasize, again, what you have

1 before you today is five sites identified by staff to use
2 the funds that were earmarked a year ago by this Board for
3 this very program.

4 CHAIRMAN PENNINGTON: Thank you. Do I hear a
5 motion on what's before us?

6 MR. MICKA: Mr. Chairman?

7 CHAIRMAN PENNINGTON: Yes, sir.

8 MR. MICKA: I would like to make one statement
9 regarding CEQA for the record. CEQA compliance for each
10 site would be achieved by filing a notice of exemption
11 utilizing a Class A categorical exemption after the Board
12 makes its decision on the agenda item. Thank you.

13 VICE CHAIRMAN FRAZEE: A question, Mr. Chairman.
14 The statute authorizes to perform this program, it's not --
15 it's not a mandated permissible activity under the
16 resources code?

17 MR. CHANDLER: It's my understanding that the
18 statute, reference of this type of activity is, I wouldn't
19 say mandated but is permissible and is one of the
20 objectives of the entire program inasmuch as the funds that
21 are set aside and going towards these purposes.

22 VICE CHAIRMAN FRAZEE: In the case of some of the
23 other clean-up activities the Board is involved in, those
24 are mandated a specific amount and set aside for that
25 purpose. Legislation specifically indicates that we must

1 set aside \$5 million to be solely used for that purpose.
2 That's not the case with the tire program?

3 MR. CHANDLER: That's correct. This item has
4 five million set aside for site cleanup of sites identified
5 by staff around the state. This fund has this purpose and
6 others identified in it.

7 VICE CHAIRMAN FRAZEE: So, it is an appropriate
8 item to bring before the Policy Committee to discuss what
9 our policy will be in the future?

10 MR. CHANDLER: Absolutely. And we intend to do
11 so.

12 VICE CHAIRMAN FRAZEE: And as always I continue
13 to raise the issue by pursuing each one of these clean-ups
14 out to its final conclusion.

15 If it involves filing a lien so that we do not
16 have to restate this every time, but we do find ourselves
17 in a position of cleaning up someone's property and
18 enhancing the value and then they go out and put it on the
19 market and the tax payers foot the bill for cleanup.

20 And so just -- I've been assured by staff that
21 there's diligent pursuit of liens against properties where
22 these cleanups are performed.

23 MR. OKUMURA: Yes, Mr. Frazee, we've been
24 following the same process that the Board's supported for
25 the 2136 site cleanup to recoup costs where it's feasible

1 and our legal staff is currently dealt a process for that.

2 VICE CHAIRMAN FRAZEE: With that, I'll move the
3 item.

4 BOARD MEMBER EGIGIAN: I'll second that item.
5 But I would like to state that for those of you who do not
6 know it's costing us three to four dollars per tire to fill
7 these sites up and what are we collecting, 75 cents a tire,
8 it looks like.

9 CHAIRMAN PENNINGTON: Okay. It's been moved and
10 seconded. Would the secretary call the roll.

11 COMMITTEE SECRETARY KELLY: Board Member Chesbro?

12 BOARD MEMBER CHESBRO: Aye.

13 COMMITTEE SECRETARY KELLY: Egigian?

14 BOARD MEMBER EGIGIAN: Aye.

15 COMMITTEE SECRETARY KELLY: Frazee?

16 VICE CHAIRMAN FRAZEE: Aye.

17 COMMITTEE SECRETARY KELLY: Gotch?

18 BOARD MEMBER GOTCH: Aye.

19 COMMITTEE SECRETARY KELLY: Relis?

20 BOARD MEMBER RELIS: Aye.

21 COMMITTEE SECRETARY KELLY: Chairman Pennington?

22 CHAIRMAN PENNINGTON: Aye.

23 The motion passes. I would make one statement.

24 This is something that -- this tire problem is something
25 that I'm very interested in and I've been dealing with the

1 problem on and off since 1972.

2 So I've asked for some meetings with
3 manufacturers and we'll be meeting with some of the tire
4 developers.

5 And I'm happy to work with the Board and
6 Mr. Egigian continually on dealing with this problem. And
7 it's one that I think we really need to attack.

8 I think we'll recess now so we can all make a
9 quick stop and get on to our tour. We'll be back at 1:30.

10 (Recess until 1:30.)

11 CHAIRMAN PENNINGTON: Okay. Let's see if we can
12 get back to work here after a delightful tour and lunch. I
13 had the wild boar sausage and I promise to try not to be
14 too wild or too boring. Okay.

15 We concluded with Item No. 49. We're back on
16 with Item No. 50, Consideration of Policy for the Solid
17 Waste Disposal and Codisposal Site Cleanup Program
18 (AB 2136).

19 MR. OKUMURA: Good afternoon Mr. Chairman,
20 Members of the Board.

21 This item was originally brought to the Appealing
22 Committee as a result of new board members having questions
23 of the existing policies that the staff had been utilizing
24 through the course of this last year.

25 In going to the Committee the Committee voted 3-0

1 to make no changes to existing Board-approved policies
2 until we come back for the current fiscal year's funding
3 allocations.

4 In addition to that recommendation we would come
5 back with recommendation on the funding distribution and
6 update of remediation projects, basically saying how many
7 were loans, how many were grants, and how many were
8 actually board site cleanups.

9 Just a little bit of background. A lot of the
10 questions and issues that came up, came up as a result, I
11 think, of the fact that we didn't have in a place -- a
12 single place all the policies where someone could take a
13 look at. So a lot of the questions that came up we
14 actually had in place already.

15 And what we're requesting is that the full board
16 support the staff's position that our proposal would be to
17 come back next month, although in the Committee meeting we
18 had said we would be coming back in December, as a result
19 of requests for additional sites in-house and not to stop
20 the progress of site cleanup, we'd like to come back in the
21 month of October proposing how the funding shouldn't be
22 distributed and also bring back a summary of how all the
23 sites are currently funded basically, which sites were
24 funded under each of the different funding allocations.

25 We're here to answer any questions that you may

1 have regarding this issue.

2 CHAIRMAN PENNINGTON: Okay.

3 BOARD MEMBER GOTCH: Mr. Chairman?

4 CHAIRMAN PENNINGTON: Yes.

5 BOARD MEMBER GOTCH: I'd like to make an ex parte
6 before we go any further.

7 CHAIRMAN PENNINGTON: Oh, sure.

8 BOARD MEMBER GOTCH: And that's a letter from Jim
9 Walsh, the VP of NORCAL regarding this issue.

10 CHAIRMAN PENNINGTON: Okay. Do we have any
11 questions?

12 BOARD MEMBER CHESBRO: I have an ex parte, too,
13 Mr. Chairman.

14 CHAIRMAN PENNINGTON: Okay.

15 BOARD MEMBER CHESBRO: I had an additional
16 conversation in regards to representing NORCAL.

17 CHAIRMAN PENNINGTON: Okay.

18 VICE CHAIRMAN FRAZEE: On this item,
19 Mr. Chairman.

20 CHAIRMAN PENNINGTON: All right.

21 VICE CHAIRMAN FRAZEE: At the time that this item
22 came before the Committee, I think, certainly on my part,
23 there was not a full understanding of how the process works
24 with the fact that the current grants that are on the
25 agenda are from what I choose to call old money, a previous

1 allocation, and the current budget has a new allocation in
2 it.

3 Correct me if I'm wrong as we go through this
4 item. The old money, once these -- the current ones in
5 this pipeline are approved will be almost diminished.
6 There will be some \$31 thousand left or something of that
7 nature.

8 So, if we fail to take action in the appropriate
9 time on this item we could end up with a six month dry
10 period, if we wait until December to reconsider modifying
11 this policy without going ahead and accepting any other
12 applications. And I don't think that's appropriate.

13 I think staff is suggesting that they can be back
14 in the October meeting with a consideration of whether this
15 policy should be changed or not and at that time bring us
16 some experience on how these categories were utilized, what
17 percentage went into each one in the applications that
18 we've had. And that would allow us to make the decision at
19 that time and to go ahead and accept the application to
20 keep a flow going on these rather than having to create one
21 when there is nothing being done and then trying to squeeze
22 them all in during the last three months of the fiscal
23 year.

24 I make a staff recommendation on this is one to
25 allow them to come back to the October meeting, do some

1 history on experience to this point current.

2 MR. OKUMURA: That is correct. We would bring
3 back how -- based on how the money was allocated, the
4 requests and applications that came in, and actually how we
5 did allocate them. We'd come back and show what the
6 history looked like and then make proposals based on that.

7 At that time board members could open up the
8 discussion, as far as whether they're in agreement with how
9 the moneys are allocated or whether they would like to
10 change how they were historically allocated. That would be
11 the time to do it.

12 CHAIRMAN PENNINGTON: Okay. Any other
13 discussion? Questions? If not, I entertain a motion.

14 VICE CHAIRMAN FRAZEE: We have -- do we have a
15 regular staff recommendation?

16 CHAIRMAN PENNINGTON: Yes, on page 140. Page 140
17 is where it is.

18 VICE CHAIRMAN FRAZEE: I would move then staff
19 recommendation on this item indicating that the, the staff
20 return at the October meeting with a report on past
21 experiences in AB 2136.

22 CHAIRMAN PENNINGTON: Okay. It's been moved.

23 BOARD MEMBER EGIGIAN: I'll second it.

24 CHAIRMAN PENNINGTON: It's been moved and
25 seconded. If the secretary will call the roll, please.

1 seconded. If the secretary will call the roll, please.

2 COMMITTEE SECRETARY KELLY: Board Member Chesbro?

3 BOARD MEMBER CHESBRO: Aye.

4 COMMITTEE SECRETARY KELLY: Egigian?

5 BOARD MEMBER EGIGIAN: Aye.

6 COMMITTEE SECRETARY KELLY: Frazee?

7 VICE CHAIRMAN FRAZEE: Aye.

8 COMMITTEE SECRETARY KELLY: Gotch?

9 BOARD MEMBER GOTCH: Aye.

10 COMMITTEE SECRETARY KELLY: Relis?

11 BOARD MEMBER RELIS: Aye.

12 COMMITTEE SECRETARY KELLY: Chairman Pennington?

13 CHAIRMAN PENNINGTON: Aye. Okay. The motion
14 carries.

15 Next item on the agenda is Item 53.

16 Consideration of the Amount of Residual Waste that would
17 Constitute Solid Waste Handling at Recycling Operations.

18 MR. OKUMURA: Mr. Chairman, Members of the Board,
19 all this item reads is consideration.

20 What we're here to do today is to present an
21 update of basically where we're at in our research of this
22 issue.

23 What I'd like to do is just start off by telling
24 you where we're at, as far as our evaluation of different
25 sites and different types of operations.

1 The first phase is actually inspecting and
2 evaluating waste hauler recycling facilities.

3 The second phase is non waste hauler recycling
4 facilities, at which time we'll be looking at those
5 industries to see how their records are being kept and how
6 their operations -- and their levels of residual.

7 The third phase -- and the word sham being used.
8 We're using the word sham-recyclers, those that are
9 suspected of having high residuals.

10 All three of those phases we're at the front part
11 of those now. We basically completed the waste hauler
12 recycling facilities. We have sent a letter to the
13 recycling industry asking them to submit sites to us, which
14 are, in fact, would be negativity impacted by our original
15 proposal. The deadline for that information was yesterday
16 I believe, and we have not received anything from them yet.

17 However, we have -- Mr. Mike Kuhn has been going
18 out and myself, to try to do so some inspections on some of
19 their representative facilities. So we do have some
20 information there. We've also started doing some
21 inspections on sham-recyclers and beginning to collect
22 information from them.

23 So we believe we'll be able to come back in
24 October with a proposed residual level to determine
25 individuals being in or out.

1 I would like to share with you some of the
2 observations we did make during our investigations.

3 The first one is that waste haulers industry is
4 quite heavily involved in recycling, much more than I had
5 anticipated going into this. The range of residuals at all
6 facilities that we have been visiting have ranged between
7 two and seven percent in the waste hauler recycling
8 facilities and non waste hauler recycling facilities. Mike
9 has started an investigation or a visit at quote "sham
10 recycler." And I believe they were somewhere in the 15 to
11 17 percent residual level.

12 We found overall the operation to be very clean
13 and very little butrescible. In addition to that, once
14 entering the site you could almost immediately determine
15 whether someone is receiving materials which are source
16 separated, which is I think a compliment to the Board's
17 adoption of the definitions because it makes it real easy
18 for regulators to come upon a site and immediately
19 determine whether that person is either going to be
20 considered to be in or out.

21 All facilities -- virtually all facilities kept
22 records, although they were not uniform they all had some
23 kind of record keeping requirements ranging from hand
24 record keeping, weekly, monthly, daily, to computerized
25 systems. And in most cases everyone said with a little bit

1 of an adjustment to the records they'd be able to give us
2 the percentage of the residuals, and, in fact, the record
3 keeping was part of their reporting back to the local
4 jurisdictions from where they were taking their local
5 contracts.

6 We found that the recycling industry whether they
7 were the waste haulers or the non waste hauler recyclers,
8 that there would need to be -- we would need to address
9 some kind of phase in of any kind of regulatory requirement
10 put in place.

11 We found that although the facilities were very
12 clean they did not originally start off that way. It took
13 an up-front education and enforcement program on their part
14 to get clean materials.

15 In fact, virtually all the facilities we visited
16 had both the -- their own enforcement program, which meant
17 they determined whether they picked something up by
18 determining right at the site whether it had too much
19 residual in it. They could actually leave it and leave
20 notice that they were not going to pick it up because it
21 did not meet their contract requirements or that it was in
22 fact contaminated.

23 They also -- let's see, the education part of the
24 program, which seemed to be a very key element, took quite
25 a bit of time to get their people to understand that they

1 needed source separated and clean materials. And as the
2 education program got into place the residual became
3 cleaner and cleaner as they went along. And virtually
4 everybody we visited had those two elements in their
5 programs.

6 As far as the cap issue, we did observe that the
7 cap issue would in fact, as it was testified at the last
8 meeting, impact more of the larger facilities. In fact,
9 there were clean facilities, there were large facilities
10 and it did have an impact on them being that they had such
11 large volumes.

12 We didn't see that that cap was of a real benefit
13 in getting control for residual because those operations
14 were extremely clean. In fact, the larger ones were a lot
15 cleaner than some of the small ones. They were really
16 clean operations. And we think it had made an impact
17 there.

18 We also felt that there are always going to be
19 exceptions no matter what regulatory requirements we put
20 into place. We receive calls from some of the more rural
21 areas saying that a waste characterization requirement
22 could be beneficial and that there were facilities that
23 were truly trying to be recyclers.

24 And what happened is they would have things
25 dumped on their doorstep, illegal waste, and because they

1 were handling such clean materials all of the materials
2 they were receiving in fact were illegal materials, all
3 would be considered residual and they felt that they
4 shouldn't be penalized having the permit based on the fact
5 people came by during nighttimes and dumped materials off.

6 So by characterizing the waste, by having the
7 LEA, the locals, walk through the system with them and
8 characterizing that the waste in fact was legitimate, that
9 they did have source separated materials and that the
10 residual that was created, that may be of any level that
11 the board members have to go with was, in fact, something
12 that came as a result of an illegal activity or not from
13 their business activity.

14 So those are just a few of the issues that we saw
15 during our visits to these facilities. And I'd like Mike
16 Kuhn to maybe just explain briefly some of the complex --
17 additional complexities that we see that we are going to
18 have to address and come into the Board next month with a
19 recommendation. Mike.

20 MR. KUHN: Good afternoon, Mr. Chairman, Members
21 of the Board. Can you hear me?

22 BOARD MEMBER EGIGIAN: We can hear you. You're
23 coming through.

24 MR. KUHN: During the last six weeks staff have
25 visited approximately 35 recycling facilities. And these

1 visits have been extremely helpful in that many of the
2 complicating factors in the implementation issues that we
3 are going to deal with in developing the regulations have
4 become apparent to us in making those visits. And we
5 really appreciate the time that the Board's given us to go
6 out and look at these facilities.

7 I'd like to briefly discuss a few of the
8 complications that we've run into.

9 One of the most difficult factors to take into
10 account when drawing a line between recycling operations
11 and material recovery operations is the issue of multiple
12 operations conducted at the same facility.

13 It's been our experience that the majority of the
14 recycling operations that we've looked at include
15 combinations of recycling activities. For example, it's
16 quite common to find a buy-back center, a drop-off center,
17 a curbside container processing operation, and a curbside
18 paper processing operation all under the same roof. In
19 addition, commercial account recycling programs and green
20 waste recycling programs are often included into the mix.

21 This complicates the task of drawing a line
22 between operations that are outside of the regulatory tiers
23 and those that will eventually be slotted in the tiers.
24 Because each of the component operations will have a
25 different residual percentage. Generally, you know, the

1 buy backs have negligible residual. A lot of the curbside
2 programs are relatively clean as well.

3 Sometimes the commercial account recycling
4 programs can get quite high in terms of residual that they
5 have. So, depending on the mix, you know, you can get
6 quite a variety of residual percentages. And it's rare for
7 the operators to keep track of the waste that's generated
8 by each individual operation. They just keep track of the
9 totals.

10 So typically all of the residuals from each
11 operation are placed in the same dumpster. And the
12 consequence of this is that only an overall aggregate
13 residual percentage can be calculated for most facilities.

14 There's a major implication of this aggregate of
15 the residual that I'd like to address.

16 Operations with low residual such as buy backs
17 and paper recycling tend to dilute the overall residual
18 percentage of the facility. This is problematic if each
19 component operation is to meet the standard of source
20 separation to remain outside of the regulatory tiers.

21 It would be difficult in practice to show that
22 all of the operations are below a threshold residual
23 percentage. Regardless of what the Board picks as a number
24 it's going to be difficult to be sure that each individual
25 operation meets that criteria since the records are kept

1 for the overall operation not for individual operations.
2 In general, the records that are currently kept could only
3 be used to calculate that overall percentage.

4 I'd like for turn now to the issue of promoting
5 diversion.

6 During the site visits numerous recyclers have
7 pleaded with staff not to set the residual percentage too
8 low. They've argued that to do so would discourage
9 recycling of marginal materials.

10 They contend that operators faced with the
11 prospect of being regulated as solid waste handlers will
12 forgo opportunities to recycle those marginal materials.

13 They have urged staff to provide enough headroom,
14 if you will, enough room in the percentage number to allow
15 and encourage innovation such as a recycling of mixed
16 plastics into products, such as plastic lumber. And
17 they've indicated that if the number's too low it will
18 discourage them from doing those sorts of activities.

19 Additionally, the argument's been made that
20 setting the residual percentage too low will discriminate
21 against new operations that have not had the time to fully
22 educate their customers or develop the internal enforcement
23 programs that Doug mentioned earlier.

24 So those are some of the key difficulties that
25 we're running into in terms of setting this number. And at

1 this point I'd like to conclude my presentation and ask if
2 there's any questions.

3 CHAIRMAN PENNINGTON: Question, Mr. Egigian?

4 BOARD MEMBER EGIGIAN: I don't have any
5 particular question to direct to you. However, it seems to
6 me that finally after many years we are not talking about
7 the recyclers and the waste haulers. The waste haulers are
8 the recyclers. Okay? And we should not divide that
9 situation.

10 The sham-haulers are the pirate recyclers. Okay?
11 You're being too nice to these guys. They're doing
12 something that's not legal and they're going around and
13 picking up the recycled stuff off of curbs that are set out
14 there to be picked up.

15 So, let's not try to be too polite on the people
16 that are breaking the law. You went into the waste haulers
17 and they opened up their doors, their books, and they
18 talked about residual. You went to the sham-recyclers, or
19 the pirates, and they wouldn't even let you in. Now
20 doesn't this tell us something, that they're doing
21 something that's wrong.

22 Now, awhile back in the compost situation we were
23 talking about clean green. And that clean green
24 situation -- Paul, you know how important that was into
25 coming out of the product. If they're not doing a clean

1 recycling program on the curb then the haulers ought to let
2 these people know that you're not doing a clean job and
3 we're not going to pick this stuff up.

4 This whole threat about, if you set the threshold
5 too low it will be a hindrance for us to go into business,
6 we don't need that kind of people in the business because
7 they're the ones that are screwing it up already.

8 So, to make this distinction from the recyclers
9 to the waste haulers I hope that we can close that big
10 valley there that existed before and the waste haulers are
11 the ones that are the recyclers. They're the ones that
12 have spent hundred of millions of dollars. These people
13 that don't want you to walk in to look at their yards are
14 doing it on a 30 day basis. They may be there next month.
15 They may not be there. The markets are up now so they're
16 in business. The minute the markets dry up, they're out
17 and a lot of bill collectors are out they're hunting for
18 them.

19 So, I appreciate what you've done and what you've
20 found out. And I -- I finally feel a little comfort in my
21 whole body knowing that the division is not there, that the
22 recycler -- who the recyclers really are. Okay?

23 So I appreciate the work that you've done. And I
24 for one want the low residuals kept in base because this is
25 how we keep this industry going and clean and -- and we

1 don't have a bunch of fly-by-nights coming into it and out
2 of it.

3 And it's not going to restrict competition.
4 Because if you've been out you know that these contracts
5 come up as people bid and they take great chances with not
6 only their time and their money but their future in the
7 business.

8 So once again you've done a fine job. I
9 appreciate it, personally.

10 Thank you.

11 MR. OKUMURA: Thank you.

12 CHAIRMAN PENNINGTON: Thank you, Mr. Egigian.
13 Anybody else have any comments? I don't believe this takes
14 a motion so we'll move on to --

15 BOARD MEMBER RELIS: Mr. Chairman?

16 CHAIRMAN PENNINGTON: Yes.

17 BOARD MEMBER RELIS: Before we go on I would just
18 like to clarify what happens next on this matter. Just so
19 the audience and I'm clear, myself, when are we going to
20 see this item? When do we intend to make a decision?

21 CHAIRMAN PENNINGTON: I believe you said October.

22 MR. OKUMURA: Yes.

23 BOARD MEMBER RELIS: October?

24 MR. OKUMURA: What we're doing now is, we're
25 going to have to do some more inspections on some more of

1 the recycling, recycler's facilities and a couple more sham
2 facilities and then we feel we'll be able to put together a
3 complete agenda item for proposal with residuals for the
4 month of October. We have had --

5 BOARD MEMBER RELIS: Is that going to come
6 directly to the full board?

7 MR. OKUMURA: I believe it comes -- the way it's
8 scheduled it's going to come to the Committee first and try
9 to hash out all the differences and issues there in
10 preparation to come to the Board.

11 BOARD MEMBER RELIS: Once again, just given all
12 the interest, very big interest in this matter, we need to
13 make sure we get our noticing out timely and complete.
14 Because I, for one, don't want to deal with any of the last
15 minute revisions in the -- in what we release on this
16 matter.

17 BOARD MEMBER EGIGIAN: Paul, we could move on it
18 today, if you want. I can come up with a motion.

19 (Laughter.)

20 MR. OKUMURA: I can assure you that Patty's been
21 on me to keep in step with the schedule.

22 BOARD MEMBER RELIS: Thank you.

23 CHAIRMAN PENNINGTON: Any other comments?

24 MR. CHANDLER: Mr. Chairman, I'd like to take off
25 on that comment.

1 Mr. Okumura's remarks did indicate that we had
2 not received a lot of response to this letter, I believe,
3 of which had a deadline of earlier this week for some
4 facilities to identify specific locations where they'd like
5 to see some staff site visits. And so I'm taking from the
6 comments that, if we continue to see no response you'd like
7 to see this item brought forward for a minimal response?

8 BOARD MEMBER RELIS: I'm just looking for
9 clarification on the process. And unless I haven't heard
10 that other members are uncomfortable with taking it up in
11 October --

12 MR. CHANDLER: We will bring it forward in
13 October and we'll hope that we get as much response in this
14 interim period as our letters of invitation have asked for.

15 Thank you.

16 BOARD MEMBER EGIGIAN: We only have one problem
17 in October. I think our Committee Chair will be someplace
18 else. So Paul and I -- would a two vote be unanimous as
19 far as Paul and I are concerned?

20 VICE CHAIRMAN FRAZEE: No action will bring it to
21 the full board.

22 BOARD MEMBER EGIGIAN: Okay. We may have to send
23 for you.

24 (Laughter.)

25 CHAIRMAN PENNINGTON: Okay. Thank you. All

1 right.

2 We're going to move on now to Item No. 46.
3 Consideration of Concurrence in the Issuance of a New Solid
4 Waste Facilities Permit for the Western Placer Waste
5 Management Authority Materials Recovery Facility in Placer
6 County.

7 MR. OKUMURA: This proposal permit is brought to
8 the full board with a 3-0 vote to support of a permit. But
9 because there was considerable discussion on the prevent or
10 substantial impair issue this item is being brought before
11 the full board for discussion.

12 Staff presentation will by made by Mr. Cody
13 Begley.

14 MR. BEGLEY: Good afternoon, Mr. Chairman and
15 Board Members. The proposed permit is for the operation of
16 a new material recovery facility and a composting
17 operation.

18 The proposed facility would process a maximum of
19 one hundred thousand tons per day of mixed, municipal,
20 commercial, industrial, construction and demolition waste.

21 The facility is located on 19.8 acres adjacent to
22 the Western Regional Center Landfill.

23 The facility will receive most of the residential
24 and commercial waste that is currently going directly to
25 the Western Regional Sanitary Landfill.

1 The owner and operator would be the Western
2 Placer Waste Management Authority, which is a joint-powers
3 authority comprised of Placer County, the cities of
4 Roseville, Rockland, and Lincoln.

5 The operation of the facility will be contracted
6 out to Nortech Waste Incorporated. During the Permitting
7 and Enforcement Committee meeting on September 20th the
8 prevent or substantially impair issue was raised by
9 Californians Against Waste.

10 CAW has alleged that there were contracts between
11 the operator, Placer Waste Management Authority, and the
12 cities in Placer County that contained language that would
13 prevent or substantially impair the various jurisdictions
14 from meeting their diversion mandates.

15 The contracts were reviewed by Board legal staff
16 who determined that these contracts would not prevent or
17 substantially impair the jurisdiction for meeting their
18 diversion mandates.

19 After considerable discussion, including a
20 presentation from the Board's legal staff, the P&E
21 Committee voted 3-0 that the proposed permit would not
22 prevent or substantially impair the jurisdictions of
23 meeting their diversion mandates, and they sent the item
24 over to the Board for concurrence.

25 In conclusion, staff recommend that the Board

1 adopt Solid Waste Facility Permit No. 95-692, concurring in
2 the issuance of Solid Waste Facilities Permit
3 No. 31-AA-0001.

4 The representatives from the operator and the LEA
5 are present to answer questions.

6 CHAIRMAN PENNINGTON: Okay. We have -- should we
7 start the comments or do you want to hear from the -- oh,
8 sorry.

9 MR. TABER: Mr. Chairman and Members of the
10 Board. Kevin Taber, Western Placer Waste Management
11 Authority.

12 We have two people lined up today to make
13 presentations that will address the issues that were
14 brought up last week. We have Denise Delmatier who is
15 representing the contract operator, Nortech Waste, and we
16 have Will Dickinson, who is also a former staff.

17 So with that, we'll turn it over to them and
18 we'll go from there.

19 BOARD MEMBER CHESBRO: Mr. Chairman?

20 CHAIRMAN PENNINGTON: Yes.

21 BOARD MEMBER CHESBRO: I can do this now or do it
22 after we talk about that issue but there is an issue
23 related to the composting facilities, some questions I want
24 to ask staff at some point.

25 CHAIRMAN PENNINGTON: Why don't we let the public

1 and then we can.

2 BOARD MEMBER CHESBRO: Okay. That's fine.

3 MS. DELMATIER: Good afternoon, Mr. Chairman,
4 Members of the Board.

5 Obviously, for those Committee members that
6 considered this item last week you were aware that, that I
7 wasn't present at that committee hearing and unfortunately,
8 I was not able to participate in the discussions on prevent
9 and impair when that took place.

10 Actually, both myself and Ms. Yvonne Hunter were
11 in Washington D.C. lobbying on our favorite subject matter,
12 flow control. So we were distracted somewhat.

13 But I want to start out by complimenting my good
14 friend and colleague from Californians Against Waste.

15 We had a permit before you, before the committee
16 members, and I missed one committee hearing and all of a
17 sudden we've got prevent and impair, we've got Rancho
18 Mirage, and we've got Carbone all thrown in, in one fast
19 swoop and I don't know what happened to the kitchen sink
20 but, good job, Rick.

21 Mr. Egigian asked the question, a rhetorical
22 question, what is CAW for at committee hearing. And we
23 know from historical perspectives that CAW has a laudable
24 goal in front of them and that's to maximize diversion.
25 Unfortunately, that's not what the law says.

1 The law says minimum goals of 25 percent and 50
2 percent. We also know from historical perspective that CAW
3 has advocated here, over the years, that this Board assume
4 a role of super permitting work. We also know from the
5 statutes that that is also not what the law says. This
6 Board has a very limited role quite frankly in considering
7 permits.

8 The Board may object or concur on the permit
9 based upon whether that permit meets State Minimum
10 Standards, or it may object or concur on the permit if
11 substantial evidence is placed in the record which shows
12 that a permit will in fact prevent or impair the ability of
13 a local agency to meet diversion goals.

14 So let me start with -- you got a lot of things
15 on the paper here, obviously some very complex issues. And
16 let me start by addressing the first one, prevent and
17 impair. And I'd like to have you turn to the handout that
18 I'm addressing.

19 We've got two letters, and the Members of the
20 Board, of course, who have been on this Board for some time
21 are familiar with these letters; the new members of the
22 Board, however, are not.

23 And it's important when we consider this issue
24 that we have both the letter and the spirit of the statute
25 before us, as well as the intent. And the authors of the

1 statute provided this Board directly with specific
2 guidelines on what the legislative intent was and is
3 pursuant to prevent and impair.

4 If you look at the letter, the first letter,
5 dated March 11 to former Chairman Jesse Huff you note that
6 on the first page the author of the Legislation,
7 Assemblyman Dominic Cortese, noted that he was concerned at
8 the time that this issue is being debated before this Board
9 and that this issue had gone through the legislative
10 process, that a policy statement could negate or
11 significantly compromise that legislative effort.

12 Second, Board Members should be aware that there
13 was a tremendous concern about the possible interpretation
14 of the term prevent or substantially impair. He also notes
15 on the second page of that letter, the bottom of the first
16 paragraph, this letter was reviewed and approved by all
17 parties, and including CAW, which were involved in the
18 AB 2296 negotiations.

19 Now, we all know with the legislative process
20 there's one approach: That was then this is now. But as
21 far as the letter that provides the guidance to this Board,
22 as far as the Legislature is concerned, if you note in the
23 second paragraph:

24 "If you determine that a Board policy statement
25 is needed to effectively implement AB 2296, it would be

1 most appropriate to adopt a policy which directs staff to
2 use the formal letter of legislative intent contained in
3 the Assembly Daily Journal as their exclusive guidance in
4 those rare instances where it is necessary to determine if
5 there is substantial evidence that a specific permit may
6 prevent or substantially impair," et cetera. Exclusive
7 guidance.

8 So, let's turn to that letter, if we could.

9 Letter dated August 30, 1990. Second paragraph.

10 It is the position of the authors of California
11 cites and counties -- that California's cities and counties
12 must "assume primary responsibility for the planning,
13 permitting, design, collection, processing, recovery,
14 disposal facilities ..."

15 Second paragraph. "It is not the intent AB 2296
16 to usurp local land use authority or local responsibility
17 for the planning, permitting, or design of solid waste
18 management systems and individual facilities." Until plans
19 are in place, final paragraph on the first page, there is a
20 "limited expansion" of that authority.

21 The board staff has done an excellent job in
22 describing in the addendum on the Kiefer Landfill what
23 prevent and impair is. What this letter provides to you is
24 what prevent and impair is not, in addition to what prevent
25 and impair is.

1 On the second page of the letter addressed to
2 Mr. Kidney. "It is not the intent of AB 2296 to authorize
3 or encourage the Board to arbitrarily overrule local
4 approval of a solid waste facility or to impose special
5 permit conditions on the majority of facilities that will
6 be reviewed by the Board."

7 The two examples of what flow control is, or
8 excuse me, what prevent and impair is.

9 Number 1. "Flow control contracts executed by
10 local agencies which require" -- this is the second part of
11 the equation which is neglected in most of the discussions
12 on this issue, "which require the transformation or
13 disposal of recyclable materials which are needed to meet
14 the AB 939 recycling goals."

15 In other words, flow control itself does not
16 constitute prevent and impair. Flow control that requires
17 transformation and disposal of needed recyclable materials
18 to meet the AB 939 minimum goals.

19 Number 2. "Local government financing
20 arrangements which necessitate the transformation or
21 disposal of substantial quantities of recyclable
22 materials." Again, financing arrangements which
23 necessitate the transformation of disposal of needed
24 recyclable materials to meet those minimum goals.

25 "The Board should recognize that the design of

1 the individual solid waste facilities requires an intimate
2 knowledge of local, political, economic, and environmental
3 conditions." Those are the considerations for local
4 agencies, not this Board.

5 "To the extent a proposed project does not
6 prevent or substantially impair the achievement of
7 State-mandated source reduction and recycling rates, it is
8 most appropriately handled at the local level. In
9 addition, the Board must recognize that an individual
10 facility may only represent one portion of a local
11 recycling requirement and disposal capacity requirement" --
12 excuse me, local program designed in response to both the
13 AB 939 recycling requirements and disposal capacity
14 requirements.

15 Thus, an individual facility under consideration
16 by the Board may not be intended to make a significant
17 contribution."

18 Finally, "it is not the intent of the
19 Legislature, in expanding the responsibility of the Board
20 to concur or object to solid waste facility permits, to
21 include within that expanded responsibility any
22 authority -- any authority to: Require modifications to
23 permits that are not essential for the city or county to
24 meet the recycling requirements prescribed by AB 939."

25 Any authority to "object to permits would mean

1 for new or expanded disposal capacity unless specific
2 permit conditions, flow control agreements, financing
3 arrangements, or similar agreements have been shown to
4 prevent or substantially impair the ability of the city or
5 county to meet the recycling requirements."

6 And finally, number 3, any authority to "require
7 the redesign of proposed facilities to meet recycling
8 levels which exceed the rates prescribed by Section 41780,"
9 et cetera.

10 So, when this bill went through the legislature
11 the hotly contested, hotly negotiated bill and all parties
12 signed and agreed to this letter, which provides the Board
13 exclusive guidance, as far as the legislature is concerned
14 in enacting this statute, provides the Board exclusive
15 guidance in a very limited and narrow fashion, what the
16 Board's role is in this regard.

17 Moving on to the second item that was raised at
18 the Permit Committee hearing. Flow control.

19 The Carbone decision, that we're all familiar
20 with, does not extend its limitations to franchises and
21 contracts. That's what we have before us. The Carbone
22 decision placed limitations on local agencies who designate
23 a facility when waste crossed -- when waste crossed
24 interstate lines and when a local agency chooses to
25 designate that facility for purposes of flow control.

1 It does not extend to franchises and contracts.
2 It only extends to ordinances. Big distinction. That's
3 the letter of the decision. That's the commonplace
4 interpretation by most attorneys, and I think Mr. Block can
5 probably reiterate that that is the commonplace reading of
6 that court decision, that the limitation is placed upon
7 local ordinances not franchises and contracts.

8 If it were to be interpreted to be a limitation
9 on franchises and contracts, I mean, consider the fact that
10 approximately 80 percent of the state operates under
11 franchises and contracts for solid waste handling, you can
12 only imagine what chaos would take place in this state if
13 that -- if that were in fact true. It is not. It's
14 limited to local ordinances.

15 Therefore, if a franchisee chooses, voluntarily
16 agrees, mutually negotiates with a local agency to take
17 their waste and recyclables to a specific facility, that's
18 their choice. That's their option. That's the choice of a
19 local agency and the voluntary agreement that a private
20 company which chooses to do in concert in partnership with
21 a local agency.

22 Therefore, flow control in and of itself is an
23 express authority of local government. It is an express
24 authority of private companies. There is no limitation
25 placed on it. Flow control in and of itself does not

1 constitute prevent and impair.

2 Finally, the other issue, exclusive franchises.
3 CAW has a long history of opposing and being anti flow
4 control and anti exclusive franchising. We all know that.
5 There's no attempt to hide that.

6 However, Section 40059 of the Public Resources
7 Code, "notwithstanding any other provision of law -- any
8 other provision of law ..."

9 Under 40059(a)(2) ... "by partially exclusive or
10 wholly exclusive franchise, contract, license, permit, or
11 otherwise, either with or without competitive bidding."
12 That is an express authority under AB 939 for local
13 government to issue exclusive franchises. Now, what does
14 that mean?

15 That means -- and in fact, that if an exclusive
16 franchise is granted to a private company, that means that
17 no other entity has the authority under that exclusive
18 franchise agreement with that local agency to pick up and
19 collect recyclable materials and garbage for a fee. That's
20 Rancho Mirage. Ranch Mirage reiterated that local
21 governments have the authority to issue exclusive
22 franchises.

23 If you look at the final page, because I'd like
24 to bring to your attention as far as what Rancho Mirage
25 says.

1 "A property owner throws his recyclables" -- this
2 is a direct quote from the case. "A property owner throws
3 his recyclables into the receptacle provided by the
4 franchisee and does so without receiving compensation. He
5 has plainly discarded property, and it is thus waste under
6 the Act. Could he instead throw the property into the bin
7 of a competing waste hauler without receiving compensation?
8 No, Because by disposing of the property without receiving
9 compensation, he has discarded the property and thereby
10 rendered it waste that is subject to the exclusive
11 franchise."

12 On the back side of the page. "In other words,
13 the Court of Appeal opinion might be read to mean that a
14 property owner could decide unilaterally with whom he will
15 discard his waste. If three competing waste handlers, (the
16 exclusive franchisee and two others) placed their
17 respective receptacles at the owner's curbside, he could
18 put his waste into whichever container he chooses."

19 "Perhaps the Court of Appeal did not intend that
20 result, but its opinion might be read as suggesting as
21 much, and, if so, we believe this result would be
22 inconsistent with the Act's apparent intent."

23 "In short, if the owner of recyclable materials
24 discards them into the solid waste stream, they become
25 solid waste subject to the Act, and an exclusive franchisee

1 would have the right to collect that waste in accordance
2 with its franchise agreement."

3 So what we have here is a situation on this
4 permit where all three of these issues have been raised in
5 a cross lateral attempt to confuse what the issues really
6 are.

7 NORCAL has the right under the statutes and under
8 the court decisions, both the California State Supreme
9 Court and the U.S. Supreme Court in the United States
10 Congress and the California State Legislature and the local
11 agency who made the choices, to collect the material, to
12 take it to a specific facility, and to also limit the
13 ability of other competing interests to collect those
14 recyclable materials for a fee. None of this, none of this
15 constitutes prevent and impair.

16 As I started out, prevent and impair only applies
17 to flow control arrangements and financing arrangements
18 which require disposal and transformation. So let's not
19 confuse the issues.

20 CAW doesn't like flow control. CAW doesn't like
21 exclusive franchises. Okay. Fine. Then they should take
22 that matter not to this Board but to the U.S Supreme Court,
23 the United States Congress, to the California State Supreme
24 Court, to the California State Legislature. All have
25 spoken explicitly on these matters.

1 It's not the role of the Board to second-guess
2 the U.S. Supreme Court, and California State Supreme Court,
3 and the U.S. Congress, and the California State
4 Legislature. Exclusive guidance here.

5 I'll be happy to answer any questions.

6 CHAIRMAN PENNINGTON: Thank you.

7 MR. DICKINSON: Good afternoon. My name is Will
8 Dickinson. And I'm just a good 'ol boy from a rural area,
9 and I don't understand all this lawyer talk, but I'd like
10 to make a few points on the county and the waste management
11 authority and our role as permit applicant.

12 First of all, I've been asked to address how we
13 came to the decision to build a MRF. It was a long
14 involved process. It began in 1989, as far back as I
15 recall. We looked at all the other programs that were
16 available and we made a decision that in our rural
17 jurisdiction, which some of you who live in Roseville may
18 not realize is rural but it is to the rest of the county,
19 that a MRF was going to be necessary to achieve the goals
20 of the Act.

21 We feel like we have the local knowledge to make
22 that decision much better than the State Board does. And
23 that's why the law was written the way it was, to allow the
24 local agencies the option to achieve the goal in the manner
25 they thought was appropriate.

1 We are going to do curbside recycling when we get
2 the MRF. It's going to be a blue bag curbside recycling
3 program. We think it will be effective in reaching the
4 citizens, in allowing them to participate, in educating
5 them in the need to source reduce as well.

6 I'm going to show you all the other programs
7 we're doing in just a second.

8 To build a MRF you have to have financing. We
9 didn't have the amount of money that it takes to build this
10 facility in our bank. To sell bonds at the time that this
11 began -- and you have to recall that this was signed in
12 1993, we had to incorporate the provisions in those flow
13 control agreements in order to get the bond attorneys and
14 underwriters to issue the bonds, and for people to purchase
15 them.

16 The flow control was achieved through voluntary
17 contracts, as has been pointed out, not ordinances. And
18 the bond underwriting and purchases were based on these
19 assurances.

20 We do not arbitrarily go back and rewrite the
21 flow control agreements as suggested by CAW.

22 I have included in your packets the provisions
23 from a document which limits our ability to do that. It's
24 the fifth item in that packet.

25 Also, we feel the flow control agreements as are

1 written now are acceptable. And if someone could operate
2 the overhead for me, unless you have a mike over there --
3 I've got just three overheads.

4 That's going to be not very readable for the
5 audience, I'm afraid. But -- and I apologize for those of
6 you who had to endure this the first time around. I am
7 going to make this a lot quicker than last time.

8 I've highlighted the sections of the flow control
9 unit for Placer County, which is similar to the other
10 agreements that I specifically consulted with our county
11 counsel and had added because of the concern that we might
12 not be able to meet our reduction goal.

13 First of all, there is a statement of intent. It
14 says, "It is not the intent of this agreement to preclude
15 such source reduction or recycling activities by the
16 County." We feel that's pretty clear as an intent
17 statement.

18 Section 4B, page 6 and 7. I'm just going to just
19 read the underlined portion. "The authority will not
20 withhold its consent for new recycling programs if the
21 County demonstrates to the authority's satisfaction that
22 such a program is necessary in order for the County to
23 comply with the Act."

24 And some additional items about how you
25 demonstrate that. I think it's very clear that Placer

1 County cannot meet the existing conditions or reduction.
2 If the Board chose to not approve that reduction, they
3 still have the option to do so, in which case we could go
4 back and say, yes, we have to implement the program.

5 It also -- this only applies to recycling
6 programs. It doesn't apply to source reduction programs.

7 Section 4C on page 8 says -- we added this
8 language and this has to do with private operators. "To
9 the extent that we determine at our sole discretion we have
10 legal authority to do so, we will follow the provision of
11 this section and, and force those operators to take all of
12 their materials to the materials recovery facility."

13 As I said before at that Committee meeting, this
14 is a nightmare for a local politician to try to get this
15 type of ordinance enacted even if it was legal, which it
16 isn't. So we are probably going to determine in our sole
17 discretion that we don't ever have legal authority to do
18 this.

19 We've had a lot of discussion from people that
20 the standard is would prevent or substantially impair. The
21 scenarios outlined by Rick Best of CAW in his last
22 presentation were unrealistic. They -- you can only follow
23 those to the point of which you can say they might possibly
24 impair to a limited degree, not would prevent or
25 substantially impair.

1 I'd also like to show you, since we are very
2 proud of the other programs we've done, what's taken place.

3 First of all, I'm going to show you what we had
4 in place prior to signing a flow control agreement. Fairly
5 limited amount of programs with that. We were achieving
6 roughly about nine percent.

7 Now, the next overhead, if you could change that,
8 shows you what we've added in addition to those programs
9 since we signed the flow control agreement. Backyard
10 composting, where we have recycling marketing development
11 zones, we have extensive education programs. We've changed
12 our procurement policy so we are buying recycled content
13 material. We have several new drop-off centers, and we've
14 added to the types of materials at those facilities.

15 We are -- we have a blue bag program on the
16 eastern side where we have a MRF in operation right now,
17 and as soon as we get this facility approved we're going to
18 start a blue bag program on the western side of the county.

19 We've expanded office paper. We're in the
20 process of getting going on a commercial cardboard
21 collection program. We have our eastern regional MRF in
22 operation. We've expanded our wood-waste program. We've
23 invested a considerable amount of money in equipment to
24 process it. We've changed over to recycling most of our
25 tires instead of burying them. We have reduced rates for

1 source separated materials. And we're recycling latex
2 paint and used motor oil, and we've started the household
3 hazardous waste collection events. All since signing the
4 flow control agreement.

5 I'd just like to point out that any delay in
6 obtaining this permit will result in the loss of about 50
7 thousand tons per month of recyclable materials that will
8 go to the landfill instead of being recycled.

9 And I'd like to ask you to give us a 6-0 vote on
10 this item today. I understand we can get our permit with
11 less, but I really feel like we would like to take back to
12 our decision makers who have the guts to go ahead with this
13 project even though it's expensive because they thought it
14 was the right thing to do as a local agency. We'd like to
15 be able to go back to them and say that the Waste Board
16 appreciates your efforts.

17 Thank you very much.

18 BOARD MEMBER CHESBRO: Mr. Chairman?

19 CHAIRMAN PENNINGTON: Yes.

20 BOARD MEMBER CHESBRO: Mr. Chairman?

21 CHAIRMAN PENNINGTON: Yes. Go ahead.

22 BOARD MEMBER CHESBRO: Mr. Dickinson, the list of
23 programs that have been implemented since the agreement --

24 MR. DICKINSON: Yes.

25 BOARD MEMBER CHESBRO: -- some of them would

1 appear to potentially conflict with the section that
2 requires the authority's consent in the application for a
3 reduction in requirements prior to implementation. How
4 have they been handled? Have they been brought before the
5 authority for approval?

6 MR. DICKINSON: Do you have any in particular you
7 wanted to talk about?

8 BOARD MEMBER CHESBRO: Well, you had -- let's see
9 here. You mentioned the wood waste. I guess -- are they
10 all operated by -- all these programs operated by the
11 company that will be operating the facility?

12 MR. DICKINSON: No.

13 BOARD MEMBER CHESBRO: I assume some of them come
14 under the definition of county-operated programs?

15 MR. DICKINSON: They do. Most of them are
16 operated by our franchisees or our -- some of those are
17 operated by our -- either our landfill contractor on the
18 western side or the MRF operator on the eastern side.

19 BOARD MEMBER CHESBRO: So would they be outside
20 of the provisions of this section?

21 MR. DICKINSON: No. There are some that are --
22 that would fall inside the provisions. We have
23 specifically gone to the authority for permission on some
24 of them, the commercial cardboard most recently. We got
25 permission for that in June. And the other ones at the

1 staff level which said these are insignificant, we talked
2 with the MRF operator directly and the MRF operators don't
3 have a problem, so we just proceeded.

4 BOARD MEMBER CHESBRO: Okay. Well, I may -- as
5 the discussion evolves I may have more questions about
6 that. From my standpoint that section is at the cross of
7 whether there's any problem or not. But trying to
8 determine how that -- that pro B provision, section pro B
9 provision would actually be carried out --

10 Also, you've addressed the language that is in
11 the County's contract. Are all those provisions identical,
12 the ones that the cities are operating under that are
13 members of the authority?

14 MR. DICKINSON: They're not identical. I
15 think -- actually, Rocklin and Lincoln are very, very
16 similar. Roseville's was the first one and it has slightly
17 different language but nothing that I've identified that
18 significant to this discussion.

19 BOARD MEMBER CHESBRO: Okay. Well, just to
20 express my concerns on here before we get too much further
21 into it and, of course, I'm very interested in your
22 responses to this.

23 I'm concerned about programs that are identified
24 in the jurisdiction as SRREs that have been put forth by
25 the jurisdiction of the Board, and presumably approved by

1 the Board to achieve 50 percent, that then determine
2 several hoops have been created that have to be -- or
3 hurdles that have to be cleared in order for them to be
4 implemented by my reading of this provision.

5 And, you know, I understand that the Committee,
6 which I was not there unfortunately, there was discussion
7 about how it may be actually implemented or how it has been
8 implemented, and that's the source of my question to you
9 today.

10 But the potential for that in essence to being an
11 obstacle for those materials the MRF operator is or isn't
12 going to recycle it is in fact a recycling oversight, but
13 that, in fact, the jurisdictions may find that they need in
14 order to get to 50 percent at some point in the process and
15 that they may have been identified in the jurisdiction's
16 SRREs.

17 MR. DICKINSON: Well, I personally don't think
18 that there's anything in the existing contracts to do with
19 a MRF operator or with the flow control agreements that
20 prevents us from ever taking additional programs to meet
21 the goals. I think that's very clear the way the code is
22 written.

23 In addition to that, I think it's important to
24 recognize that this is a joint-powers authority that owns
25 this facility and controls the contract with Nortech.

1 If we are -- the only circumstance under which I
2 could imagine that there might be a problem in the concern
3 that you're raising is if one jurisdiction is lagging
4 tremendously behind everyone else.

5 If we're all in the same boat we're going to do
6 what we have to do to change the agreement with the
7 operator either providing more incentives to achieve higher
8 diversion at recovery facilities or we're going to go back
9 as members of this authority, this decision-making body,
10 and say, yes, these are the programs that we understand you
11 need to undertake and authorize them.

12 BOARD MEMBER CHESBRO: Well, you've pointed to
13 the general language in Section 4 regarding the parties
14 recognizing that the jurisdictions may need to conduct or
15 authorize certain programs. But that seems like it's a
16 general finding and it's undermined by the provisions of
17 4B, which in terms of saying that you have to ask
18 permission and you have to come to the Board and apply for,
19 for the reduction and requirement before implementing these
20 programs.

21 It's -- I'm somewhat reassured by the general
22 language, but then when it comes to the specific provision
23 it seems like it's -- there's a circuitous route to getting
24 there. It's not just something that the jurisdiction says,
25 well, this is the programs in our SRREs, it's not provided

1 by the MRF, therefore, we have to do it, but we have to go
2 ask the authority of the Waste Board.

3 MR. DICKINSON: We feel like -- I feel -- I
4 disagree with you on that point because -- perhaps you're
5 looking at the Roseville agreement, but our agreement says,
6 "In order to demonstrate that such a program is necessary
7 the County shall show that a reduction in the applicable
8 waste diversion standard from the Board pursuant to PRC
9 Section 41782 wherein a similar provision has not been or
10 could not be written by the Board."

11 We don't actually have to come to the Board. All
12 we have to do is show that it could not be under the
13 statutes. And right now as I read the statutes Placer
14 County could not even come to you.

15 Perhaps you'll change those at some point in the
16 future and if you do, as I said, you still have the option,
17 if we come in for a reduction in those diversion
18 requirements, you still have the option of saying, no,
19 we're not going to grant that to you and we go back to the
20 landfill authority and say they wouldn't give it to us, we
21 need to implement the program. In that case there's
22 absolutely no discretion on the part of the authority.

23 Our county counsel told us that was a hole big
24 enough to drive a truck through, so we feel good about it.

25 BOARD MEMBER CHESBRO: Well, thank you. I do

1 want to say while I have concerns about the potential for
2 the provisions holding down some diversion over here I do
3 want to recognize the effort by the county and local
4 officials to do something progressive here and to take a
5 risky step and get out front on their part, that obviously
6 will enhance diversion.

7 So it's a mixed bag and I don't mean by asking
8 these questions to imply that I don't recognize it. And I
9 appreciate the steps that the County has taken to be ahead
10 of all other counties of similar size around the state.

11 MR. DICKINSON: Thank you.

12 CHAIRMAN PENNINGTON: I believe Mr. Relis has a
13 question.

14 BOARD MEMBER RELIS: Yes, Mr. Chair. Since this
15 issue of the sections 4B and 4C have been raised and then
16 the other matter related to, if we were in petition, I
17 think it's important we clarify those three points early on
18 and have some discussion with Counsel. And I would
19 appreciate hearing from Counsel on -- there's contract
20 language and there's real world -- I mean, contract
21 language in part, real world for the facility operator, but
22 there are other factors that affect contracts, such as,
23 legal rulings. And I would like Elliot, if he could, to
24 tell us what authority these provisions have from your read
25 of them in today's world.

1 MR. BLOCK. Okay. Let me try to answer that and
2 basically do this quickly. I think that I can confirm what
3 Mr. Dickinson indicated their county counsel had indicated
4 that as the current stated law stands now, it's based on
5 Rancho Mirage decisions.

6 Some of the other decisions at some of their
7 earlier discussions was that the authority could not go out
8 right now and legally adopt ordinances to control or
9 restrict some of the movement of these materials, and also
10 could not be able to control the flow of recyclable
11 materials that have not been discarded in the first place.

12 BOARD MEMBER RELIS: Per Rancho Mirage?

13 MR. BLOCK: Per Rancho Mirage.

14 BOARD MEMBER RELIS: So two of -- two of the
15 factors here, if you wanted to set up a private recycling
16 activity where you were not dealing with, interfering with
17 the franchises, there's nothing that prevents us under
18 today's law from doing that?

19 MR. BLOCK: That's correct.

20 BOARD MEMBER RELIS: And so recycling activity
21 could indeed occur beyond what is proposed here within the
22 legal bounds --

23 MR. BLOCK: That's correct.

24 BOARD MEMBER RELIS: -- of Rancho Mirage?

25 MR. BLOCK: That's correct.

1 BOARD MEMBER RELIS: Correct?

2 MR. BLOCK: Yes.

3 BOARD MEMBER RELIS: And we have determined that,
4 I believe with the exception of one of the jurisdictions,
5 that they could not, they would not meet the qualifications
6 for petition for diversion reduction according to our
7 criteria, is that not also correct?

8 MR. DICKINSON: Yes. The answer to that is, yes.
9 And Loomis is the jurisdiction and they didn't sign this
10 agreement. So I think that point is not relevant.

11 MR. BLOCK: To add a little bit, to give some
12 context to this. In the statute, which was recently
13 amended, actually pulled some of the Board's regulatory
14 provisions into the statute. In order to qualify the
15 petition in the first place you got to meet certain --
16 well, actually be below certain thresholds in terms of
17 square foot, not square foot, square mile, excuse me, area
18 and population density to be able to qualify to petition in
19 the first place.

20 So that's why that answer can be given so
21 definitively. Based on the size of the jurisdictions
22 you're dealing with, that you're only going to grow they're
23 not going to be in a position where they could even --

24 BOARD MEMBER RELIS: The only reason I bring this
25 up, for all of our sakes is if -- in my view should not

1 spend undue attention on language which is there but not
2 active under today's law. So I just wanted to get that out
3 early. I'll have some further comments later.

4 CHAIRMAN PENNINGTON: Okay. Any other questions
5 of Mr. Dickinson?

6 BOARD MEMBER GOTCH: Yes, Mr. Chairman.

7 CHAIRMAN PENNINGTON: All right.

8 BOARD MEMBER GOTCH: If you would please give me
9 an understanding of the incentive process and how that
10 works. What it appears from the information we have,
11 there's a \$55 per ton tipping fee at the landfill and then
12 the \$7 incentive for the recyclables after the 20 percent
13 has been reached.

14 And it appears then that you'd actually be making
15 \$48 or I should say the operator would actually be making
16 \$48 a ton to landfill anything beyond that 20 percent. I'm
17 hoping there's a missing piece between there.

18 MR. DICKINSON: I'd like to have Mr. Trewhitt get
19 up and explain.

20 MR. TREWHITT: The 58 --

21 COMMITTEE SECRETARY KELLY: Could you identify
22 yourself, please.

23 MR. TREWHITT: Wayne Trewhitt, representative of
24 Nortech Waste LLC, the contract operator.

25 The \$58 a ton now charged at the landfill is for

1 the waste coming through the landfill. That same fee or
2 something similar to that would be charged as the material
3 flows through the -- the scale house going to the materials
4 recovery facility.

5 What the \$7 a ton is based upon is basically the
6 avoidance of the capacity in the landfill. It doesn't go
7 to the landfill operator. The money -- the money, the \$58
8 goes to the authority. That is spread out for amortization
9 of the facility, payment to the operator to run the
10 landfill, payment of the operator to run the MRF, and it
11 goes to the programs that the authority has over and above
12 what we talked about.

13 The \$7 a ton is basically an incentive, an
14 additional incentive over the 20 percent to the operator to
15 recover more materials. He also has the incentive of the
16 price that he gets for selling those materials. So that --
17 the \$7 is just, you get the break-even level to a higher
18 point and that is also an escalated figure, as with the
19 CPR.

20 Now, does that answer your question?

21 BOARD MEMBER GOTCH: I think it does but the -- I
22 guess the question comes between the fact that the operator
23 operates the landfill County MRF and --

24 MR. TREWHITT: The operator is being the
25 authority.

1 BOARD MEMBER GOTCH: Uh-huh.

2 MR. TREWHITT: They receive the money and they
3 spread that money around to different places. The landfill
4 operator doesn't get the \$58. Something considerably
5 reduced from that.

6 This -- what this incentive to the MRF
7 operator -- the MRF contract operator is to basically pay
8 him for that cost avoidance in the landfill.

9 BOARD MEMBER GOTCH: Okay. Thank you.

10 MR. TREWHITT: It just raises the level of where
11 you break-even. So you do have a \$7 more incentive. If
12 you break-even at \$30 now you break-even at \$37, I mean,
13 \$23, it drops it.

14 BOARD MEMBER GOTCH: Thank you.

15 BOARD MEMBER CHESBRO: Can I --

16 CHAIRMAN PENNINGTON: Let Mr. Egigian and then
17 I'll come back to you.

18 BOARD MEMBER EGIGIAN: I don't have any questions
19 of Mr. Trewhitt. However, Ms. Gotch asked a question and
20 I'm just wondering how appropriate is that kind of a
21 question. We're not putting any money into this project so
22 why should we be interested in what kind of financial
23 arrangements have been made between the people that are
24 operating and whoever else? If they want to do it for
25 nothing that's their business. It's none of our business.

1 So I want to know, can we ask questions like this and is it
2 appropriate?

3 MR. BLOCK: Is that directed my way?

4 (Laughter.)

5 BOARD MEMBER EGIGIAN: Did I wake you up? I'm
6 sorry.

7 MR. BLOCK: Without getting into the merits of
8 how relevant the question is or isn't, it certainly is a
9 question that can be asked within this context. Arguably
10 it could be relevant to the effect of this contract, and
11 there's a lot of reasons why somebody would argue that. I
12 certainly, from a legal point of view, wouldn't be able to
13 say that that's a question that can be asked.

14 BOARD MEMBER EGIGIAN: Well, I know that we've
15 had many, many permits that we've concurred on. And I
16 remember -- I find it hard to remember who would get into
17 the dollar factor that's going on between the operators and
18 whoever else they're involved with. If they want to lose
19 money -- maybe they got a high tax problem. Maybe they've
20 been running a loss for a couple years, but I just wonder
21 because we're not asking that of everybody.

22 BOARD MEMBER GOTCH: But I'm sure you want to
23 have a full understanding of how this works as a benefit to
24 the jurisdiction with the recycling. And that's why my
25 question came.

1 BOARD MEMBER EGIGIAN: There's no problem. My
2 only thing is that I don't see any square that we've laid
3 out on your coming before this Board to get concurrence on
4 a permit that says, let's find out how much they're going
5 to charge and what it's going for and so forth.

6 Just like some of these other questions that came
7 forth about the impair, you know. I can't see why some of
8 these questions come up after they've been answered.

9 And maybe it's because -- probably with some
10 exceptions I'm one of the few people that have been in
11 business, and I don't think it's anyone's business to ask
12 me what I'm doing with my money, as long as I pay my taxes.
13 Okay? And this is where I'm coming from. Maybe it's too
14 radical a point. But --

15 MR. TREWHITT: To briefly answer your question.
16 I think the point is that if that operator of the materials
17 recovery facility has the choice of watching that material
18 go down the line versus picking it off the line he gets \$7
19 more for picking it off the line plus what he gets to sell
20 it for. That's why we believe it's a bona fide incentive.

21 BOARD MEMBER GOTCH: Thank you. You've answered
22 my question.

23 CHAIRMAN PENNINGTON: Mr. Chesbro, did you want
24 to ask a question?

25 BOARD MEMBER CHESBRO: That answered my question.

1 CHAIRMAN PENNINGTON: Is that -- is that the end
2 of the applicant's presentation?

3 MR. TREWHITT: Yes.

4 CHAIRMAN PENNINGTON: Then we have Mr. Rick Best
5 who would like to speak on the subject.

6 MR. BEST: Rick Best.

7 CHAIRMAN PENNINGTON: Before you start, Rick, I
8 would like to apologize. We had some communication problem
9 and you were expecting to be heard this morning.

10 MR. BEST: Not a problem. That's taken care of.
11 Is this microphone working?

12 CHAIRMAN PENNINGTON: Yes.

13 MR. BEST: Thank you for the opportunity to speak
14 today. Rick Best with Californians Against Waste.

15 When we raised this issue before the Board it was
16 our intent to focus on prevent or impair. I think that's
17 what our testimony at last week's Board Permits Committee
18 was.

19 It's unfortunate Ms. Delmatier was not at the
20 meeting. I felt that we raised some issues in terms of
21 flow control and the Carbone decision. It was not our
22 intent in terms of that to be the focus of our comments.

23 I'd like to respond to a few of those issues that
24 she's raised. But before I begin my comments on that
25 specific thing I want to kind of clarify in terms of where

1 we're coming from and where our interest in this issue is.

2 Number one. It's not our intent in terms of the
3 11th hour to see this permit go down. I think this
4 facility is certainly a reflection of a tremendous amount
5 of work on the part of Placer County officials in terms of
6 trying to address their ways of complying with 939. So I
7 certainly applaud the work that they've done.

8 And it's unfortunate, I think, in terms of the
9 way that the process was established, that the specific
10 statutory issue established in 939, in terms of looking at
11 prevent or impair, is one that the Board can only consider
12 here at the very end of the line. It would be much more
13 appropriate if we could address these issues before all of
14 the work that's gone on into this facility. I think it's
15 certainly appropriate, but we have to deal with what's in
16 law at this point.

17 Secondly, it's not our intent in terms of -- to
18 make this an issue in terms of a material recovery facility
19 versus source separated. Our interest is merely in terms
20 of the issue before the Board, whether it prevents or
21 impairs within the legal compliance of 939.

22 First, getting to the issues in terms of the
23 background of the prevent or impair language and where it's
24 coming from. The -- as was mentioned earlier today, the
25 original language was in fact impede or impair. It was the

1 subsequent Legislation, the AB 296 changing, making it
2 prevent or impair, prevent or substantially impair, based
3 upon substantial evidence in the record.

4 There was a lot of discussion in regards to
5 earlier testimony, the issues of, what was the intent
6 behind this Legislation. We have -- certainly were a
7 participant in that discussion, and as the letter points
8 out it's the intent in terms of -- it was the intent of the
9 author of this Legislation, that the Board in adopting a
10 policy as to how it should implement this would be focusing
11 on contracts with financial arrangements.

12 However, I want to say that the language that's
13 established in the law does not say anything in regards to
14 limiting the Board's role.

15 The language says specifically that the Board
16 shall object to the permit if it prevents or substantially
17 impairs. The Board can adopt policies based upon the
18 intent of the author, certainly that's appropriate, but the
19 policy that was adopted by the Board allows other
20 information to be brought before the Board.

21 This was very clear when the policy was adopted
22 last year. Ms. Delmatier in speaking in support of this
23 says there's no limitation -- I'm quoting from the full
24 board meeting of October 27th. "There's no limitation on
25 how the information could be brought forward. There is, in

1 fact, no limitation in this proposal to any person who may
2 wish to bring relevant information to the Board's
3 attention. We urge the Board to act favorably and adopt
4 the policy today."

5 So here we are today in bringing forward
6 additional information. It may be beyond what the Board
7 looks at in terms of its policy, but I think it's relative
8 information that the Board should consider.

9 In regards to the issues of flow control and
10 exclusive franchises. I want to address those before I get
11 into the substance.

12 It was stated that our position is in opposition
13 to flow control and in opposition to exclusive franchises.
14 CAW's official position is not in opposition to flow
15 control or exclusive franchises for solid waste. The issue
16 relates to recyclable materials, source separated
17 recyclable materials that meet whatever standards are set
18 in terms of a definition or distinction between recyclable
19 materials and solid waste.

20 Our position in legislative debates, in terms of
21 the court decisions, it holds true to that distinction.
22 And so to say that we are raising these issues in terms of
23 questioning NORCAL's -- to the operator's rights to
24 exclusive franchises, we're not questioning that. It's
25 simply a focus on recyclable materials.

1 I want to first speak in terms of the
2 generalities of the Western Placer County MRF and why this
3 is an issue for us.

4 The issue of prevent or impair has long been
5 focused on landfills and transformation facilities. But we
6 believe that, as we are seeing in a greater regionalization
7 in terms of how the solid waste system is developing, we're
8 seeing a lot of material now also going to transfer
9 stations, material recovery facilities, and not simply
10 directly to landfills and transformation facilities.

11 Consequently, there is potential for prevent or
12 impair, in terms of there's a potential for contract
13 arrangements with these types of facilities that can impair
14 a jurisdiction's ability to comply with 939 even though
15 it's not specifically geared towards disposal or
16 transformation facility.

17 I, I passed out to the board members -- I
18 apologize, I don't have overheads of it, of some materials
19 and I'd like to kind of walk through those.

20 The first thing I want to talk about is in terms
21 of specifics of the operating agreements. We're not -- our
22 issues do not relate to the operating agreements. But
23 before we talk about the delivery agreements I want to kind
24 of make sure of the Board's understanding in terms of the
25 provisions. And if county staff would like to respond in

1 terms, if there's anything incorrect that I'm saying, I'd
2 be happy to pause at that time.

3 My understanding is in terms of, there's a
4 performance requirement that they have to demonstrate; that
5 they achieve a minimum recovery level of 20 percent; and
6 that they have to meet a 30 percent on-demand recovery
7 level. And that would apply to, I believe it's a 700
8 ton-per-day operation in terms of 8 hours at 87 tons per
9 hour. But that facility's required to process any material
10 that's delivered. That's simply -- they have to
11 demonstrate performance at that -- at the outset of the
12 operation of the facility.

13 The tipping fees, as was stated, are over \$50 a
14 ton. These are predirected to the authority. And that
15 there is an incentive to the operator in terms of the \$7 a
16 ton incentive above the 20 percent level for material
17 that's diverted.

18 And -- and finally, in regards to the purchase of
19 recyclable material. There is a requirement that they
20 purchase material from both private and public operations
21 at the fair market value. The operator does not receive a
22 tonnage payment or a tonnage credit for that material.

23 The issue that I want to focus on though is the
24 delivery of solid waste agreements. And there's a couple
25 of specific provisions that have already been mentioned.

1 I'll just briefly highlight them.

2 The two provisions that we are concerned about
3 first relates to private operations, in that it's -- the
4 language basically states that the -- the contracting
5 jurisdiction, that is the county or the cities, if private
6 recycling operations are interfering with the financing of
7 the facility or interfering with a successful operation of
8 the facility the -- the cities and counties shall prohibit
9 or require the delivery of those materials to the facility.
10 It leaves up to the discretion of the city or county as to
11 how, to what extent and how they would do that.

12 We see that language in terms of, initially at
13 least, providing a cause for concern in terms of the
14 possibility of preventing the implementation of private
15 recycling programs, if that provision was invoked. I'm
16 going to go through more details. But I just kind of
17 wanted to lay out our areas of concern. Do you have a --

18 BOARD MEMBER RELIS: I just wanted to make sure
19 on that point, Rick, you understand what our Counsel said
20 about the ability to enforce that --

21 MR. BEST: I understand.

22 BOARD MEMBER RELIS: -- that provision. In other
23 words, they are -- at least the way current law reads --

24 MR. BEST: I will address that issue.

25 BOARD MEMBER RELIS: Okay. Thank you.

1 MR. BEST: The second provision relates to the
2 issues of public operations in terms of limiting --
3 permitting the implementation of additional recycling
4 programs unless they get permission from the authority.

5 In order to get permission from the authority you
6 have to, depending on which contract you're looking at, you
7 either have to have shown that you couldn't have gotten a
8 diversion reduction from the Board or that you actually
9 sought one and were denied by the Board.

10 There again, we see placing at least what appears
11 to be a hurdle in terms of the ability of jurisdictions to
12 implement additional recycling programs needed to comply
13 with 939.

14 Let me, I guess, now go into the specific
15 reasons -- specific issues relating to those two things.
16 First, regarding private operations.

17 I think counsel, as was stated, doesn't believe
18 based upon the Rancho Mirage decision that that provision
19 would be enforceable. We certainly recognize that. We
20 certainly agree with that. The fact is that that provision
21 is there.

22 There's a possibility of changes in terms of
23 whether legislative changes further court rulings that may
24 change the -- make the provisions of that. And so there
25 certainly exists the possibility of that provision being

1 able to be enforced and thus prohibiting separate
2 collection of materials.

3 If the material -- if the County were to require
4 that the materials be delivered to a MRF and that they pay
5 the fair market value I don't see that as preventing or
6 impairing, because that material, if it's sent to a MRF,
7 would likely be recycled. It wouldn't make economic sense
8 for the, the MRF operator to not divert that material.

9 The question is -- the provision says, if the
10 County could prohibit that collection. If the County
11 prohibits that collection there's no guarantee that that
12 material is going to be recovered at the facility. There's
13 the 20 percent diversion level that's mandated and the 30
14 percent on demand.

15 But frankly, if the material isn't collected
16 source separately you have to insure that all of that
17 material is going to be diverted, otherwise you have the
18 potential of reducing the amount of diversion that's been
19 going on.

20 Secondly, in regards to the provisions of
21 additional recycling programs. We believe that that
22 provision in and of itself admits that there's potential
23 for conflict with AB 939 and that the city must prove its
24 inability to comply with 939 before it can implement these
25 additional recycling programs.

1 I guess -- I want to ask a question that was
2 raised in terms of -- that the Board would not be able to
3 enforce, would not be able to fine these jurisdictions
4 based upon they don't meet, I guess, the population size
5 and what not.

6 In Counsel's opinion, based -- does this language
7 that refers to the Section 41782 or other similar
8 provisions, would that allow the Board to -- would -- could
9 that refer to other diversion reductions? There are other
10 diversion reductions in law and I'll go through those in a
11 moment, but I want to get from Counsel in terms of, could
12 the other similar provisions, could that refer to other
13 diversion reductions under current law?

14 MR. BLOCK: Do you want me to go ahead and
15 respond?

16 CHAIRMAN PENNINGTON: We're going to take a paper
17 break.

18 (Short break.)

19 CHAIRMAN PENNINGTON: I will let Mr. Block answer
20 the question, however, I think it's inappropriate for
21 people who are testifying to be asking us questions. But
22 let's go ahead and clear that up.

23 MR. BLOCK: Okay. Just very quickly. Looking at
24 the language of the contract obviously leaves open a
25 possibility of somebody interpreting it to include other

1 diversion sections, that would be -- are diversion
2 sections, diversion reduction provisions that would be
3 applicable to that situation that we're dealing with.

4 And you may want to at a later point in time ask
5 the operator what its intent was in that section, but it
6 seems more likely that it would cover a situation like we
7 had today, which is the change in number for the ruling
8 petition. The other diversion reduction provision stated
9 that transformation for future facilities.

10 I don't know how relevant this is to this
11 particular site.

12 CHAIRMAN PENNINGTON: Thank you, Mr. Block.

13 MR. BEST: Okay. I will refrain from asking
14 questions. I will pose them as hypotheticals in the rest
15 of my testimony.

16 The issue that -- the reason I asked that is that
17 I think there is potential for the other diversion
18 reductions that are in current law that could be
19 interpreted in terms of applying them with this section.
20 In the materials that I've provided to you there's three
21 that are in current law.

22 Number one, there's the potential for the Board
23 to reduce the diversion plan if it finds that a facility is
24 implementing all feasible source reduction recycling
25 composting programs. And that if it grants that reduction

1 it must set that level at whatever is feasible based upon,
2 you know, whatever the criteria the Board sets.

3 There's also the diversion reductions possible
4 for pre AB 939 out of transformation commitments. And then
5 there's, as I said, there's already the rural cities and
6 counties that have already been referred to. In addition,
7 there are several delay provisions in terms of the Board
8 delaying the diversion requirements based upon adverse
9 market conditions, the establishment of new cities, or if
10 rural cities and counties meet adverse market conditions.

11 In that second provision relating to rural cities
12 meeting adverse market conditions, there is no limitation
13 in terms of the size of the jurisdiction or the, the
14 tonnage generation.

15 I want to raise those, in terms of a number of
16 those are additional diversion reductions or delays that
17 could be considered by this Board and granted to the
18 diversion, excuse me, to the jurisdictions. And it's
19 unclear, based upon my interpretation of the contract, it's
20 possible that those could be considered as being similar to
21 the diversion provision in the contracts.

22 So I want to apply that as a potential in terms
23 of while counsel and while staff are saying that they will
24 not comply, comply under -- the majority of the cities
25 would not comply under the rural cities and counties

1 provision, there are other provisions in law to be made
2 upon it.

3 The question then really becomes then, how does
4 the Board evaluate if all feasible recycling programs have
5 been implemented, because a number of these provisions
6 require that the Board the -- the cities implement all
7 feasible recycling programs. If the Board finds that they
8 are implementing all feasible programs then the Board could
9 reduce the diversion requirements and hence, this provision
10 would be invoked and the authority could prohibit the
11 cities from implementing additional site requirement.

12 If the Board doesn't find that they have
13 implemented all feasible programs, then the cities will
14 then certainly have the authority to implement the new
15 programs, but during that interim period they would have
16 been in effect, you know, prevented from implementing those
17 programs until they made that finding.

18 So it's creating a situation where the cities are
19 having to kind of, I guess, wait until the Board makes a
20 decision as to what their authority is, and in doing so are
21 basically being prevented from implementing additional
22 recycling programs.

23 The question -- so, I believe we've raised some
24 issues in terms of two aspects of the contracts which
25 create the potential for a prevent or impair situation.

1 The question is then, what is, what is the real impact in
2 terms of, as Mr. Relis has pointed out, what's the real
3 world situation.

4 Certainly we can't know until after the operation
5 of the facility what, what kind of diversion we're going to
6 get, what kind of diversion is going to be achieved by the
7 facility. Certainly it's required to achieve 20 percent
8 and 30 percent on demand, and that's going to be a
9 significant portion of meeting their 939 goals.

10 On the next page I -- I provided a summary of the
11 breakdown in terms of their diversion under 939, their SRRE
12 plans, and all of them -- both of them show for the City of
13 Roseville and Placer County, which I looked at, showed them
14 meeting the 50 percent requirement. And it showed the MRF,
15 in the case of Roseville, diversion 28.9 percent, thus,
16 within the diversion specifications of the MRF. And in the
17 case of Placer County achieving a 10 percent diversion,
18 also within.

19 So based upon that -- those numbers in general,
20 it seems that the facility is within its ability to meet
21 the diversion reduction. However, at the same time those
22 diversion projections are based upon implementing a number
23 of additional recycling programs. The county staff have
24 already outlined what a number of those are. And the --
25 meeting the 50 percent is going to be predicated on

1 implementing those additional recycling programs.

2 In the case of Placer County that -- in their
3 SRRE it included expanded bar and restaurant recycling,
4 expanded office paper, collections, expanded drop-off
5 curbside collection, tire recovery, and C&D recovery.

6 So, these are a number of programs that are based
7 upon their -- how they specified they will meet and comply
8 with AB 939. Those programs are either going to have to be
9 implemented or they're going to have to increase the
10 recovery at the MRF in order to meet those -- in order to
11 meet the 50 percent requirement.

12 So, I think it's -- it's difficult certainly for
13 the Board to make the decision based upon not having the
14 facility implemented. But I think the fact that there are
15 these contract provisions is certainly a cause for concern.
16 It something that the Board should take light of, and --
17 and make a policy motion in the sense of, these are
18 examples of provisions that may prevent or impair a
19 jurisdiction's ability to comply with 939.

20 I want to raise a number of issues that the Board
21 really needs to look in terms of prevent or impair.

22 A lot of tension has been raised, but the focus
23 has always been on, if they're strict put or pay contracts.
24 If they're a strict contract that says jurisdiction "A"
25 shall dispose of 80 thousand tons of waste out of a waste

1 stream of a hundred thousand tons, obviously if they comply
2 with that they're not going to meet their 939 objectives.

3 But I think there are other mechanisms, there are
4 other aspects aside from a strict put or pay contract that
5 can prevent an ability to collect 939.

6 For example, in the case of the contracts before
7 us, if there's no incentive, there's an incentive for
8 increasing recovery.

9 But what if there was no incentive for the
10 contracting operator to exceed their 20 percent diversion
11 requirement, and their SRREs showed that they needed 28
12 percent diversion as in the case of Roseville, if that
13 incentive wasn't there, could the Board find that this,
14 this contract could prevent or impair the ability to comply
15 with 939?

16 The issue was raised in terms of the cost
17 situation. I think it's appropriate, based upon the
18 letters provided by Senator Cortese, that the Board is
19 certainly directed to look at costs, excuse me, contract
20 provisions and financial arrangements. What if the
21 financial incentive for diverting the material wasn't
22 sufficient to cover costs, additional costs and recycling
23 material? Would that be an example of potentially
24 preventing or impairing the ability to comply with 939?

25 Are there -- are there other capacity issues in

1 terms of if a -- it was raised in previous debates as to a
2 facility which is going to create a massive landfill
3 capacity in terms of a hundred years of landfill capacity,
4 thereby taking away the economic sense of -- for diversion.
5 Is that an example of prevent and impair?

6 I think all of these are issues that the Board
7 really should be laying in its role in terms of making sure
8 that we comply with the diversion mandates and we maximize
9 the amount of source reduction and recycling and
10 composting.

11 The question -- the final question I think the
12 Board needs to wrestle with is, what is the threshold for
13 prevention and impair? I think that's what everyone is
14 saying is, what -- does this meet the threshold?

15 I took a look at the -- I'm certainly not a
16 lawyer. I know that the Board has its own lawyers and they
17 will probably want to comment on this, but in terms of,
18 what is the threshold for the Board looking at in terms of
19 preventing or substantially impairing jurisdiction's
20 ability to comply with 939. I took a -- I took a long look
21 at the dictionary. It said prevent means to hinder,
22 frustrate, prohibit, impede, preclude or to obstruct or
23 intercept.

24 Some of those are certainly here black and white.
25 You need to demonstrate that. But I think to hinder or

1 frustrate is certainly a different standard and it's
2 something that certainly warrants potentially for the Board
3 to consider for a threshold.

4 In terms of substantially impairing.
5 Substantially means essentially. Impairing means to
6 weaken, make worse, to lessen, empower, diminish, relax.
7 There again, there's I think -- it's certainly within the
8 Board's role in terms of establishing a policy, to consider
9 what is the threshold that it will establish for proving
10 prevent or impair.

11 With that I want to close with two conclusions in
12 terms of recommendations that we would like to see the
13 Board take.

14 Number 1. As I said at the outset, I think the
15 operation of this facility is of a major component of the
16 Board -- of the Placer County diversion strategy.
17 Termination of this facility is not in the interest of them
18 meeting the 50 percent goal.

19 At the same time, I believe there are provisions
20 of the delivery of solid waste agreements, like the other
21 franchise agreements or agreements between the authority
22 and the operator, but specifically the agreements of the
23 delivery of solid waste between the authority and the
24 cities that provide the permission for jurisdictions to
25 prohibit the operation of recycling enterprises.

1 In addition, there are provisions with the
2 delivery agreements which require the jurisdiction to seek
3 permission from the Board to -- or to at least consider
4 whether it would be able to get permission from the Board
5 for reducing the diversion requirements. We believe that
6 also creates an impediment to achieving 939 goals.

7 We assume these provisions are legal. Certainly
8 there's the issues related to Rancho Mirage that needs to
9 be addressed. But considering these provisions are legal
10 we think the existence of these provisions would create
11 sufficient evidence for the Board to find that
12 substantially -- prevents or substantially impairs the
13 ability of jurisdictions to comply with AB 939.

14 Our recommendations are, number 1, any changes
15 that or -- or requirements that the Board places should not
16 be done in such a way that they impair the financing of the
17 authority. To do so would potentially violate our
18 conclusion in terms of wanting to insure that this facility
19 continues on.

20 So, from the outset we are saying that the Board
21 shouldn't make -- establish policies that would undermine
22 the financing. We believe the Board should work with the
23 County, and to modify the agreements, if that is possible,
24 or to make a policy statement attesting to the following:

25 Number 1, that the Rancho Mirage decision -- if

1 the Rancho Mirage decision was upheld in terms of, that the
2 private recycling provisions of this contract were not
3 enforceable, the authority should not enforce those
4 provisions.

5 If those decisions, however, are overturned,
6 there should be a policy such that the authority shall not
7 require material be diverted to the facility that would not
8 be recycled. That is, there should be a requirement that
9 any material that's diverted to a facility away from
10 private recycling operations must be recovered at the
11 facility.

12 And finally, we believe that there should be a
13 removal of the requirement that you have to go to the Board
14 to get a diversion reduction. Certainly I think a
15 requirement that the material be diverted to the facility,
16 in terms of the city being willing to enter into those
17 agreements, I think that's appropriate, but to actually
18 prohibit those source separation recycling programs from
19 operating we believe is inappropriate. Finally that --
20 those are the provisions relating to this permit.

21 Finally, we believe the Board should recognize
22 that the current prevent or impair policy that was adopted
23 last year is inadequate.

24 Number 1, it focuses solely on transplant through
25 the transformation of facilities, will not consider the

1 potential impacts material recovery facilities and transfer
2 stations.

3 Secondly, the policy does not recognize that
4 there may be other aspects beyond contract and financial
5 issues which could have -- impede or impair, excuse me,
6 prevent or impair ability of privately owned.

7 And finally, that the policy does not have any
8 sort of framework in terms of what specific issues they
9 would be looking at in terms of those contract and
10 financial arrangements.

11 And with that I conclude my testimony and would
12 be happy to answer any questions.

13 CHAIRMAN PENNINGTON: Okay. Thank you. We'll
14 start with Mr. Relis.

15 BOARD MEMBER RELIS: I don't have a question but
16 I do have -- I prepared some comments that address many of
17 the issues we've heard in here. And I'd like to --

18 CHAIRMAN PENNINGTON: Shall we finish taking
19 testimony?

20 BOARD MEMBER RELIS: Is there more? I'm sorry.
21 Excuse me.

22 BOARD MEMBER EGIGIAN: Yes, Mr. Best, you talked
23 several times about adverse market conditions. Would you
24 please enlarge on that. What did you mean by that?

25 MR. BEST: I only raise that in terms of there

1 are specific statutory provisions that are already in
2 existing law which allows for the Board to grant for a
3 delay of the diversion requirements if there are adverse
4 market conditions.

5 BOARD MEMBER EGIGIAN: In other words, if it cost
6 an operator \$50 a ton to collect that recyclable material
7 and bale it and have it ready for markets, and markets are
8 \$12 a ton, then we cannot insist that they continue to
9 spend that \$50 to bale that material and stack it up?

10 Or are we prepared to go to the legislature
11 saying that the cost of baling is \$50 a ton, the market is
12 \$12, we have to pay these people the difference in order to
13 keep them recycling this material and baling it and taking
14 it to the warehouse?

15 MR. BEST: I don't think the policy speaks to any
16 of those issues.

17 BOARD MEMBER EGIGIAN: You don't?

18 MR. BEST: I think --

19 BOARD MEMBER EGIGIAN: I want to make sure what
20 you were talking about.

21 MR. BEST: The only reason I raise this issue is
22 that there is potential in terms of other provisions of law
23 that would allow the Board to either reduce or delay the
24 diversion requirements. And that relates to the provisions
25 in these contracts relating to the -- to the authority of

1 the -- the permission of the authority to restrict the
2 implementation of additional recycling programs if the
3 Board granted diversion reduction.

4 BOARD MEMBER EGIGIAN: Thank you, Mr. Best.

5 CHAIRMAN PENNINGTON: Any other questions of
6 Mr. Best? Okay.

7 Our next person is Yvonne Hunter.

8 MS. HUNTER: Mr. Chairman and Members, Yvonne
9 Hunter with the League of California Cities.

10 Similar statement with the Kiefer Landfill. We
11 don't have a position on this specific permit --

12 BOARD MEMBER RELIS: You weren't on a roll yet.

13 MS. HUNTER: I wasn't on a roll yet so you can
14 tell jokes if you want.

15 -- but we are concerned about the message this
16 sends and the precedent, which is why we're here. I'm
17 going to try not to talk about the specifics of the
18 contract.

19 Just a few comments in response to some of the
20 things Rick said. I jotted down some notes.

21 As far as I know, the only diversion reductions
22 provided in the law, and it's not guaranteed it's
23 authorized, the Board may grant a reduction. Elliot talked
24 about the incineration transformation reduction, and also
25 for smaller cities and sparsely populated rural areas. And

1 there are some very key thresholds and conditions and the
2 Board and the League and CSAC worked cooperatively on that
3 over the last couple of years to clarify that.

4 Those are the only reductions. The Board is
5 authorized to grant an extension to achieving a goal if
6 certain conditions can be demonstrated. It doesn't mean
7 the Board will, but it can.

8 For example, natural disasters and earthquakes;
9 economic conditions beyond the local agency's control,
10 which unfortunately tends to be more of a likelihood given
11 what's going on in local government; work stoppages, things
12 like that. So just a clarification on that.

13 Also, I think a clarification -- I'm not sure if
14 Rick misspoke. The Rancho Mirage decision said that
15 recyclables are included in the definition of solid waste
16 if they are discarded.

17 Clearly, and it's always been the League's
18 position maybe we should be able to donate or sell, to give
19 away or sell their recyclable material and get money for
20 them more power to you. Go ahead and do it.

21 I have great respect for Rick and for CAW. We've
22 worked together cooperatively on the same side on a number
23 of issues but on this one, Rick, we have to part company.

24 I am -- I feel like I'm Alice glazing -- gazing
25 through the looking glass. This is absolutely amazing. I

1 don't know how many people are in the room here who
2 actually worked on AB 939 and worked on 2296, I think there
3 are four of us here. I count four, if you added on the
4 clean-up legislation, and to see the interpretation that is
5 now given to some of this language, it is amazing.

6 As a follow-up to the testimony that I gave on
7 the Kiefer permit, and I won't go into all of that, but the
8 reason the prevent and substantially impair language was
9 put into law was something the League did not like and CSAC
10 did not like, but we were faced with a dilemma, we had to
11 accept it, was that basically the Board and the legislature
12 and CAW and the Sierra Club said, we don't trust local
13 government. We don't trust you to make the right decision
14 to do the right thing. We want to protect you from
15 yourselves.

16 What we have now after local governments, cities
17 working cooperatively with the County, and with the private
18 sector, we have environmental groups, CAW, apparently CRRA,
19 second-guessing the good work of local governments.

20 Legislature and the Board gave local governments
21 a challenge. Go forth and recycle. Be creative. The
22 responsibility is yours, and, oh, by the way, if you don't
23 do it right we're going to nail you for \$10 thousand a day.

24 So the cities and the County of Placer went and
25 got creative. They had hours and hours of public hearings

1 deciding what type of facility they wanted. They put their
2 legal minds together and came up with the contract.

3 It is unbelievable that at this late hour, not at
4 the time when these contracts and the projects were being
5 discussed, but now, that there are those that are
6 second-guessing the contract. It's outside influence
7 coming in at the last minute to tell local government, I'm
8 sorry, we think -- we think you're doing it wrong,
9 frankly -- and again, I haven't read all of the contract
10 and we're not taking a position on the facility itself,
11 it's more the principal and the process.

12 It sounds like a very nifty project and a very
13 creative proposal. There are checks and balances to
14 protect the local government, to protect the operator, and
15 what we have here is second-guessing.

16 And the message that this Board sends by the
17 action you take as a Board and as individual board members
18 on your vote will send a message to local government
19 whether we trust you or not. Whether we trust your
20 intelligence, whether we trust your good sense to do the
21 right thing, that you have the ultimate say, and that is,
22 \$10 thousand a day.

23 And if -- if the jurisdictions, whether it's in
24 Placer County or somewhere else have negotiated a contract,
25 have built a MRF and somehow they boxed themselves into a

1 corner like some would be concerned that they're not going
2 to be able to get above the 20 or 30 percent recycling, and
3 they come to you and say, "Please don't penalize us," you
4 have every right to say, "I'm sorry, you got yourself into
5 a corner we are going to fine you." That is your ultimate
6 hammer.

7 The issue about prevent or impair is key. But
8 the law says, based upon substantial evidence in the record
9 the facility would, not could or may but would, prevent or
10 substantially impair the achievement of the 939 goals.

11 And -- and you may have different opinions on
12 whether or not you like the facility, whether or not you
13 like the agreement, but the criteria that the legislature
14 has given the Board to operate, the latitude you have is
15 fairly narrow.

16 And I think I heard Rick say he liked the
17 facility. It provides a substantial portion of the
18 recycling capabilities that the JPA is proposing.

19 So why would you not want this facility to go
20 forward? In addition, this facility or any facility that
21 is in a plan is but one piece of an overall integrated
22 waste management strategy. And that needs to be considered
23 very, very carefully.

24 If the communities were simply saying, we're
25 building this and that's it and it's only going to get us

1 to 30 percent well, maybe, you know, that might be
2 something frankly to look at with your SRRE, where are the
3 other programs that you're going to be proposing, but not
4 the facility itself.

5 We think that the existing board policy on
6 prevent and impair is -- is adequate. Frankly, after this,
7 I think I'm going to be chatting with my colleague from
8 CSAC and we may sponsor Legislation to simply repeal
9 prevent or impair so we don't have to go through this agony
10 on every permit.

11 I realize this is a difficult issue for some
12 Board Members, for the Board itself on where do you draw
13 the line. But I would say that you need to trust local
14 government. We have taken the challenge that AB 939 has
15 given us to the best of our ability, creatively put
16 together plans that in our judgment will achieve the goals.

17 It's not for the Board to micro-manage or to
18 second guess. Let us go off and do it. But if the Board
19 rejects this permit or changes its policy, sends a message
20 to local government that we're going to micro-manage your
21 program, and we are going to look at projects that are
22 contributing to achieving your diversion goal and instead
23 say, no, we think we're going to prevent your diversion
24 goal, then -- I don't know, maybe we should just repeal
25 AB 939.

1 It's that level of frustration that I think
2 you're going to find local governments facing.

3 So the key then from our perspective is it's not
4 what if, what if happens here, or what if happens there,
5 it's, what is. What will happen. And unless somebody can
6 point out something that absolutely determines that this
7 contract, this program, will prevent or impair then I don't
8 see that the Board has any legislative latitude but to
9 concur in the permit.

10 Thank you very much.

11 CHAIRMAN PENNINGTON: Thank you. We have three
12 more people who wish to speak.

13 I'd like to remind everybody that this meeting is
14 noticed to end at 4 o'clock. We still have to vote and
15 board members may have something. So I ask that the
16 remaining folks to be as brief as possible.

17 The next person is John Boss.

18 MR. BOSS: Excuse me, Mr. Chairman, Members of
19 the Board. I have to say -- first of all, John Boss,
20 EMCON, currently wearing my SWANA hat representing the
21 Three Chapters of SWANA in California.

22 And I have to say that it's not normally SWANA's
23 policy to talk at specific facility's permit hearings. But
24 like Yvonne for League of Cities this is a very important
25 policy that is being debated.

1 I'm going to be very short and say I agree with
2 what Denise Delmatier said. I think Yvonne has stated our
3 position very eloquently.

4 I just want to get up here and say that this is
5 very important for our member agencies. They are the
6 agencies that are responsible for developing the source
7 reduction recycling elements and the plans, and would like
8 to see facilities like this go forward as part of the mix
9 of facilities that our agencies would have for diversion.

10 So, again, we would hope that a decision is not
11 made that's going to send the wrong message to our member
12 agencies.

13 Thank you.

14 CHAIRMAN PENNINGTON: Thank you. Next is Jack
15 Michael.

16 MR. MICHAEL: Thank you, Mr. Chairman and Members
17 of the Board.

18 I'm Jack Michael representing Los Angeles County.
19 I, too, will be brief.

20 I think Yvonne and Denise are clearly outlining
21 the issues. I was one of those that Yvonne mentioned was
22 involved in the writing of AB 939, also very involved in
23 this issue. And I would point out that part of this
24 prevent or substantially impair issue came about as the
25 result of an alleged counsel drafting error in the writing

1 of AB 939 that has held the industry and local government
2 hostage since that time.

3 That drafting error in effect said that we
4 basically couldn't build any facilities, any type of any
5 facility relating to solid waste, from the time that 939
6 was passed until complete planning had been done by all the
7 local agencies, all the SRREs, all the integrated waste
8 plans, and that they were all adopted and approved by the
9 Board.

10 In retrospect maybe it would have been better
11 that we had not taken on this issue and simply not built
12 any of the facilities during that period of time. Maybe
13 some of our local governments wouldn't be bankrupt now, I'm
14 not sure.

15 However, out of that complication has driven us
16 to groups that want to revise continually what the intent
17 of not only AB 939 was and is, but what the efforts were,
18 the compromise efforts were to allow local government to
19 move forward to meet the objectives of 939.

20 I will simply indicate, as I have many, many
21 times to this Board, the Legislature enacted this law, AB
22 939. The only -- only people any place, the only entities
23 any place that the Legislature has imposed potential
24 sanctions on are local government. The Legislature has
25 imposed no sanctions on the Waste Board if diversion goals

1 are not met. Only imposed upon local government.

2 Rick mentioned that you as a Board had a
3 responsibility to make sure that there weren't contracts,
4 agreements, other measures that would hinder or frustrate
5 local government's ability to meet the diversion mandates.
6 I would ask Rick, and I have before, that maybe much of
7 what he does is hindering and frustrating local
8 government's ability to meet our requirements.

9 The policy that the Board adopted I think is
10 clearly within the law, clearly represents the law and the
11 intent of the law that the legislature passed on prevent or
12 substantially impair.

13 I see no reason why the Board should consider in
14 any way changing that policy. And I would ask that these
15 other considerations be put aside to allow local government
16 to move ahead with their programs.

17 The project before you I'm not taking a specific
18 position on but I find it rather interesting that a local
19 authority consisting of only the local governments would
20 somehow take actions that would hinder the ability of
21 themselves to meet their State mandates. I just find that
22 absurd. And I find nothing in the law that would give this
23 Board any authority or responsibility to rewrite a contract
24 between those local agencies.

25 So with that I would again encourage you to keep

1 the policy as it is. I think it's adequate. And I think
2 these issues are simply sidetracking our ability to meet
3 the mandates.

4 Thank you.

5 CHAIRMAN PENNINGTON: Thank you.

6 Denise Delmatier.

7 MS. DELMATIER: Thank you, Mr. Chairman. I just
8 needed do respond to a couple of things briefly.

9 Obviously, Rick, when he mentioned that I was not
10 at the hearing, of course, which I mentioned in my opening
11 remarks, wasn't aware, of course, that our fine friend,
12 Mr. John Kupps, provides a complete transcript of the
13 Committee hearings and the Board hearings.

14 And so I didn't actually sit in the Committee
15 hearing room and listen to Mr. Best's words once, I
16 reviewed his every word that he presented before the
17 Committee hearing several times.

18 And so I just wanted to make that clarification
19 that I was not responding on a whim. I was just responding
20 to the specific words that Mr. Rick Best presented before
21 the Committee hearing.

22 And then finally, just the distinction that
23 Mr. Best made and they do, CAW makes a distinction between
24 recyclable materials and waste, they're not one in the
25 same. My guidance is from the Rancho Mirage case and the

1 courts have spoken and recyclables are waste, and so that's
2 why we refer to them as waste because the courts refer to
3 them as waste.

4 Thank you.

5 CHAIRMAN PENNINGTON: Okay. Thank you. And
6 finally, Evan Edgar.

7 MR. EDGAR: Evan Edgar, Manager of Technical
8 Services, California Refuse Removal Council.

9 I'm not an applicant. I'm part of the local
10 majority, ditto to SWANA, League of Cities, NORCAL, et
11 cetera.

12 I think CAW has a case of "Rancho Carbones."

13 (Laughter.)

14 I hope it's not contagious, it's only a mirage.

15 So, I'll adopt to keep the current policy.

16 Thank you.

17 (Applause.)

18 CHAIRMAN PENNINGTON: Okay. Mr. Relis.

19 BOARD MEMBER RELIS: Mr. Chair, I realize we're
20 down to 25 minutes and we've got to get out of here so
21 I'll --

22 CHAIRMAN PENNINGTON: You're not going to take 20
23 minutes?

24 BOARD MEMBER RELIS: No, I'm not going to take 20
25 minutes. I may take five.

1 I prepared some comments and revised them in
2 light of the comments made here today, but let me try and
3 get through this. I hope that it will clarify what we're
4 doing here.

5 First of all, I think the issue of prevent and
6 impair, you know, it's been brought up we've heard the
7 authorities, the people both that -- who were at the table
8 at the time it was taken up. I know many people are
9 frustrated with this issue, but it is around, it's in the
10 law. We have an LEA advisory, et cetera, as to how we
11 expect it to be treated.

12 Some of us -- I know there are different views
13 about planning and diversion. People are interested in
14 cost-effective programs, some are interested in clean
15 materials versus sort of clean versus sort of dirty.
16 Anyway, these are really complex issues.

17 I'm interested in those just from the standpoint
18 of looking to cost-effective implementation of our law
19 because we want local governments to be successful. And
20 success means, can you afford it.

21 I think AB 939 does make it clear that our
22 decisions though on -- reach into second-guessing,
23 commenting about, did somebody make the right decision, or
24 is it sort of right, or could they have a cleaner material
25 and all, goes beyond our jurisdiction.

1 Our bottom line is, is there any evidence
2 indicating that concurrence in a permit will prevent or
3 substantially impair a jurisdiction's ability to meet the
4 25 and 50. That's the way the law reads.

5 Decisions about cost, about going beyond 50 or --
6 though interesting and interest some of us, are not law and
7 are not the requirements that local government must live
8 with.

9 There are provisions that were raised in this
10 contract, and I'll go back to the contract just because
11 this contract -- and I said in the Permits Hearing was --
12 is a creation of a probably four our five year old process.
13 As we learned today some of the provisions -- or some of
14 the contingencies that were in the legal language that have
15 been the source of discussion in legal clarification have
16 changed in the course of the time which this agreement was
17 even entered into.

18 And I think we should always be careful to read
19 into legal agreements reality because they -- while they're
20 legal we know that underlying assumptions, that upon which
21 those were based, could have changed in the time. We have
22 to know what those are and that's why I asked for a
23 clarification.

24 Now, if a few of the provisions in there -- let's
25 just say Placer County exercised a decision that prevented

1 recycling programs from occurring -- this is a
2 hypothetical -- but if an actual decision were made
3 could -- and it came to our attention -- and this is
4 something I'll wrap up with, then maybe there is an issue.

5 But I look at, based on Counsel's opinion that we
6 heard today and the law, AB 939, I would be very concerned
7 about what message we would be sending. And that's the
8 word, operative word I think is being used here, were we to
9 deny or even say we didn't, you know, provisionally like
10 what you do, because I think you in Placer County and the
11 parties did enter into this in good faith.

12 I visited your facility yesterday. I think I may
13 be the only Board Member that's been out there. It's an
14 impressive facility. It's a \$22 million diversion
15 facility. It's supposed to divert between, as I
16 understand, 20 percent, and that's contract. If you go
17 below it you get penalized. It hurts by about \$300
18 thousand a percent. With every percent they fall below
19 that's \$300 thousand. They get a 7 percent incentive for
20 above.

21 When asked -- and you know when I -- I've been
22 trying to understand what this facility is about and the
23 contracts, if that wood waste facility which you were
24 counting on 10 percent goes away, you have the ability I
25 understand -- and the local authorities told me they may

1 put this in their agreement, to increase to 30 percent
2 recovery.

3 So you're clearly -- your facility is a big piece
4 of the diversion. If we're to measure goodwill
5 commitment -- I've always said at this Board you'll know
6 them by their works. Did they do it or not. You can talk
7 about programs but there it is. It's real.

8 And I said I was very skittish about saying
9 something or had Board second-guessing a final agreement.

10 I'm glad CAW spoke to that point because that
11 would be of great concern. So I don't want to send the
12 wrong message. I support you. I hope the Board does in
13 their decision and votes for the facility.

14 There was a comment that perhaps we need to deal
15 with the question outside of this permit -- outside of this
16 permit about what happens down the line because -- this is
17 in our LEA advisory.

18 It says in our LEA, in the policy under
19 subsequent to concurrence -- I draw your attention to our
20 statement subsequent to concurrence, "If the Board or LEA
21 receives information on existing contracts or other
22 relevant information subsequent to concurring in the
23 permit, which may potentially prevent or impair to achieve
24 the goals, Board staff and LEA shall review the contract or
25 other information in the jurisdiction's SRRE and any other

1 relevant information for consistency."

2 My concern as a Board Member, because we had a
3 contract fall our way just a week or so ago, and as a Board
4 Member speaking as one, it's very difficult to deal with
5 matters like that.

6 A contract comes your way, is it valid, is it not
7 valid from the standpoint of prevent or impair. So we have
8 to ask legal counsel and scurry about -- and I'm concerned
9 that in future permits should these come our way, how are
10 we going to deal with it and how are we going deal with the
11 subsequent issues.

12 So that represents what I think lies ahead. So I
13 would just ask two questions.

14 What steps can the Board take if any new evidence
15 indicating prevent or impair comes to light after a permit
16 has been issued? What do we do? I don't know. I'm just
17 stating this.

18 Secondly, what do we expect of LEAs in terms of
19 the policy requirements that they make a finding about
20 prevent and impair, what if -- I'm concerned about what
21 we're going to hear or whether nothing is heard and we have
22 an agreement thrown our way, what do we do about it,
23 because I think those may come up in the future.

24 I fully support this permit.

25 CHAIRMAN PENNINGTON: Mr. Frazee.

1 VICE CHAIRMAN FRAZEE: Thank you, Mr. Chairman.
2 The arguments that have been brought forward in opposition
3 to issuing this permit are more appropriately attempting to
4 make changes in the contract associated with this permit
5 are all based on a series of what ifs. And I'd like to
6 think -- Yvonne said my words, add one to that, what if the
7 legislature repealed 949.

8 And I think you'll have to admit after this year
9 with the legislature that's not beyond the realm of reason.
10 That could possibly happen. It could possibly happen.

11 So the whole argument then centers around the
12 contractual arrangement that's been made between the
13 member agencies and the operating authority, the
14 joint-powers agency in this case.

15 And I'd like to quote from Mr. Best's letter to
16 this Board. "As we have seen with the San Marcos MRF these
17 facilities don't always live up to their expectations."
18 And that's appropriate I think.

19 And I know a little something about the San
20 Marcos MRF because not only will I be paying for it the
21 rest of my life, my children and grandchildren will be
22 paying for the San Marcos MRF, and it's not providing one
23 ounce of service, not processing one pound of waste at this
24 point. And no source of revenue to meet a \$136 million
25 debt that the County of San Diego has incurred.

1 What went wrong with the San Marcos MRF? Failure
2 to have contracts in hand to guarantee input. There's
3 other factors, the over-building and the extreme cost of
4 the facility had a bearing on it, but the thing that caused
5 it to shut down was that there was no guarantee of flow of
6 input.

7 So what happened was that the jurisdictions that
8 found a cheaper solution were utilizing that, and at the
9 same time every jurisdiction went to curbside recycling and
10 were taking their materials somewhere else and nothing was
11 flowing through this facility except the total input, which
12 had already been curbsided through that facility.

13 So we couldn't -- it had been handpicked once.
14 And there was not enough revenue to meet the daily
15 operational cost, let alone the debt service on a \$136
16 million facility.

17 So that -- here we have a case where these folks
18 have avoided that pitfall and are prepared to make a
19 success of this, and I just want to applaud them for the
20 efforts that they have made. And I think they're going to
21 do a magnificent job of meeting their goals with this kind
22 of facility.

23 CHAIRMAN PENNINGTON: Thank you.

24 Mr. Chesbro.

25 BOARD MEMBER CHESBRO: Mr. Chair, I'd like to

1 begin by commenting on the tenor of the testimony and the
2 discussion.

3 I for one feel that this is a legitimate point of
4 discussion. And I read 939, I read these provisions; I
5 read Mr. Cortese's letter repeatedly when we deal with
6 these things. And I don't believe the legislature acted
7 for no reason.

8 There is a provision in the law and I think we as
9 a Board have to look at it and try to interpret it. And
10 that's a legitimate discussion.

11 And I'm concerned a little bit today that there's
12 been an implication at some of the comments, that simply
13 discussing it calls into question whether 939 should exist,
14 whether or not local government should trust the Board,
15 whether or not we're, the Board, is trustful of the
16 government, et cetera, et cetera. And that's quite
17 frustrating to me. Because while I don't intend to leap to
18 any conclusions on these issues I think they're complex.

19 And some very legitimate arguments have been made
20 today that have swayed me. This continual undercutting of
21 the idea that it's a legitimate point for debate and that
22 we should somehow just shove it aside, never discuss it and
23 ignore it, is something that I, as a Board Member, feel
24 that I would be derelict in my duty if I followed that
25 advice. So I just have to say that first of all to get

1 that out of the way.

2 Now, secondly, my concerns for this contract are
3 fairly specific and fairly narrow. I looked at the
4 provisions and I came across, what appeared to me to be
5 provisions which would make it more difficult for a local
6 government to implement, who was a party to this agreement,
7 to implement programs that are identified in their SRRE, or
8 SRREs, plural, and that might be necessary in order to
9 achieve 50 percent if this facility did not accomplish
10 that. And that's specifically a narrow legal source of my
11 questioning on this issue.

12 I think that Mr. Dickinson pointing out a list of
13 programs that have been implemented since the contract has
14 been agreed to certainly indicates that it's not been
15 utilized to date in the way that the fears have been
16 expressed that it might be. That doesn't mean that it
17 couldn't be or it wouldn't be.

18 And I have to say that my reading of the
19 language, and I respect very much the analysis and other
20 opinions, but my reading of the language would indicate
21 that a provision that -- that could be utilized to create
22 obstacles to implementation of programs that are identified
23 in the SRRE is something that we ought be sending out a
24 message about. I don't want to wait until the year 2000 to
25 tell the local government that that's a concern that I as a

1 Board Member have or this Board has.

2 And so I think it's a completely legitimate
3 discussion. I'm sorry about the uncertainty. I'm sorry
4 that this has to -- this kind of discussion has to take
5 place at the end of the process. That's part of the nature
6 of our Board's permitting role, is that we're reviewing the
7 process. But perhaps by having the discussion it might be
8 discussed earlier on in the process by some other local
9 governments and questions might be asked earlier on as a
10 result of today's discussions.

11 So, I don't think it's illegitimate at all.

12 I am reassured about the current practice. I
13 said earlier that I'm impressed with the facility and the
14 efforts that the jurisdictions have made to get this
15 facility in place.

16 I, like Mr. Relis though, wonder what happens in
17 the future. I wonder how do we monitor and be assured as a
18 Board that in fact these provisions don't prevent or
19 impair.

20 And I would like to see us, when we act today on
21 this, include provisions which would direct our staff to
22 monitor through the annual reporting process and any other
23 evidence that comes to light, how these provisions have
24 been implemented so we could look at the permit, if, in
25 fact, they were implemented that way, because I think they

1 could be used that way.

2 On the other hand, there's no evidence that the
3 jurisdictions have attempted to use them that way today or
4 intend to.

5 So -- and so just to summarize let me say, again,
6 I think this issue will continue to come up until the gap
7 is closed and we have an Integrated Waste Management Plan.

8 I think the evidence submitted or debated about,
9 whether there is evidence or whether it's legitimate
10 evidence is an important part of our discussions with
11 regards to permits. I think the Legislature told us it was
12 an important part and I intend to continue to look at
13 permits from that standpoint.

14 I also don't intend to try to micro-manage local
15 governments and tell them how to operate their facilities.
16 And that's not my intention for asking these questions.

17 When we get to the point of the motion I would
18 like to see us address somehow the question of how we are
19 going to monitor the operation of the facility and the
20 implementation of the SRREs to be assured that we don't
21 have a situation that is -- at least until the gap is
22 closed that prevents or impairs.

23 CHAIRMAN PENNINGTON: Okay. Thank you,
24 Mr. Chesbro. Anybody else want to make a statement? Okay.
25 Then I think we are prepared for a motion.

1 BOARD MEMBER CHESBRO: Well, I'll make a motion.

2 CHAIRMAN PENNINGTON: Why is that not surprising
3 to me?

4 BOARD MEMBER CHESBRO: I'll make a motion that we
5 approve the facility permit but that we also direct staff
6 to monitor, this is not a permit condition this is a
7 direction to staff, that we monitor the implementation of
8 the SRREs through the annual report from the reports from
9 the jurisdictions, and any other evidence that's submitted
10 to us, to ascertain whether or not these provisions, if
11 there's any evidence that these provisions have been used
12 or are being used to prevent or impair achievement of the
13 diversion mandates, and that, that be reported to the
14 Board, back to the Board, as an agenda item for discussion
15 if -- if that evidence emerges.

16 VICE CHAIRMAN FRAZEE: Mr. Chairman.

17 CHAIRMAN PENNINGTON: Yes.

18 VICE CHAIRMAN FRAZEE: Is there a second?

19 BOARD MEMBER GOTCH: I'll second that.

20 VICE CHAIRMAN FRAZEE: I'm going to offer a
21 substitute motion, Mr. Chairman, that the Board adopt
22 Permit Decision number 95-692.

23 BOARD MEMBER EGIGIAN: I'll second that.

24 CHAIRMAN PENNINGTON: Okay. Let's --

25 VICE CHAIRMAN FRAZEE: Discussion, if I could.

1 CHAIRMAN PENNINGTON: Sure.

2 VICE CHAIRMAN FRAZEE: Mr. Chesbro's suggestion
3 is certainly appropriate. I think it's a subject area that
4 ought to go back through the process, the agenda items, and
5 be discussed, but I don't think it's appropriate in terms
6 of tagging it on to one specific permit.

7 CHAIRMAN PENNINGTON: Okay.

8 BOARD MEMBER CHESBRO: Mr. Chairman, it's my
9 impression, and I'm trying to find the LEA advisory, but
10 it's my impression that it's completely consistent with the
11 LEA advisory that we would send out relative to the
12 question of, of after the permit is granted. And so, I
13 don't see it as a major departure policy wise.

14 And it certainly addresses I think the, the
15 question of the, the questions that have been raised
16 relative to prevent and impair, prevent or substantially
17 impair.

18 BOARD MEMBER RELIS: Can I speak to I guess the
19 substitute motion?

20 CHAIRMAN PENNINGTON: Yes.

21 BOARD MEMBER RELIS: My interest would be to see
22 that we have a general report. I'm not interested so much
23 in singling this project out because this is relevant in
24 many projects. So if, if there was interest in just sum
25 general procedures that we knew about these things I think

1 it would be more appropriate.

2 CHAIRMAN PENNINGTON: Okay. Any other
3 discussion?

4 BOARD MEMBER CHESBRO: Mr. Chairman, my concern
5 is that, you know, it's not every -- we wouldn't create a
6 new significant staff burden relative to a new activity
7 when there are only some projects where evidence, or
8 alleged evidence has come forth as to questions of, of
9 whether or not a project would prevent or impair. And so I
10 really think that it's more appropriate to focus, if any,
11 any special staff effort on these instances.

12 CHAIRMAN PENNINGTON: Okay. Any other discussion
13 on the substitute motion?

14 MS. DELMATIER: Mr. Chairman, if I might just ask
15 for a point of clarification. I'm assuming, Mr. Chesbro,
16 that on your motion, that the direction to staff to monitor
17 post the permit being issued, would be based upon the
18 existing Board policy criteria that's contained in the LEA
19 advisory?

20 BOARD MEMBER CHESBRO: There's no other Board
21 policy at this point.

22 MS. DELMATIER: Right. Thank you.

23 BOARD MEMBER CHESBRO: On the other hand, let me
24 say that it's not -- please, I'm not talking to you I'm
25 talking to the person in the back of the room. It's not --

1 I think -- I don't think that that would be applicable with
2 regard to the question of the LEA being the only source of
3 information waiting for that. I think it is asking staff
4 to take a slightly more active role. When they get the
5 annual report they look at it and ask questions relative --

6 MS. DELMATIER: Sure.

7 BOARD MEMBER CHESBRO: -- relative to the
8 implementation of programs.

9 MS. DELMATIER: Sure. But based upon the
10 existing Board policy whether or not it's the LEA or staff
11 or -- it's the two criteria that the Board has already
12 adopted?

13 BOARD MEMBER CHESBRO: That's my understanding.

14 CHAIRMAN PENNINGTON: Okay. I think we're ready
15 to vote on the substitute motion which was offered by
16 Mr. Frazee.

17 BOARD MEMBER GOTCH: Mr. Frazee, with your
18 motion, I just wanted to verify, that part of your motion
19 is that we can bring this issue back to Committee the
20 concerns that Mr. Relis and Mr. --

21 VICE CHAIRMAN FRAZEE: Let me indicate, I would
22 be willing to vote for Mr. Chesbro's second part of the, of
23 his motion as of a separate item, but to condition this
24 particular one that -- I'd like to get this permit over and
25 out of the way. And to bring that whole subject, because

1 it's general, because it doesn't apply specifically to this
2 preliminary item --

3 CHAIRMAN PENNINGTON: That's the way I understand
4 it, Mr. Frazee, as separate, two issues. Would you call
5 the roll.

6 COMMITTEE SECRETARY KELLY: Board Member Chesbro?

7 BOARD MEMBER CHESBRO: No.

8 COMMITTEE SECRETARY KELLY: Egigian?

9 BOARD MEMBER EGIGIAN: Aye.

10 COMMITTEE SECRETARY KELLY: Frazee?

11 VICE CHAIRMAN FRAZEE: Aye.

12 COMMITTEE SECRETARY KELLY: Gotch?

13 BOARD MEMBER GOTCH: Aye.

14 COMMITTEE SECRETARY KELLY: Relis?

15 BOARD MEMBER RELIS: Aye.

16 COMMITTEE SECRETARY KELLY: Chairman Pennington?

17 CHAIRMAN PENNINGTON: Aye. The motion carries.

18 BOARD MEMBER RELIS: Mr. Chairman, we would take
19 up, take up the information.

20 CHAIRMAN PENNINGTON: If somebody offers a
21 motion. I would have to offer a motion for the second
22 part.

23 BOARD MEMBER CHESBRO: Well, I would -- in order
24 to -- as we did this morning, separate the questions, I
25 would make the second part of my motion relative to

1 direction to staff. And I'd be happy to add to that the
2 referral to the Committee on a general topic how we respond
3 in these situations.

4 CHAIRMAN PENNINGTON: Okay. You want -- is that
5 your motion?

6 BOARD MEMBER CHESBRO: Yes.

7 CHAIRMAN PENNINGTON: Okay.

8 MR. CHANDLER: Excuse me. I need clarification.
9 The motion is how we respond to these situations? Is that
10 what we're being asked to do?

11 BOARD MEMBER CHESBRO: It's both. The motion is
12 both the specific direction with regards to monitoring the
13 implementation of the programs and these SRREs, as was the
14 second part of my earlier motion, and a referral to the
15 Permits Committee on the general question of how to deal
16 with similar situations.

17 MS. RICE: Would that be distinct and apart from
18 the staff's review of the annual reports from jurisdictions
19 on the implementation?

20 BOARD MEMBER CHESBRO: That was part of the
21 motion with regards to this particular situation.

22 MS. RICE: Okay. But that's required for all
23 jurisdictions as well.

24 BOARD MEMBER CHESBRO: Yes, but the original
25 intent of my earlier motion, and I restated it, am

1 restating it, that a specific review of the question of
2 whether or not programs were being prevented from
3 implementation or impaired from implementation as a result
4 of contract provisions be part of their annual review of
5 their annual -- of their annual report, I should say.

6 MS. RICE: For these jurisdictions rather than
7 for all jurisdictions?

8 BOARD MEMBER CHESBRO: These jurisdictions. But
9 the general -- I also included a general referral of the
10 subject for other jurisdictions where these questions come
11 up to Mr. Frazee's Committee.

12 BOARD MEMBER RELIS: I'm confused. I thought the
13 second part, what Mr. Frazee presented, was a general
14 reporting that wasn't specific --

15 BOARD MEMBER CHESBRO: Well, my motion is
16 specific and general. It's specific to this situation and
17 a general referral for Mr. Frazee's Committee.

18 CHAIRMAN PENNINGTON: Maybe it would be helpful
19 if you could restate your motion so that we are clear on
20 it.

21 BOARD MEMBER CHESBRO: Okay. Direct the -- the
22 Board direct staff to, as a part of the annual reporting
23 process for the jurisdictions that are party to this
24 agreement, make a specific review of the question of
25 whether or not these contract provisions are being

1 implemented in a way that is preventing implementation of
2 programs that are identified in the SRRE, and therefore
3 achievement of the diversion mandates, that's the first
4 part.

5 The second part is to refer to Mr. Frazee's
6 Committee the general question of monitoring potential for
7 prevent and substantially impair questions on permits in
8 the future, which is I think is what he had been asking
9 for, what he said he was in favor of; is that correct? I'm
10 trying to get at --

11 VICE CHAIRMAN FRAZEE: Well, again, Mr. Chesbro,
12 you've covered two subjects in the same motion. And I
13 agreed that I would vote for the general part of it but not
14 if it ties specifically to this permit.

15 BOARD MEMBER EGIGIAN: Mr. Chairman.

16 CHAIRMAN PENNINGTON: Yes.

17 BOARD MEMBER EGIGIAN: I was ready to go along
18 with Mr. Chesbro on this if it was for information that
19 would improve his understanding and our understanding of
20 what he's asking for. However, that was conditioned on the
21 fact that we get a six vote on the permit, and if we didn't
22 get a six vote on the permit then I could not go along with
23 it or support it or second it.

24 CHAIRMAN PENNINGTON: All right. Hearing no
25 second the motion fails.

1 BOARD MEMBER RELIS: Mr. Chairman, could we go
2 back then just to getting the general reporting, which is
3 what Mr. Frazee, I think, had put forward. Are we still
4 willing to do that?

5 CHAIRMAN PENNINGTON: Certainly.

6 BOARD MEMBER RELIS: For general information.

7 VICE CHAIRMAN FRAZEE: For general review --

8 BOARD MEMBER RELIS: Because I think that's what
9 we're looking at, whether this case or others.

10 CHAIRMAN PENNINGTON: You want to make a motion?

11 BOARD MEMBER RELIS: I'll defer it to Mr. Frazee,
12 if he wishes.

13 VICE CHAIRMAN FRAZEE: Go ahead.

14 (Laughter.)

15 BOARD MEMBER RELIS: I make a motion that we get
16 a general reporting of the issue of whether there would
17 be -- that would make us aware of any contractual or other
18 agreements that would lead to prevent or impair, or that
19 would prevent or impair, and how that would be done, leave
20 to staff to figure out for further direction.

21 CHAIRMAN PENNINGTON: So, what you're really
22 saying is to refer this issue --

23 BOARD MEMBER RELIS: Yes. That's correct.

24 BOARD MEMBER CHESBRO: Before we go on,
25 Mr. Chair --

1 CHAIRMAN PENNINGTON: Yes.

2 BOARD MEMBER CHESBRO: I'll vote in favor with
3 the motion, but I want to point out that for some time this
4 subject has been a Committee overlap question. It involved
5 both planning issues and permit issues.

6 And so in support of the motion I want to make it
7 clear that we are talking about the narrow application as
8 it relates to permits and not, you know, a broader
9 reporting question on implementation of SRREs.

10 And with that part -- and I've accepted in the
11 past that the question of prevent or impair is a Permits
12 Committee item, but it is an overlap planning issue. So, I
13 just wanted to clear that up.

14 CHAIRMAN PENNINGTON: Okay. I understand. Is
15 the staff clear on what we're doing here?

16 MR. CHANDLER: At this hour I'd say we are clear.
17 I certainly would want to come back to you and indicate in
18 a memo how we understand this motion to be at our
19 acceptance of your direction, to bring it back to Committee
20 to further meet your needs in this area of getting
21 clarification on this general approach that has just been
22 offered as a motion, should the Board adopt that motion.

23 CHAIRMAN PENNINGTON: And as I understand this is
24 Mr. Relis's motion and Mr. Frazee has seconded; is that
25 correct?

1 VICE CHAIRMAN FRAZEE: Yes.

2 CHAIRMAN PENNINGTON: Being no further discussion
3 would the secretary call the roll, please.

4 COMMITTEE SECRETARY KELLY: Board Member Chesbro?

5 BOARD MEMBER CHESBRO: Aye.

6 COMMITTEE SECRETARY KELLY: Egigian?

7 BOARD MEMBER EGIGIAN: I don't know.

8 (Laughter.)

9 COMMITTEE SECRETARY KELLY: I don't have a column
10 for that.

11 BOARD MEMBER EGIGIAN: Is that something that
12 could go down in the record? I vote yes.

13 COMMITTEE SECRETARY KELLY: Frazee?

14 VICE CHAIRMAN FRAZEE: Aye.

15 COMMITTEE SECRETARY KELLY: Gotch?

16 BOARD MEMBER GOTCH: Aye.

17 COMMITTEE SECRETARY KELLY: Relis?

18 BOARD MEMBER RELIS: Aye.

19 COMMITTEE SECRETARY KELLY: Chairman Pennington?

20 CHAIRMAN PENNINGTON: I'll make it unanimous.

21 Aye.

22 BOARD MEMBER CHESBRO: 939 is not threatened.

23 BOARD MEMBER EGIGIAN: Mr. Chairman?

24 CHAIRMAN PENNINGTON: Yes, Mr. Egigian.

25 BOARD MEMBER EGIGIAN: Can we ask staff to pull

1 out of the testimony that Ms. Delmatier gave on the various
2 points outlining the question of the impair and --

3 CHAIRMAN PENNINGTON: Certainly.

4 BOARD MEMBER EGIGIAN: Okay. I would like to
5 have that in the --

6 MR. CHANDLER: In the appendix?

7 BOARD MEMBER EGIGIAN: Yes. Please.

8 MR. CHANDLER: We'll append the item.

9 BOARD MEMBER EGIGIAN: I'd like to congratulate
10 her on, and both those ladies sitting together there, on a
11 clear explanation. Usually the explanation is not that
12 clear.

13 CHAIRMAN PENNINGTON: Staff would be happy to do
14 that.

15 The next item on our agenda is open discussion.
16 I would say we've had plenty of open discussion.

17 So, therefore, the meeting is adjourned.

18 There will be an executive session of the Board
19 immediately following this meeting. Thank you.

20 (Thereupon the foregoing meeting
21 was concluded at 4:15 P.M.)

22

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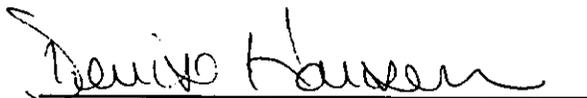
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1 CERTIFICATE OF SHORTHAND REPORTER
2

3 I, DENISE HANSEN, a Shorthand Reporter, in and
4 for the State of California, do hereby certify that I am
5 a disinterested person herein; that I reported the foregoing
6 hearing in shorthand writing and thereafter caused my
7 shorthand writing to be transcribed by computer.

8 I further certify that I am not of counsel or
9 attorney for any of the parties to said proceedings,
10 not in any way interested in the outcome of said
11 proceedings.

12 IN WITNESS WHEREOF, I have hereunto set my
13 hand as a Shorthand Reporter on the 28th day
14 of September, 1995.

15 
16

17 Denise Hansen

18 Shorthand Reporter
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