

California Environmental Protection Agency
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
8800 Cal Center Drive
Sacramento, CA 95826
(916) 255-2200

Thursday, February 19, 1998
9:30 a.m.

meeting of the

PERMITTING AND ENFORCEMENT COMMITTEE

Robert C. Frazee, Chairman
Steven R. Jones, Member

AGENDA

Note:

- *Agenda items may be taken out of order.*
- *If written comments are submitted, please provide 15 two-sided copies in advance of the Committee meeting and include on the first page of the document the date, the name of the committee, the agenda item number, and the name of the person submitting the document.*
- *Public testimony may be limited to five minutes per person.*
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Important Notice: The Board intends that Committee Meetings will constitute the time and place where the major discussion and deliberation of a listed matter will be initiated. After consideration by the Committee, matters requiring Board action will be placed on an upcoming Board Meeting Agenda. Discussion of matters on Board Meeting Agendas may be limited if the matters are placed on the Board's Consent Agenda by the Committee. Persons interested in commenting on an item being considered by a Board Committee or the full Board are advised to make comments at the Committee meeting where the matter is considered.

Some of the items listed below may be removed from the agenda prior to the Committee meeting. To verify whether an item will be heard, please call the Committee Secretary, Lori Lopez, at (916) 255-2167.

1. REPORT FROM THE DEPUTY DIRECTOR OF THE PERMITTING AND ENFORCEMENT DIVISION
2. CONSIDERATION OF APPROVAL TO BEGIN A 45-DAY PUBLIC COMMENT PERIOD FOR THE SOLID WASTE DISPOSAL AND CODISPOSAL SITE CLEANUP PROGRAM REGULATIONS (AB 2136) 2-1
3. CONSIDERATION OF AMENDMENT TO POLICIES IN THE PROPOSED WASTE TIRE REMEDIATION AND STABILIZATION CONTRACT AND REALLOCATION OF 1997-98 FUNDING UNDER THE WASTE TIRE STABILIZATION AND ABATEMENT PROGRAM 3-1
4. PRESENTATION OF WASTE TIRE ENFORCEMENT ACTIONS TAKEN DURING THE 1997 CALENDAR YEAR 4-1
5. OPEN DISCUSSION
6. ADJOURNMENT

Notice: The Board or the Committee may hold a closed session to discuss the following: confidential tax returns, trade secrets, or other confidential or proprietary information of which public disclosure is prohibited by law; the appointment or employment of a public employee; or litigation under authority of Government Code Sections 11126 (a)(1), (c)(3), (15), and (e), respectively.

For further information or copies of agenda items, please contact:

INTEGRATED WASTE MANAGEMENT BOARD
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California Integrated Waste Management Board

Permitting and Enforcement Committee

February 19, 1998

AGENDA ITEM 2

ITEM:

CONSIDERATION OF APPROVAL TO BEGIN A 45-DAY PUBLIC COMMENT PERIOD FOR THE SOLID WASTE DISPOSAL AND CODISPOSAL SITE CLEANUP PROGRAM REGULATIONS (AB2136)

I. SUMMARY

This item requests approval to submit a 45-day Notice to the Office of Administrative Law for the draft regulations for the Solid Waste Cleanup Program.

II. PREVIOUS (BOARD OR COMMITTEE) ACTION

The Board approved implementation of the Solid Waste Cleanup Program on February 24, 1994. Approval included the Program Flow Chart and guidelines for cleanup of sites through matching grants to local governments, loans to responsible parties and local governments, grants to local enforcement agencies for cleanup of illegal disposal sites, and direct site cleanups using Board-managed contracts.

III. OPTIONS FOR THE BOARD OR COMMITTEE

Committee members may:

1. Direct staff to submit a 45-day Notice to the Office of Administrative Law for the attached draft regulations without revisions.
2. Direct staff to submit a 45-day Notice to the Office of Administrative Law for the attached draft regulations with revisions.
3. Direct staff to conduct informal workshops regarding the draft regulations and return to the Committee for approval to submit a 45-day Notice to the Office of Administrative Law at a future meeting.

IV. STAFF RECOMMENDATION

Staff recommend that the Committee direct staff to submit a 45-day Notice to the Office of Administrative Law for the attached draft regulations without revisions.

V. ANALYSIS

Public Resources Code section 48020 required the Board to initiate the Solid Waste Cleanup Program on January 1, 1994. Public Resources Code section 48025 states that the Board may

adopt regulations for the implementation of the Solid Waste Cleanup Program.

The Board approved implementation of the Solid Waste Cleanup Program on February 24, 1994. Approval included the Program Flow Chart and guidelines set forth in policy for cleanup of sites through matching grants to local governments, loans to responsible parties and local governments, grants to local enforcement agencies for cleanup of illegal disposal sites, and direct site cleanups using Board-managed contracts. The proposed regulations are based primarily on the policies previously adopted by the Board.

VI. ATTACHMENTS

1. Draft Regulations for the Solid Waste Cleanup Program

VII. APPROVALS

Prepared By:	<u>Wes Mindermann</u> <i>W-M</i>	Phone:	<u>(916) 255-1193</u>
Prepared By:	<u>Marge Rouch</u> <i>M-R for MR</i>	Phone:	<u>(916) 255-2347</u>
Reviewed By:	<u>Charlene Herbst</u> <i>CH</i>	Phone:	<u>(916) 255-2301</u>
Reviewed By:	<u>Dorothy Rice</u> <i>D. Rice</i>	Phone:	<u>(916) 255-2431</u>
Legal Review:	<u>Suzanne Small</u> <i>Suzanne Small</i>	Date/Time:	<u>2/5/98</u>

Chapter 10. Solid Waste Cleanup Program

Article 1. Authority

§ 18900. Scope.

(a) Regulations contained herein are promulgated pursuant to Public Resources Code Article 2.5 of Chapter 2 of Part 7 of Division 30. The regulations implement the Solid Waste Cleanup Program, a program for the cleanup of solid waste at disposal sites and solid waste at codisposal sites where the responsible party either cannot be identified or is unable or unwilling to pay for timely remediation and where cleanup is needed to protect public health and safety and/or the environment.

(b) In implementing this program the Board is vested, in addition to its other powers, with all the powers of an enforcement agency under Division 30 of the Public Resources Code.

(c) In administering the program authorized by Public Resources Code section 48020 et seq. the Board may:

- (1) Expend funds directly for remedial action;
- (2) Provide loans to responsible parties who demonstrate the ability to repay state funds for remedial actions on solid waste disposal sites and codisposal sites;
- (3) Provide matching grants to local governments for remedial actions on solid waste disposal sites and codisposal sites; and
- (4) Provide grants to certified local enforcement agencies for the abatement of illegal disposal sites.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48021(b), 48021(c), and 48023(b), Public Resources Code.

Article 2. Definitions

§ 18901. Definitions.

For the purposes of this Chapter:

- (a) "Abandoned site" means a site where no responsible party can be identified or located.
- (b) "Agreement" means a memorandum of understanding between the Board and a local government.

1 (c) "Applicant" means a person or an entity applying for a loan, matching grant, grant, or remediation
2 managed by the California Integrated Waste Management Board.

3 (d) "Board" means the California Integrated Waste Management Board.

4 (e) "Borrower" means an applicant whose loan application has been approved and who has executed a loan
5 agreement.

6 (f) "Closed site" means a disposal site that has ceased accepting waste and was closed in accordance with
7 applicable statutes, regulations, and local ordinances in effect at the time.

8 (g) "Codisposal site" means a hazardous substance release site listed pursuant to section 25356 of the
9 Health and Safety Code where the disposal of hazardous substances, hazardous wastes, and solid waste have
10 occurred.

11 (h) "Grant recipient" means an applicant whose grant application has been approved and who has executed
12 a grant agreement pursuant to Public Resources Code section 48021(b).

13 (i) "Illegal disposal site" means:

14 (1) A site where unauthorized disposal of solid waste has taken place to the extent that cleanup may be
15 required to protect public health and safety and/or the environment, and

16 (2) The site is not permitted and not exempt from obtaining a permit and is not closed or excluded from the
17 requirement to obtain a Solid Waste Facilities Permit.

18 (j) "Local government" means a local public entity which is a county, city, district, or any other political
19 subdivision deemed eligible by the Board, but does not include the State.

20 (k) "Nuisance" includes anything which is injurious to human health or is indecent or offensive to the
21 senses and interferes with the comfortable enjoyment of life or property, and affects at the same time affects an
22 entire community, neighborhood, household or any considerable number of persons although the extent of the
23 annoyance or damage inflicted upon an individual may be unequal and which occurs as a result of the storage,
24 removal, transport, processing or disposal of solid waste.

25 (l) "Remedial action" means any action to abate, prevent, minimize, stabilize, mitigate, or eliminate a threat
26 to public health and safety and/or the environment.

1 (m) "Repayment amount" means the amount equal to the amount expended by the Board for cleanup, a
2 reasonable amount for Board's cost of contract administration, and an amount equal to the interest that would have
3 been earned on the funds expended for cleanup.

4 (n) "Responsible party" means:

5 (1) Any individual; trust; firm; joint stock company; Native American tribe; corporation, including a
6 government corporation; partnership; joint venture; association; city; county; district; the state, including any
7 department or agency thereof; or any department or agency of the United States to the extent authorized by federal
8 law, who at the time of disposal of any solid waste owned the property;

9 (2) The present owner or operator of the site at which solid waste has been deposited;

10 (3) Any individual; trust; firm; joint stock company; Native American tribe; corporation, including a
11 government corporation; partnership; joint venture; association; city; county; district; the state, including any
12 department or agency thereof; or any department or agency of the United States to the extent authorized by federal
13 law who by contract, agreement or otherwise arranged for the transportation to and/or disposal of solid waste at the
14 site;

15 (4) Any individual; trust; firm; joint stock company; Native American tribe; corporation, including a
16 government corporation; partnership; joint venture; association; city; county; district; the state, including any
17 department or agency thereof; or any department or agency of the United States to the extent authorized by federal
18 law who was the owner or custodian of the solid waste that was deposited on the site.

19 (5) The term "responsible party," as defined above, may only be construed within the context of this Article
20 and Public Resources Code sections 48020 et seq. and shall not be interpreted under any other local, state, or federal
21 statute.

22 (o) "Responsible party is unable to pay" means:

23 (1) The responsible party does not currently, or would not within a time frame considered by the Board to
24 be reasonable for timely site remediation, have the financial ability, as verified by independent audit, financial
25 statements, or other documentation acceptable to Board, to pay the costs of remediation necessary to protect the
26 public health and safety and/or the environment and has made reasonable efforts to raise funds for cleanup.

(2) The responsible party does not have the legal power or authority to perform required site cleanup.

1 (p) "Responsible party is unwilling to pay" means:

2 (1) The responsible party has financial ability to pay for the costs of remediation necessary to protect public
3 health and safety and/or the environment, has been issued an enforcement order to perform remediation, and has
4 refused to comply with the order, or

5 (2) The responsible party has otherwise demonstrated unwillingness to pay.

6 (q) "Responsible party cannot be identified" means the responsible party cannot be identified or found after
7 a search of public records, investigation, and consultation with other enforcement agencies.

8 (r) "Threat" or "threaten" means a condition creating a probability of substantial harm, when the
9 probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or
10 mitigate damages to persons, property, natural resources, or the public health or safety.

11 (s) "Trust Fund" means the Solid Waste Disposal Site Cleanup Trust Fund created pursuant to Public
12 Resources Code section 48027 of Article 2.5 of Chapter 2 of Part 7 of Division 30.

13 (t) "Surplus Money Investment Fund" means the fund in which excess state moneys are invested until the
14 money is needed for its intended purpose. The fund is administered by the state treasurer's office.

15 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.

17 **Article 3. Site Selection and Ranking Criteria**

18 **§ 18902. Site Eligibility.**

19 Candidate sites may be eligible for funding if:

20 (a) The site is a solid waste disposal site, codisposal site, or illegal disposal site as defined in Section
21 18901;

22 (b) The responsible party either cannot be identified, located, or is unable or unwilling to pay for timely and
23 proper remediation; and

24 (c) Remedial action is required to protect public health and safety and/or the environment.

25 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020(b) and
26 48021(c), Public Resources Code.

1 **§ 18903. Site Prioritization.**

2 (a) The Board shall prioritize sites for eligibility based on the following factors:

3 (1) The ability of the site owner and or responsible parties to promptly and properly remediate the site
4 without monetary assistance;

5 (2) The ability of the Board to adequately remediate the site with available funds;

6 (3) The maximization of available funds;

7 (4) The availability of other appropriate federal or state response mechanisms to respond to the threat;

8 (5) The actual or potential degree of risk to public health and safety and/or the environment posed by
9 conditions at the site as determined either by:

10 (A) The Solid Waste Ranking System for solid waste disposal sites, including burn dumps, and codisposal
11 sites; or

12 (B) The Illegal Disposal Site Ranking System for illegal disposal sites.

13 (6) The ability of the Board to obtain site access for the proposed remediation

14 (7) Other situations or factors that may pose threats to the public health and safety and/or the environment.

15 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020(b) and
16 48021(a), Public Resources Code.

17
18 **§ 18904. Eligible and Ineligible Remedial Actions.**

19 (a) Remedial actions taken pursuant to the Solid Waste Cleanup Program shall, to the extent practicable,
20 contribute to the efficient performance of any anticipated long-term remedial action with respect to the specific
21 threat to public health and safety and/or the environment addressed under the program.

22 (b) Remedial actions that are appropriate for the use of funds include, but are not limited to: waste removal
23 and disposal; security measures such as fences and warning signs; drainage controls; slope and foundation
24 stabilization; excavation, consolidation, and capping of waste areas; extinguishing underground landfill fires; field
25 and laboratory testing; and installation of landfill gas and leachate control systems. This list is not exhaustive and
26 shall not prevent the Board from taking other necessary and appropriate actions and does not create a duty on the
Board to take action at any particular time.

1 (c) Ineligible actions include, but are not limited to: closure as defined in Section 20164 of Title 27,
 2 Division 2 of the California Code of Regulations; ground water remediation; operation and maintenance of leachate,
 3 surface water, or vadose zone monitoring systems; closure and postclosure maintenance services; improvements to
 4 property for postclosure land uses; preparation of closure or postclosure maintenance plans; removal, abatement,
 5 cleanup or otherwise handling of hazardous substances as defined in the Comprehensive Environmental Response,
 6 Compensation, and Liability Act of 1980 [42 U.S.C. section 9601(14)]; and other actions determined ineligible by
 7 the Board.

8 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.

9
 10 **Article 4. Loans to Local Governments**

11 **§ 18905. Purpose.**

12 (a) The Board may make loans directly from the trust fund to local government to assist in site remedial
 13 actions. The loans shall be used to assist the Board in complying with Public Resources Code section 48020 et seq.

14 (b) The regulations contained in this Article set forth the requirements to apply for and receive loan funds
 15 from the trust fund.

16 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(b), Public
 17 Resources Code.

18
 19 **§ 18906. Loan Eligibility.**

20 (a) Loans are available only to local governments which demonstrate:

- 21 (1) The site remediation is needed to protect public health and safety and/or the environment; and
- 22 (2) The ability to repay the loan and to pay for costs of remediation that exceed the loan amount.

23 (b) The loan applicant must be a responsible party.

24 (c) Loan funds may be used only for those eligible costs pursuant to Section 18904.

25 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(b), Public
 26 Resources Code.

1 § 18907. Loan Requirements.

2 (a) Loans made pursuant to this Article shall be subject to the following requirements:

3 (1) The terms of any approved loan shall be specified in a loan agreement between the borrower and the
4 Board. Notwithstanding any term of the agreement, any recipient of a loan that the Board approves shall repay the
5 principal amount plus interest on the basis of the rate of return for money in the Surplus Money Investment Fund at
6 the time of the loan.

7 (2) The Board shall not finance more than one million dollars (\$1,000,000) per site.

8 (3) The term of any loan made pursuant to this Article shall be not more than 20 years.

9 (4) The money from any loan repayments and fees, including, but not limited to, principal and interest
10 payments, fees and points, administrative fees, recovery of collection costs, income earned on any asset recovered
11 pursuant to a loan default, and funds collected through foreclosure actions shall be deposited in the trust fund.

12 (5) The Board or the Department of Finance may audit the recipient's records regarding moneys received
13 pursuant to this Article.

14 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48027(b)(3),
15 Public Resources Code.

16
17 § 18908. Loan Application Process.

18 (a) Applications from local governments for loan funds shall be accepted on a continuous basis.

19 (b) Jurisdictions with eligible sites shall submit applications on forms approved by and provided by the
20 Board.

21 (c) All materials submitted shall become property of the Board and will be retained for a minimum of three
22 years.

23 (d) Documents required in subsection (b) of this section shall be submitted to the principal place of
24 business of the California Integrated Waste Management Board.

25 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.
26

1 **§ 18909. Preliminary Review of Loan Applications.**

2 (a) Upon receipt, Board staff shall review each local government application to determine whether the
3 application is complete. Within thirty (30) days of receiving the application Board staff shall send a letter to the
4 local government with one of the following responses:

5 (1) The local government application is incomplete with specification of the steps, if any, that the applicant
6 may take to correct the identified deficiencies. Applications that fail to supply the required information shall
7 rejected from consideration for a loan; or

8 (2) The applicant is ineligible for a loan pursuant to Section 18906 of this Article; or

9 (3) The applicant is eligible for a loan pursuant to Section 18906 of this Article, the application is complete,
10 and the application shall be evaluated by Board staff.

11 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.

12
13 **§ 18910. Review of Complete Loan Applications and Board Approval.**

14 (a) Upon determination that an application is complete, Board staff shall review each application and
15 prepare a summary of findings. Applicants which meet the following criteria shall sent to the appropriate
16 Committee, if necessary, for final recommendation to the Board:

17 (1) The source of repayment is sufficient for the requested loan amount; and

18 (2) The applicant has adequately demonstrated the appropriateness of the loan for use in the project as
19 specified pursuant to Section 18906(c) of this Article.

20 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.

21
22 **§ 18911. Loan Agreement.**

23 (a) If the Board approves the loan, the applicant and the Board shall enter into a written loan agreement that
24 identifies and ensures compliance with the terms and conditions specified in Section 18907 of this Article and any
25 other special conditions or terms which the Board deems necessary.

26 (b) All funds shall be disbursed and repaid pursuant to the terms of the loan agreement.

1 (c) The borrower shall obtain prior written approval from the Board, or its designated representative, for
2 any changes in the loan agreement. All requests shall include a description of the proposed change(s) and the
3 reason(s) for the change(s).

4 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.

5
6 **§ 18912. Financial Condition Notification.**

7 (a) During the application process and any time thereafter, it shall be the responsibility of the applicant or
8 borrower to immediately notify the Board of any change in financial condition that would make them:

- 9 (1) Financially able to perform remedial action without Trust Funds; or
- 10 (2) Unable to repay the loan; or
- 11 (3) Unable to pay for remedial action costs that exceed the loan amount.

12 (b) Any such changes in conditions or failure to notify the Board of any such changes in conditions may
13 nullify eligibility for use of Trust Funds.

14 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.

15
16 **Article 5. Grants to Local Enforcement Agencies**

17 **§ 18913. Purpose.**

18 (a) The Board may make grants directly from the trust fund to Board certified Local Enforcement Agencies
19 to assist in site remediation actions. Grants shall be used to assist the Board in complying with Public Resources
20 Code section 48020 et seq.

21 (b) The regulations contained in this Article set forth the requirements to apply for and receive grant funds
22 from the trust fund.

23 NOTE: Authority cited: Section 40502 and 48025, Public Resources Code. Reference: Section 48021(c), Public
24 Resources Code.

1 **§ 18914. Local Enforcement Agency Grant Eligibility.**

2 (a) Grants are available only to Board certified Local Enforcement Agencies that demonstrate the
3 following:

4 (1) The illegal disposal site remedial action necessary to protect public health and safety and/or the
5 environment; and

6 (2) Who are authorized by resolution of their local governments to file an application with the Board for
7 grant funds and enter into and execute a grant agreement.

8 (b) Grants to Local Enforcement Agencies may only be used for remedial actions at illegal disposal sites
9 within their jurisdiction.

10 (c) Grant funds may be used only for those eligible costs pursuant to Section 18904.

11 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(c), Public
12 Resources Code.

13
14 **§ 18915. Local Enforcement Agency Grant Requirements.**

15 (a) Grants made pursuant to this Article shall be subject to the following requirements:

16 (1) The terms of any approved grant shall be specified in a grant agreement between the grant recipient and
17 the Board.

18 (2) The Board shall not finance more than five hundred thousand dollars (\$500,000) per site.

19 (3) The Board or the Department of Finance may audit the recipient's records regarding moneys received
20 pursuant to this Article.

21 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48027(b)(3),
22 Public Resources Code.

23
24 **§ 18916. Local Enforcement Agency Grant Application Process.**

25 (a) Applications for grant funds shall be accepted on a continuous basis.
26

1 (b) Jurisdictions with eligible sites shall submit applications on forms approved by and provided by the
2 Board. All materials submitted shall become the property of the Board and will be retained for a minimum of three
3 years.

4 (c) Documents required in subsection (b) shall be submitted to the principal place of business of the
5 California Integrated Waste Management.

6 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.

7
8 **§ 18917. Preliminary Review of Grant Applications.**

9 (a) Upon receipt, Board staff shall review each application to determine whether the application is
10 complete. Within thirty (30) days of receiving the application Board staff shall send a letter to the applicant with
11 one of the following responses:

12 (1) The application is incomplete with specification of the deadline and steps, if any, which the applicant
13 may take to correct the identified deficiencies. Following receipt of such notice, applicants that fail to supply the
14 required information shall be rejected from consideration for a grant.

15 (2) The applicant is ineligible for a grant based on failure to meet criteria under Section 18914 of this
16 Article; or

17 (3) The applicant is eligible for a grant pursuant to Section 18914 of this Article, that the application is
18 complete, and that the application shall be evaluated by Board staff.

19 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.

20
21 **§ 18918. Review of Complete Grant Applications and Board Approval**

22 (a) Upon determination that an application is complete, Board staff shall review each application and
23 prepare a summary of findings. Applications which meet the following criteria shall be considered by the
24 appropriate Committee, if necessary, for final recommendation to the Board:

25 (1) The Local Enforcement Agency shall provide ongoing inspection and enforcement action to prevent
26 recurring use of the illegal disposal site; and

1 (2) The applicant has adequately demonstrated the appropriateness of the grant for use in the project as
2 specified pursuant to Section 18904 of this Chapter.

3 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(c), Public
4 Resources Code.

5
6 **§ 18919. Local Enforcement Agency Grant Agreement.**

7 (a) If the Board approves the grant, the applicant and the Board shall enter into a written grant agreement
8 that identifies and ensures compliance with the terms and conditions specified in Section 18915 and any other
9 special conditions or terms which the Board may deem necessary.

10 (b) All funds shall be disbursed pursuant to the terms of the grant agreement.

11 (c) The grant recipient must obtain prior written approval from the Board, or its designated representative,
12 for any changes in the grant agreement. All requests must include a description of the proposed change(s) and the
13 reason(s) for the change(s).

14 (d) The Board may terminate any grant in whole, or in part, at any time prior to the date of completion
15 whenever it is determined by the Board that the recipient has failed to comply with the terms of the grant agreement.
16 The Board shall notify the recipient in writing of the reasons for the termination of the grant and the effective date of
17 the termination within five working days of the determination to terminate.

18 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.

19

20 **Article 6. Matching Grants to Local Governments**

21 **§ 18920. Purpose.**

22 (a) The Board may make matching grants directly from the trust fund to local governments to assist in site
23 remedial actions. The grants shall be used to assist the Board in complying with Public Resources Code section
24 48020 et seq.

25 (b) The regulations contained in this Article set forth the requirements to apply for and receive matching
26 grant funds from the trust fund.

2-14

1 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(b), Public
2 Resources Code.

3
4 **§ 18921. Matching Grant Eligibility.**

5 (a) Matching grants are available only to local governments which demonstrate the following:

6 (1) The site remedial action is needed to protect public health and safety and/or the environment; and

7 (2) The ability to pay the costs of remedial action that exceed the grant amount.

8 (b) The matching grant applicant must a responsible party.

9 (c) Matching grant funds may be used only for those eligible costs pursuant to Section 18904.

10 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(b), Public
11 Resources Code.

12
13 **§ 18922. Matching Grant Requirements.**

14 (a) Matching grants made pursuant to this Article shall be subject to the following requirements:

15 (1) The terms of any approved grant shall be specified in a matching grant agreement between the matching
16 grant recipient and the Board.

17 (2) The Board shall finance up to and not more than 50 percent of the cost of any project up to a maximum
18 of seven hundred and fifty thousand dollars (\$750,000) per site.

19 (3) The Board or the Department of Finance may audit the recipient's records regarding moneys received
20 pursuant to this Article.

21 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48027(b)(3),
22 Public Resources Code.

23
24 **§ 18923. Matching Grant Application Process.**

25 (a) Applications for matching grant funds shall be accepted on a continuous basis.

26 (b) Jurisdictions with eligible sites shall submit applications on forms approved and provided by the Board.

All materials submitted will become property of the Board and will be retained for a minimum of three years.

1 (c) Documents required in subsection (b) shall be submitted to the principal place of business of the
2 California Integrated Waste Management Board.

3 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.
4

5 **§ 18924. Preliminary Review of Matching Grant Applications.**

6 (a) Upon receipt, Board staff shall review each application to determine whether the application is
7 complete. Within thirty (30) days of receiving the application Board staff shall send a letter to the applicant with
8 one of the following responses:

9 (1) The application is incomplete and specifying the deadline and steps, if any, which the applicant may
10 take to correct the identified deficiencies. Following receipt of this notice, applicants that fail to take the specified
11 steps or to supply the required information shall have their applications rejected; or

12 (2) The applicant is ineligible for a matching grant pursuant to Section 18921 of this Article; or

13 (3) The applicant is eligible for a matching grant pursuant to Section 18921 of this Article, that the
14 application is complete, and that the application shall be evaluated by Board staff.

15 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.
16

17 **§ 18925. Review of Complete Matching Grant Applications and Board Approval**

18 (a) Upon determination that an application is complete, Board staff shall review each application and
19 prepare a summary of findings. Applications which meet the following criteria shall be considered by the
20 appropriate Committee, if necessary, for final recommendation to the Board:

21 (1) The source of payment is sufficient for the amount of funds that exceed the matching grant amount; and

22 (2) The applicant has adequately demonstrated the appropriateness of the matching grant for use in the
23 project as specified pursuant to Section 18922(c) of this Article.

24 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(c), public
25 Resources Code.
26

1 **§ 18926. Matching Grant Agreement.**

2 (a) If the Board approves the matching grant, the applicant and the Board shall enter into a written
3 matching grant agreement that identifies and ensures compliance with the terms and conditions specified in Section
4 18923 and any other special conditions or terms which the Board may deem necessary.

5 (b) All funds shall be disbursed pursuant to the terms of the grant agreement.

6 (c) The matching grant recipient must obtain prior written approval from the Board, or its designated
7 representative, for any changes in the matching grant agreement. All requests must include a description of the
8 proposed change(s) and the reason(s) for the change(s).

9 (d) The Board may terminate any matching grant in whole, or in part, at any time prior to the date of
10 completion, whenever it is determined by the Board as a whole, that the recipient has failed to comply with the
11 terms of the matching grant agreement. The Board shall notify the recipient in writing of the reasons for the
12 termination of the matching grant and the effective date of the termination within five working days of the
13 determination.

14 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.

15
16 **§ 18927. Financial Condition Notification.**

17 (a) During the application process and any time thereafter, it shall be the responsibility of the applicant or
18 matching grant recipient to immediately notify the Board of any change in financial condition that would make them
19 either:

- 20 (1) Financially able to perform remedial action without Trust Funds; or
- 21 (2) Unable to pay for remedial action costs that exceed the matching grant amount.

22 (b) Any such changes in conditions and or failure to notify the Board of any such changes in conditions
23 may nullify eligibility for use of Trust Funds.

24 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.

25
26

Article 7. Board Managed Remediations

§ 18928. Purpose.

(a) The Board may decide to expend available moneys to perform any cleanup, abatement, or remedial action work required under the provisions set forth in Section 18904 which is required by the magnitude of the endeavor or the need for prompt action to prevent substantial pollution, nuisance, or injury to public health or safety and/or the environment. The action may be taken in default of, or in addition to remedial work by the responsible party or other persons and regardless of whether injunctive relief is being sought.

(b) The Board may perform the work itself or in cooperation with any other governmental agency. Notwithstanding any other provisions of the law, the Board may enter into oral contracts for that work, and the contracts, whether written or oral, may include provisions for equipment rental and in addition the furnishing of labor and materials necessary to accomplish the work. The contracts are exempt from approval by the Department of General Services pursuant to section 10295 of the Public Contract Code.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: 48021(b), Public Resources Code.

§ 18929. Cost Recovery.

(a) If a remedial action is taken in the case of threatened pollution or nuisance by the Board and/or any governmental agency, any costs incurred by the Board and/or governmental agency are recoverable from the responsible party or parties who unlawfully caused such a condition. Any and all responsible parties are joint and severably liable for any such costs. The amount of those costs shall be recoverable in a civil action by, and paid to, the governmental agency and the Board to the extent of the latter's contribution to the cleanup costs from available funds.

(b) Reasonable costs shall include the amount expended, the Board's costs of contract administration, and an amount equal to the interest that would have been earned on the expended funds.

(c) Any and all responsible parties are joint and severably liable.

(d) The entry of judgement against any party to the action does not bar any future action by the trust fund against any person who is later discovered to be potentially liable for costs paid from the trust fund.

1 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48023, Public
2 Resources Code.

3

4 **§ 18930. Responsible Party Identification.**

5 If, despite reasonable efforts by the Board to locate the person(s) responsible for the condition of pollution
6 or nuisance, the person is not identified at the time of cleanup, abatement, or remedial action work must be
7 performed, the Board shall not be required to issue an order under this Chapter.

8 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.

9

10 **§ 18932. Eligibility.**

11 Funds may be used only for those costs eligible pursuant to Section 18904.

12 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(b), Public
13 Resources Code.

14

15 **§ 18933. Board Approval**

16 Upon determination that a site is eligible pursuant to Section 18904 of this Chapter, the site shall be
17 considered by the appropriate Committee, if necessary, for final recommendation to the Board.

18 NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code.

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California Integrated Waste Management Board

Permitting and Enforcement Committee

February 19, 1998

AGENDA ITEM 3

ITEM:

CONSIDERATION OF AMENDMENTS TO POLICIES IN THE PROPOSED WASTE TIRE REMEDIATION AND STABILIZATION CONTRACT AND THE REALLOCATION OF 1997-98 FUNDING UNDER THE WASTE TIRE STABILIZATION AND ABATEMENT PROGRAM

I. SUMMARY

The Board approved implementation of the Waste Tire Stabilization and Abatement (WTSA) Program on August 31, 1994. Public Resources Code (PRC) section 42846 authorizes the Board to expend money from the California Tire Recycling Management Fund to perform any cleanup, abatement, or remedial work required to prevent substantial pollution, nuisance, or injury to the public health or safety at waste tire sites where responsible parties failed to take appropriate action as ordered by the Board.

Currently, the Board utilizes the 1996/97 WTSA Contract awarded to Sukut Construction, Inc. (SUKUT) to remediate/stabilize illegal waste tire sites in California. Once the site has been referred to WTSA Program from the waste tire enforcement program, the steps taken for site remediation/stabilization are as follows:

1. receive Board approval,
2. obtain property access,
3. contractor develops workplan,
4. complete Remediation/stabilization of site, and
5. Board pursues cost recovery.

The procedure to remediate an illegal waste tire site is contained in Attachment 1.

There are two conditions contained in the 1996-97 contract that are intended to help divert the disposal of illegal waste tires from landfills and encourage sending these waste tires to a reuse/transformation facility. The first condition allows the Board to provide a 30% incentive for cleanup alternatives that propose to send waste tires to reuse/transformation rather than landfill. The second condition requires that the waste tires being sent to that reuse/transformation facility not displace an existing source of tires. SUKUT must incorporate this policy in workplans for sites remediated under this contract when evaluating bids. The procedure describing the sub-contractor bid evaluation criteria to implement this policy is contained in Attachment 2.

II. PREVIOUS (BOARD OR COMMITTEE) ACTION

Since the inception of the WTSA Program, the Board has allocated funding and approved contract work as follows:

1994/95 contract in the amount of \$800,000 was awarded to SUKUT. Work on this contract concluded when the contract expired on June 30, 1997. Remediation projects were awarded to the subcontractor providing the most cost-effective proposal.

No 1995/96 contract was implemented. Contract funding allocation was included in the 1996/97 contract.

1996/97 contract in the amount **not to exceed \$2,250,000, but only funded** for \$1,599,251 was awarded to SUKUT and is valid until June 30, 1999. The board implemented the illegal waste tire end-use policy with this contract including the following provisions:

A 30% incentive for cleanup alternatives that proposes to send waste tires to a reuse/transformation facility rather than to a landfill

Waste tires being sent to that reuse/transformation facility cannot displace an existing source of tires.

The 1997/98 contract has not yet been awarded. The Board approved the draft Request for Qualifications (RFQ) for the contract to continue to offer the 30% incentive for cleanup alternatives that propose to send waste tires to a reuse/transformation facility rather than to a landfill; and required that the waste tires sent to that reuse/transformation facility not displace an existing source of California tires. The 1997/98 contract allocation is \$2,500,000

III. OPTIONS FOR THE BOARD OR COMMITTEE

Issue 1 - Augmentation of existing 1996/97 Waste Tire Stabilization and Abatement Contract

Committee Members may decide to:

1. Concur with staff's recommended augmentation of the 1996/97 contract by the maximum amount allowed by law (\$1,325,000), or
2. Augment the 1996-97 contract for a lesser amount to be determined by the Board, or
3. Leave the funding in the 1996-97 contract unchanged

Issue 2 - Board Policy

Committee Members may decide to:

1. Concur with staff's recommendation to amend the contract language regarding the policies pertaining to the 30% reuse/transformation option and displacement of an existing flow of

California tires, or

2. Amend the contract language regarding the policies pertaining to the 30% reuse/transformation use option and displacement of an existing flow of tires with language determined by the Board, or
3. Leave the contract language regarding the policies pertaining to the 30% reuse/transformation use option and displacement of an existing flow of tires unchanged.

IV. STAFF RECOMMENDATION

Issue 1 - Augmentation of 1996/97 Waste Tire Stabilization and Abatement Contract

Staff recommends augmenting the 1996/97 Waste Tire Stabilization and Abatement Contract (WTSA) by the maximum amount allowed by the law (\$1,325,000).

Issue 2 - Board Policy

Staff recommends the Board amend the language regarding the policies pertaining to the 30% reuse/transformation use option and displacement of an existing flow of tires in the WTSA Contract as follows.

"If the principal difference between the disposal and reuse/transformation option is cost, then the Contract Manager will direct the contractor to select the reuse/transformation option ~~if that option does not displace another source of waste tires that are currently serving that option~~ and if the total cost of the reuse/transformation option does not exceed 130 percent of the total least cost option for disposal." Contractors or subcontractor will submit a disposal option bid in addition to an end-use option bid to determine if the end-use option exceeds 130% of cost of the least cost option for disposal. Additionally, require that the contractors or subcontractor submit documentation that the remediation tires are suitable for the identified end-use and that the end-use facility has adequate capacity to accept the waste tires. Documentation should be provided that the remediation tires were actually received at the identified end-use. In the event remediation tires are deemed unsuitable for end-use proposed by that contractor or subcontractor and must be landfilled, the Board will only pay the price contained in their landfill option bid.

V. ANALYSIS

This agenda item discusses two issues. One issue is the augmentation of the 1996/97 SUKUT Contract. The other issue is the Board's policy regarding the end-use of tires as part of the WTSA contract. For analysis purposes, these two issues will be discussed separately.

Issue 1: Augmentation of the 1996/97 WTSA Contract

Background: The 1996/97 W TSA contract awarded to SUKUT is currently being expended and will terminate on June 30, 1999. The total amount of the contract is \$2,250,000 but is currently funded at \$1,599,251. Staff is proposing to fully fund this contract by bringing the funding for the contract up to the total \$2,250,000 by adding \$650,000. In addition, we propose that this contract be augmented by the allowable 30% bringing the total additional contract funds to \$1,325,000 and the total amount of the contract to \$2,924,251 ($\$2,250,000 + 30\%$).

We would propose that this \$1,325,000 increase be taken out of the \$2,500,000 tire fund allocated for stabilization and remediation for Fiscal year 1997-98. \$500,000 has already been taken out and allocated to the Brackett Settlement Agreement. This would leave a balance of \$675,000 to be encumbered by the proposed 1997-98 RFQ. We would propose that the 1997-98 RFQ be for an amount not to exceed \$2,500,000 to allow additional funds to be placed into this contract from any unspent 1996-97 funds or also for funds which may be allocated to this program from the 1998-99 tire fund allocation.

Key Issues: Staff is preparing to begin several large projects utilizing the SUKUT contract. Based on these projects, staff can project a possible shortage of funds necessary to complete the projects. The 1997/98 contract must be awarded by June 30, 1998. If the contract is not awarded by that time, the unencumbered funds will revert back to the California Tire Recycling Management Fund. If the contract is awarded by June 30, 1998, a second contract will be implemented and operate concurrently with the 1996/97 contract.

Fiscal Impacts: Augmentation of the 1996/97 contract will have no overall fiscal impact. Remediation funds are allocated per fiscal year and encumbered in contracts. The contract is valid for up to three years from the fiscal year appropriation.

Findings: Augmentation of the 1996/97 contract will provide the maximum amount of funds to be utilized in the W TSA Program in the event the 1997/98 contract is not awarded.

Issue 2: Board Policy

Background: In 1996, the Board adopted the end-use policy in an effort to create an incentive to send remediation tires to reuse/transformation facilities rather than disposal at a landfill and also requires that the diversion to the end-use not displace an existing source of tires already serving that end-use. The 1997/98 contract further clarifies the existing source of tires as being California tires. Reviewing the bid process (Attachment 1), staff has identified the following problems.

30% Incentive:

The language in the Board contract with Sukut in regard to the 30% incentive reads as follows: "If the principal difference between the disposal and reuse/transformation option is

cost, then the Contract Manager will direct the contractor to select the reuse/transformation option if that option does not displace another source of waste tires that are currently serving that option and if the total cost of the reuse/transformation option does not exceed 130 percent of the total least cost option for disposal.”

Although providing a 30% incentive does encourage the Board’s contractor (SUKUT Construction Inc.) to find end-uses in remediating waste tire sites, SUKUT along with **Board** staff is experiencing difficulty implementing this policy in the current contract. There is often confusion amongst the subcontractors on how the 30% applies to their bids. The following are the issues that are typically encountered during the implementation of the subcontracting process described on Attachment 1 and the criteria used to select an appropriate remediation option described in Attachment 2.

- On the smaller waste tire site cleanups, the 30% incentive is rarely a factor because the subcontractors will almost always submit end-use alternatives with no landfill option. However, on the larger cleanups, the subcontractors will typically submit both end-use and landfill alternatives but also options that incorporate a combination of the two. For example, a subcontractor may submit a bid that will landfill 50 % of the tires with the remaining 50 % being sent to an end-use. The confusion is how the 30% incentive is applied to the portion of the option that deals with the end-use.
- Bidders are often not able to identify the volume of tires from the remediation that are suitable for end-use. In many cases remediation tires are deemed unsuitable for end-uses due to their age or condition (full of soil or too large to be easily processed). It is conceivable that a subcontract could be awarded based on an end use and then after the remediation begins find out that 100% of the tires are not suitable for end use. Since the cost per ton of waste tires would incorporate the more expensive land use option, the Board could end up paying a higher fee for tires that may need to be ultimately landfilled. Also, a subcontractor may have been awarded a job based on an end use option and then ultimately need to landfill tires. This is unfair to other subcontractors who proposed landfill options.
- Tracking the quantity of tires that are actually sent to an end-use can be difficult for SUKUT and Board staff. For example, an end-use facility may be identified by the bidder to accept the waste tires from a remediation site. However, when the remediation is completed, the bidder hauls the remediation tires that have been removed from the site back to their own facility. Once at the facility, the bidder could substitute tires that may be more suitable for the identified end-use and send the remediation tires to a landfill. Again, the Board could end up paying a higher fee (exercising the 30% incentive option) for tires that may need to be ultimately landfilled.

Proposed Solution – Amend the language in the (WTSA) contracts to require that each subcontractor submit a landfill option bid to determine if the end-use option exceeds 30% of cost of the landfill option. Additionally, require that the subcontractor submit documentation that the remediation tires are suitable for the identified end-use and that the end-use facility has adequate capacity to accept the waste tires. In the event remediation tires are deemed unsuitable for end-

use proposed by that subcontractor and must be landfilled; the Board will only pay the price contained in the low cost landfilling bid received.

Displacement of an Existing Flow Waste Tires to an End-Use.

The current Contract encourages waste tires to be sent to an end-use so long as they do not displace a current flow of waste tires. SUKUT and Board staff are experiencing difficulty in implementing this policy.

How does the Board evaluate the flow of tires into an end-use facility and determine if the remediation tires are going to displace the existing flow of tires or the existing flow of California tires as proposed in the 1997-98 Contract? It is difficult to verify the displacement of an existing flow of tires to an end-use without doing an extensive audit of the end-users records. This policy could be interpreted to require remediation tires be sent to only new end use facilities rather than existing end use facilities, as any end-use facility must currently inventory taking tires which could be 'displaced' by remediation tires.

Proposed Solution: Rescind this policy.

Fiscal Impacts: The contract amount will remain the same regardless of the policy.

Findings: Amending this policy will eliminate a condition of the contact that has been difficult if not impossible to track. It will also minimize the confusion between SUKUT, the tire sub-contractors, and Board staff and as a result facilitate the stabilization and remediation of waste tire sites.

VI. FUNDING INFORMATION

Amount Proposed to Fund Item: \$1,325,000

Fund Source:

	Used Oil Recycling Fund
X	Tire Recycling Management Fund
	Recycling Market Development Revolving Loan Account
	Integrated Waste Management Account
	Other (Specify)

Proposed From Line Item:

X	Consulting & Professional Services
	Training
	Data processing
	Other (Specify):

Redirection:

If Redirection of Funds: \$1,325,000

Fund Source: Tire Recycling Management Fund

Line Item: 1997/98 Waste Tire Stabilization and Abatement Allocation

VII. ATTACHMENTS

1. Procedure to remediate an illegal waste tire site.
2. Procedure for subcontractor bid evaluation criteria.
3. Resolution 98 – 56
4. Resolution 98 – 62

VIII. APPROVALS

Prepared By: Gale Rehberg *[Signature]* Phone: 255-3895
Prepared By: Bob Fujii *[Signature]* Phone: 255-1300
Reviewed By: Charlene Herbst *[Signature]* Phone: 255-2301
Reviewed By: Dorothy Rice *[Signature]* Phone: 255-2431
Reviewed By: _____ Phone: _____
Legal Review: *[Signature]* Date/Time: 2/9/98

Attachment 1
Implementation of the Illegal Waste Tire Remediation Contract
with SUKUT Construction Inc.

The following procedures are followed in the implementation of the Illegal Waste Tire Remediation Contract with SUKUT Construction Inc.

- Once waste tire sites are approved for cleanup by the Board, Board staff issues work orders to SUKUT Construction Inc. (SUKUT) to authorize them to prepare a workplan to remediate the site. The workplan will typically contain the tasks necessary to remediate the site as well as a preliminary cost estimate for the project. Once the workplan is completed it is submitted to Board staff for approval.
- Once approved, SUKUT begins implementation of the workplan and if necessary prepares and requests bids from subcontractors for tire remediation work.
- SUKUT and Board staff conduct a site visit with potential subcontractors. Subcontractors prepare and submit bids to SUKUT. Typically, SUKUT will receive at least three subcontractor bids.
- SUKUT evaluates the bids based on the criteria contained in Attachment 2.
- Based on their evaluation, SUKUT notifies the Board of their intent to award the subcontract to the successful bidder and propose a schedule for completion of the project.
- Board staff concur with subcontractor award and proposed schedule and authorize SUKUT to begin remediation of the site.
- Upon completion of the project, SUKUT will submit a project completion report with invoices requesting payment for work performed.
- Board staff reviews and if appropriate, approves invoices for payment
- Board staff prepares cost recovery reports and upon approval submits them to legal to initiate cost recovery procedures.

Attachment 2

Sub-Contractor Bid Evaluation Criteria

Currently, the proposals are evaluated by Sukut using the three following basic criteria.

1. The type of Board approved disposal method or end-use being proposed to determine whether the 30% incentive applies.
2. Cost of Project oversight to assure that it is being done in conformance with the terms and conditions of the Board's contract.
3. The cost per ton of tires removed adjusted for any of the above factors. It should be noted that the subcontractor bids are only one part of the overall project evaluation.

Board Approved Disposal or End-use

Waste tires may be transported to landfills (monofills) or any number of end-users such as waste to energy facilities (i.e., MELP), tire derived fuel facilities (i.e., cement kilns), or for various civil engineering applications (i.e., tire shred alternative daily cover). In all cases SUKUT will verify that the end use is authorized to receive the waste tires and to the degree possible that it will not displace an existing source of waste tires already going to that end-use.

30 % Incentive

The language in the Board contract with SUKUT reads as follows: "If the principal difference between the disposal and reuse/transformation option is cost, then the Contract Manager will direct the contractor to select the reuse/transformation option if that option does not displace another source of waste tires that are currently serving that option and if the total cost of the reuse/transformation option does not exceed 130 percent of the total least cost option for disposal."

The Board is implementing the 30 % incentive with SUKUT in the following manner. If a landfill disposal option is proposed by a subcontractor on a cleanup job along with several end-use options by other contractors, we have directed SUKUT to give preference of up to 30% for the bidders utilizing end use options. Please note that the language says this would apply only if cost were the principal difference. So for example, if a subcontractor were proposing an end use that was unacceptable to the Board or exceeded 130% of the cost of landfilling the tires, then the Board would not be obligated to honor the 30% incentive. Similarly, if all parties are proposing acceptable end-uses, then each proposal would be evaluated on the criteria mentioned above and how it effects their respective bids. No consideration to the 30% incentive would be necessary; it would be simply low bid based on the evaluation criteria.

Project Oversight

The cost for Sukut to provide project coordination and oversight is a significant factor in evaluating bids from the subcontractors. As a result, the duration of a project also becomes a consideration in the bid evaluation process because the longer the project takes the higher the

project coordination and oversight costs. Therefore, there can be situations where a contractor is not awarded a contract when he is the low bidder based on the cost per ton of waste tires because he may proposing a lower tire removal rate which would result in a longer project completion time and hence higher overall project costs.

Once bids are submitted, Sukut may request additional information needed to evaluate and compare bids. The contract authorizes Sukut to give preference up to 30% for those permitted/authorized end use options if the cost were the principal difference. The reuse/transformation option must not displace another source of waste tires that are currently serving that option. **Sukut will recommend to CIWMB the most cost-effective method for this project.**

Selection of Successful Bidder

Based on their evaluation of the above criteria, SUKUT will prepare a bid evaluation sheet for each of the bidders and select the successful bidder based on the lowest project cost to the Board. They would then notify the Board of their intent to award the subcontract to the successful bidder for consideration by Board staff. Board staff would review the bid evaluation sheets and if they agree, authorize SUKUT to award the subcontract and proceed with the remediation of the site.

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Resolution 98-56

CONSIDERATION OF AMENDMENTS TO POLICIES IN THE PROPOSED WASTE TIRE REMEDIATION AND STABILIZATION CONTRACT AND THE REALLOCATION OF 1997-98 FUNDING UNDER THE WASTE TIRE STABILIZATION AND ABATEMENT PROGRAM

WHEREAS, the California Integrated Waste Management Board was created with enactment of the California Integrated Waste Management Act of 1989; and,

WHEREAS, the major responsibility of the Board is to develop and implement new integrated waste management policy for the State of California; and,

WHEREAS, in order to carry out the responsibilities commitment and administration of the Board, numerous agreements and documents must be executed for and on behalf of the Board; and,

WHEREAS, the Board desires to focus its energies and efforts on the responsibilities with which is alone has been charged by the Governor and the Legislature, namely the deliberation, adoption and implementation of statewide policy and standards for integrated waste management; and,

WHEREAS, the Public Resources Code (PRC), Section 42845(a) states that any person who stores, stockpiles, or accumulates waste tires at a location for which a waste tire facility permit is required or in violation of a waste tire facilities permit, or the statute or regulations governing the permitting and storage of waste tires, shall upon order of the Board, clean up those waste tires or abate the effects thereof, or, in the case of threatened pollution or nuisance, take other necessary remedial action; and,

WHEREAS, PRC, Section 42846(a) allows the Board to expend available money in the California Tire Recycling Management Fund to perform any cleanup, abatement, or remedial work required under the circumstances set forth in section 42845 which in its judgment is required by the magnitude of endeavor or the need for prompt action to prevent substantial pollution, nuisance, or injury to the public health and safety;

NOW, THEREFORE, BE IT RESOLVED, that the Board approves augmenting the 1996/97 Waste Tire Stabilization and Abatement contract awarded to SUKUT Construction, Incorporated by the maximum amount allowed by law \$1,325,000.

CERTIFICATION

The undersigned Executive Director, or his designee, of the California Integrated Waste Management Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the California Integrated Waste Management Board held on February 25, 1998

Dated:

Ralph E. Chandler
Executive Director

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Resolution 98-62

CONSIDERATION OF AMENDMENTS TO POLICIES IN THE PROPOSED WASTE TIRE REMEDIATION AND STABILIZATION CONTRACT AND THE REALLOCATION OF 1997-98 FUNDING UNDER THE WASTE TIRE STABILIZATION AND ABATEMENT PROGRAM

WHEREAS, the California Integrated Waste Management Board was created with enactment of the California Integrated Waste Management Act of 1989; and,

WHEREAS, the major responsibility of the Board is to develop and implement new integrated waste management policy for the State of California; and,

WHEREAS, in order to carry out the responsibilities commitment and administration of the Board, numerous agreements and documents must be executed for and on behalf of the Board; and,

WHEREAS, the Board desires to focus its energies and efforts on the responsibilities with which is alone has been charged by the Governor and the Legislature, namely the deliberation, adoption and implementation of statewide policy and standards for integrated waste management; and,

WHEREAS, the Public Resources Code (PRC), Section 42845(a) states that any person who stores, stockpiles, or accumulates waste tires at a location for which a waste tire facility permit is required or in violation of a waste tire facilities permit, or the statute or regulations governing the permitting and storage of waste tires, shall upon order of the Board, clean up those waste tires or abate the effects thereof, or, in the case of threatened pollution or nuisance, take other necessary remedial action; and,

WHEREAS, PRC, Section 42846(a) allows the Board to expend available money in the California Tire Recycling Management Fund to perform any cleanup, abatement, or remedial work required under the circumstances set forth in section 42845 which in its judgment is required by the magnitude of endeavor or the need for prompt action to prevent substantial pollution, nuisance, or injury to the public health and safety;

NOW, THEREFORE, BE IT RESOLVED, that the Board authorizes staff to amend the language regarding the policies pertaining to the 30% reuse/transformation use and rescinding the policy pertaining to the displacement of an existing flow of tires to an end-use.

CERTIFICATION

The undersigned Executive Director, or his designee, of the California Integrated Waste Management Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the California Integrated Waste Management Board held on February 25, 1998

Dated:

Ralph E. Chandler
Executive Director

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Permitting & Enforcement Committee

February 19, 1998

AGENDA ITEM 4

ITEM: PRESENTATION OF WASTE TIRE ENFORCEMENT ACTIONS TAKEN DURING THE 1997 CALENDAR YEAR

I. SUMMARY

The California Integrated Waste Management Board (Board) receives an annual appropriation from the California Tire Recycling Management Fund (Tire Fund) to administer the Tire Recycling Act and related legislation. These programs include:

- waste tire market development program;
- waste tire hauler registration and manifest program;
- waste tire facility permitting and enforcement program; and
- waste tire site stabilization and remediation program.

Tire Program implementation began in 1990 and is supported by a \$0.25/tire fee paid by the consumer at the time of retail purchase. Because the statutory fee collection provisions sunset June 30, 1999, the program is funded only for the two remaining fiscal years (FY 97/98 and FY 98/99). While the fee collection provisions sunset, all of the program mandates continue.

In 1990, the Legislature enacted comprehensive requirements authored by Willie Brown (Assembly Bill 1843) for the storage of waste tires, including banning of whole tire disposal at landfills. These new requirements were intended to address potential fire and health risks posed by the growing number of tire piles in California. The Board adopted regulations for the permitting of minor (stockpile of 500 to 4,999) and major (stockpile of 5,000 or more) waste tire facilities (WTF) that became effective November 3, 1993.

Pursuant to Public Resources Code, Section 42811, the Board is the sole authority in the enforcement of the Waste Tire Standards, until authority is delegated to the Local Enforcement Agencies (LEAs). This statute does not preclude the LEAs from enforcing more stringent local ordinances regarding persons or businesses involved in the storage, stockpiling, processing, or disposing of waste tires. To date, the Board has not received a formal request for such delegation of authority.

In May 1997, the Board awarded four Grants totaling more than \$110,000.00 to the LEAs of Tulare, Riverside, Imperial, and Yuba-Sutter Counties to conduct cursory surveys of tire dealers and auto dismantlers (tire generators) in an effort to determine compliance with waste tire statutes and regulations. Tulare and Riverside Counties were given the additional task of participating in preliminary enforcement actions against

discovered violators. This year, the Board has given its approval to award up to \$400,000.00 for city or county regulatory agencies to assist in the enforcement of waste tire laws. The Facilities Operations Branch, in conjunction with the LEA Support Services, is overseeing this project.

II. PREVIOUS BOARD ACTION

None. Informational item only.

III. OPTIONS FOR THE COMMITTEE

None. Informational item only

IV. STAFF RECOMMENDATION

None

V. ANALYSIS

Background

California is faced with the challenge of responsibly managing approximately 30 million reusable and waste tires generated annually, as well as an estimated 15 million stockpiled tires. Annual generation is expected to increase as the state's population increases.

Assembly Bill 1843 established the California Tire Recycling Management Act (Act) to oversee the management of waste tires. The Act initiated a tire recycling program to promote and develop markets for waste tires as alternatives to landfill disposal and stockpiling. The Act allows the Board to award grants and loans to businesses and public entities. The Act also addresses ongoing storage of tires in stockpiles and cleanup of illegal piles. The Board is charged with responsibility for tire pile stabilization and remediation where public health and safety and the environment may be at risk.

Additionally, in 1993, SB 744 (Stats. 1993, c. 511) enacted the Waste Tire Hauler Registration Program to ensure that waste tires are legally transported to authorized sites. The Waste Tire Hauler Registration Program went into effect on January 1, 1995. Revenue for the tire fund is currently generated by a fee of \$0.25 that is paid by consumers at the time of retail tire purchase. Moneys remitted to the fund are appropriated to the Board annually in the budget act.

The Board's Waste Tire Program has assisted businesses and local governments, helped develop technologies and markets, increased Board knowledge, increased recycling, stabilized and remediated tire sites, registered haulers, reduced illegal disposal, and improved public awareness. The Waste Tire Program has achieved significant success when results are compared to the magnitude of the waste tire challenge and the limited resources available.

Key Issue

While the fee collection provisions of law sunset in 1999, the legislated mandates fulfilled by staff work will continue. Currently, there are six staff assigned to the Waste Tire/Enforcement Agency Section, where the responsibility rests for the enforcement and permitting of waste tires facilities and registration of waste tires haulers. Two staff are dedicated to full time enforcement of waste tire issues. Additionally, three EA staff are available to assist in waste tire enforcement, when needed. The remainder of the staff are assigned for the permitting of waste tire facilities and registration of waste tire haulers.

Fiscal Impacts

Since the inception of this program in 1994, two enforcement staff have inspected 285 waste tire sites. Of these 285 sites, 192 sites have come into compliance with Board requirements or have removed the waste tires from the site without the use of Board awarded funding. Board funding has been used to clean up 15 waste tire sites. Staff is actively working on the remediation of the remaining 93 new sites.

Since 1994, the Board's Waste Tire Enforcement Program has been responsible for the clean up of approximately 3.1 million waste tires. These tires have been removed by either the operator or the property owner as a direct result of Board enforcement action.

In those situations where the operator or the property owner fails to comply with the Board requirements, Waste Tire Enforcement staff have taken further enforcement action.

During the 1997 year, the following enforcement actions were taken:

- 53 Clean Up & Abatement Orders
- 28 Administrative Complaints
- 7 Criminal Complaints
- 1 Inspection Warrant
- 1 Injunction to gain property access for remediation

During the 1997 calendar year, over \$217,000 in administrative penalties were assessed.

VI. ATTACHMENTS

1. Enforcement Options: Levels Of Enforcement
2. Waste Tire Enforcement Summary (dated 12/31/97)

VII. APPROVALS

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FACILITIES OPERATIONS BRANCH WASTE TIRE SECTION

ENFORCEMENT OPTIONS

It is the responsibility of the Facilities Operations Branch to develop and implement an effective enforcement program designed to provide guidance to facility operators, and when necessary, take appropriate action to remediate threats to the public health or safety, or the environment. The levels of enforcement are as follows:

Letter of Violation

The first level of enforcement, after conducting a facility inspection and determining non-compliance, a Letter of Violation is issued to the owner/operator advising them of the outstanding violation(s) and requiring a corrective action plan (CAP). A four to six week time period is given to the operator/owner for the submission of this plan.

Warning Letter

If the owner/operator fails to submit a CAP, a Warning Letter will be issued allowing an additional two to three weeks for the owner/operator to submit the CAP.

Clean Up & Abatement Order

If compliance has not been met after the Notice of Violation or Warning Letter process, a Clean Up & Abatement Order (C&A) will be issued to the owner/operator of the site citing the outstanding violations, establish a waste tire removal schedule, and lastly, list punitive actions which may result if these orders have not been complied with. This order is signed by the Deputy Director of the Permitting and Enforcement Division.

Stipulated Agreement of Compliance

In those instances where lengthy time frames have been established for site remediation, a Stipulated Agreement of Compliance (STIP) may be issued. Similarly, as with the C&A, the STIP will list the outstanding violation(s), establish a waste tire removal schedule, and list punitive actions should this order not be met. However, in the STIP the operator would sign the order in agreement to specific tasks and compliance dates; facing punitive action if these dates were not met. This order is also signed by the Deputy Director of the Permitting and Enforcement Division.

Legal Action

Lastly, if the owner/operator or responsible party does not comply with any of the former administrative actions, the Facilities Operations Branch and Legal Office may determine that legal action is necessary. Presently, Board staff has the following options:

Administrative Complaint

Administrative penalties may be sought in those cases where there is reason to believe the operator/owner refuses to comply with tire laws. Such penalties are determined by an Administrative Law Judge from the State Office of Administrative Hearings. Generally, a penalty of two dollars per passenger tire and five dollars per truck tire is requested by the Board in this penalty assessment. This assessment is sought from the operator and/or property owner to cover clean up costs incurred by the Board out of the Tire Fund. This order is issued by the Legal office.

Attorney General Referral

In some instances, the Legal Office may determine that a referral to the State's Attorney General's Office is necessary to obtain not only punitive actions, but to handle bankruptcy claims.

Local Prosecutorial Referral

In some instances, owner/operators who accept waste tires and refuse to obtain a waste tire facilities permit or waste tire haulers who transport waste tires to unpermitted sites, may be referred to the local prosecutor's office in that jurisdiction for criminal prosecution.

WASTE TIRE

Enforcement Summary

12/31/97

- ▶ **285** Inspections (Sites)
- ▶ **130** Enforcement Orders (Clean-up & Abatement)
- ▶ **50** Administrative Complaints
- ▶ **22** Criminal referrals

To date: **285 WT Sites** have been inspected
 Compliance: 192 WT Sites
 Non-Compliance: 93 WT Sites

To date: **130 Enforcement Orders (C&As)** have been issued
 1994: 6 C&As
 1995: 34 C&As
 1996: 37 C&As
 1997: 53 C&As

To date: **50 Administrative Complaints (referral)**
 1994: 1
 1995: 13
 1996: 8* *1 dropped due to insufficient evidence
 1997: 28

To date: **22 Criminal complaints (separate parties)** have been prepared and have/will be referred to the respective prosecutorial agency.
 1994: 0
 1995: 11
 1996: 4
 1997: 7

Levels of Enforcement:

- 1- Letter of Violation - issued after non-compliance determined.
- 2- Warning Letter - issued after non-compliance of Letter of Violation.
- 3- Clean Up & Abatement Order - may be issued by the Deputy Director of the Permitting & Enforcement Division after non-compliance of Letter of Violation and/or Warning Letter.
- 4- Administrative Complaint - issued by the Legal Office after non-compliance of Letter of Violation/Warning Letter/Clean Up & Abatement Order.
- 5- Criminal referral - referral only if statute is violated and prosecutorial agency is interested in case.

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