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MEETING

STATE OF CALIFORNIA

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

REGULAR MONTHLY BUSINESS MEETING

--oOo--

BOARD ROOM

8800 CAL CENTER DRIVE

SACRAMENTO, CALIFORNIA

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THURSDAY, MARCH 28, 1996

9:00 A.M.

Vicki L. Medeiros, C.S.R.

License No. 7871

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APPEARANCES

—o0o—

DANIEL G. PENNINGTON, Board Chairman

ROBERT C. FRAZEE, Vice Chairman

WESLEY CHESBRO, Board Member

JANET GOTCH, Board Member

PAUL RELIS, Board Member

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PROCEEDINGS

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3 BOARD CHAIRMAN PENNINGTON: Good morning. Welcome

4 to the second day of the March Integrated Waste Management

5 Board meeting.

6 We are here this morning to talk about the Oxford

7 Tire Recycling permit.

8 I have to speak up. I didn't realize there was

9 such great interest in a pile of old tires, but there is,

10 and we will get on with it this morning.

11 Would the secretary, please, call the roll?

12 MS. KELLY: Board Members Chesbro.

13 BOARD MEMBER CHESBRO: Here.

14 MS. KELLY: Frazee.

15 BOARD MEMBER FRAZEE: Here.

16 MS. KELLY: Gotch.

17 BOARD MEMBER GOTCH: Here.

18 MS. KELLY: Relis.

19 BOARD MEMBER RELIS: Here.

20 MS. KELLY: Chairman Pennington.

21 BOARD CHAIRMAN PENNINGTON: Here.

22 We have a quorum present.

23 Does any Member have any ex parte?

24 BOARD MEMBER FRAZEE: I think, Mr. Chair, everyone

25 has received this. It was not recorded in my office.

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1 It's a letter from Downey, Brand, Seymour and
2 Rohwer, representing Oxford Tire, with an attachment, and it
3 should be in the record for all of us to look at.
4 BOARD MEMBER RELIS: Mr. Chair, I had a discussion
5 yesterday with Michael Burn and Affiliates, and Stephen
6 Meyer, of Downey, Brand, Seymour and Rohwer, representing
7 the Oxford Tire.
8 BOARD CHAIRMAN PENNINGTON: Okay. Mr. Chesbro.
9 BOARD MEMBER CHESBRO: In addition to the letter
10 that Mr. Frazee mentioned, I had a fairly casual
11 conversation this morning with Terry LaBelle.
12 I don't think he was actually trying to influence
13 anything, but it wandered across the line of ex parte area,
14 and so, I will report it officially as an ex parte on the
15 subject this morning.
16 BOARD CHAIRMAN PENNINGTON: Okay.
17 BOARD MEMBER GOTCH: I'm fine.
18 BOARD CHAIRMAN PENNINGTON: I'm saying I think all
19 of the things that were circulated to all of the Board
20 Members —
21 Our first and only item is consideration of issues
22 related to Oxford Tire Recycling permit. We will start with
23 the Executive Director, Mr. Chandler.
24 MR. CHANDLER: Thank you, Mr. Chairman, and good
25 morning, Members.

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1 I think for ease of presentation this morning, it

2 would serve me better if I was down there and ask staff to

3 come and sit at the table, and I will do that and present an

4 agenda of how I would like to proceed this morning.

5 Garth, sit right here.

6 BOARD CHAIRMAN PENNINGTON: Apparently the volume

7 is down on the mikes a bit, but I think Mr. Dier has gone to

8 get a key to get it turned up.

9 MR. CHANDLER: We have had a busy two weeks.

10 Let me first off indicate that we are before you

11 today not as staff requesting to bring this item forward,

12 but really, as you are well-aware, a request by OTR and the

13 representatives, Downey, Brand, Seymour and Rohwer, who have

14 been retained and who have been working with all parties, to

15 bring further developments to the issue of the Oxford

16 permit,

17 What I would like to do this morning is first

18 start off by walking through briefly all of the material

19 that has been disseminated over the last two weeks,

20 particularly what is on the back table and what will be kind

21 of an outline of how I would like to proceed this morning.

22 We have received a lot of material. The Board

23 Members have received a lot of material.

24 So, let me just start with your binders on this,

25 and let's just walk through very briefly what you have

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1 before you. I have assembled an outline which will serve as
2 the order on how I would like to move through the issues
3 today, and we will summarize the past Board action that we
4 took in February on the permit briefly.
5 In your binders, starting with Attachment 1,
6 beginning on page A-2 and proceeding all the way through
7 page A-27, is simply last month's agenda item, and on pages
8 A-12 and A-13 are pertinent pages relative to the actual
9 permit conditions themselves. If you move to Attachment 2
10 in the binder, and I believe this material is all on the
11 back table as well, on pages A-28 through pages A-32, you
12 have a letter from Downey, Brand, Seymour and Rohwer, Mr.
13 Meyer to myself, outlining a presentation that they gave my
14 staff and where I indicated that I would like that
15 presentation put in writing and delivered to the Board.
16 On page A-33, you have a representation from
17 Western Trucking Services on their perspective on moving
18 forward with providing some underwriting closure insurance
19 at the site discussed to date. Pages A-34 all the way
20 through A-96 is simply a statement of qualifications of
21 GeoSyntec Consultants, which you will hear more from later
22 this morning, retained by Downey, Brand to provide some
23 facility design and engineering services to look at
24 alternative closure options at the Wesley site.
25 Pages A-97 through A-112 is, perhaps, the meat of

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1 their proposal, which is a work plan to look at alternatives
2 for closure. And lastly in your binder should be pages
3 A-113 through A-117, which is a correspondence from Mr.
4 Meyer, of Downey, Brand, to Mr. Michael Normoyle, indicating
5 the need for both parties to sit down and clarify the
6 conditions in the service agreement between both parties,
7 which to date have been at least unclear to Board staff and
8 others.

9 As Mr. Frazee mentioned this morning, you were
10 hand-delivered last evening, I believe, a letter, dated
11 March 27, which elaborates more fully on the relationship
12 between CMS and OTR, and just this morning, at 8:45, I
13 received a Negotiated Tire Supply and Delivery and Storage
14 Agreement, which will be the subject of Mr. Meyer's overview
15 later on this morning, and at that point I would ask -- 16 Well,
Patti, you have copies of that? I would
17 like you to make copies of the Renegotiated Tire Supply
18 Delivery and Storage Agreement to the Members, which came in
19 this morning at 8:45, and make additional copies available
20 in the back of the room.

21 So, we have had, as I indicated, kind of a
22 significant amount of correspondence since February 27.
23 This is, again, not staff's proposal but OTR's.
24 So, before moving to the presentation from
25 representatives from OTR, for some context, just review the

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1 Board's past action on February 27 and the pertinent permit
2 conditions for the Oxford facility. Again, that can be
3 found on your Attachment 1, pages A-12 through A-13.
4 I had numerous individual conversations with all
5 of you and have tried to explain this approach to the
6 financial assurances through a simple formula of A plus B
7 equals C, where I have indicated that A represents, in my
8 view, the cost of disposal at the site, in the site, in this
9 case the tip fee charged by MELP, Modesto Energy Limited
10 Partnership, and the B component, being cost of moving the
11 tires from the site to the belt, which is the tire transport
12 cost, and the combined costs of A plus B equals the total
13 cost of remediation and removing the tires to that disposal
14 option.

15 It is important that I point out right now that we
16 started this discussion last fall. Staff at that time
17 brought some other disposal options to the Committee's
18 attention.

19 We brought forward a proposal that indicated that
20 there are some other ways in which we could look at
21 remediating the site out there.

22 We looked at the Kiefer Road Landfill. Nine
23 million dollars was staff's estimate to take the tires at
24 the tire pile site to the Kiefer location.

25 We also looked at taking the tires to Redding, to

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1 a cement kiln operation, and the staff's estimate was \$11
2 million.

3 At that time the Committee's direction was that we
4 were to look for more -- help me out, Garth. Am I using the
5 right word? More cost effective alternatives for disposal.
6 It was back at that time we settled on the Modesto
7 Energy facility adjacent to the tire pile as the basis for
8 our future calculations. So, it's inherent in your
9 discussions and what you hear today that you understand that
10 we have always from that time forward have been relying on
11 the Modesto Energy site as the basis for our cost
12 calculations.

13 Now, what were those calculations under the
14 formula A plus B equals C?

15 First of all, I think it's important to note that
16 we seem to no longer be in dispute on the tire pile size.
17 At least it's my understanding that GeoSyntec has looked at
18 the site and will not contest the Board's figures or the
19 Board's consultant figures that approximately 60,000 tons of
20 tires are located at that location, and as you recall, we
21 added an additional 12,000 tons for the period when MELP
22 would be shut down, February through April, for a total of
23 72,000 tons of tires at that location.

24 The cost of disposal, the tip fee was \$16 a ton.

25 The cost of tire transport from the pile to the belt was

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1 estimated by staff at \$23 a ton, for a total cost of
2 remediation, if you will, in the neighborhood \$39 a ton.

3 We took that figure and multiplied it by the
4 72,000 tons of tires at the site, plus the 20 percent
5 contingency, and came with a permit condition of \$3.3
6 million for closure requirements that are embodied in the
7 permit issued last February, last month.

8 To date we had a \$500,000 bond and approximately
9 \$26,000 in an established trust fund. We laid out an
10 amortization schedule and have corresponded to OTR, from a
11 letter from Clint Whitney, dated March 5, what requirements
12 they were under to fulfill their financial assurance
13 obligations.

14 I think it's also important to note that in the
15 permit conditions we had an annual net reduction in the tire
16 pile size of half a million tires a year, 500,000 tires per
17 year, a net reduction, and essentially that embodies the
18 primary permit conditions that the Board approved last
19 month, \$3.3 million in round figures for remediation at the
20 site, financial assurances, which, if you want, we can go
21 through all the tables again that showed you the initial
22 deposit and the monthly requirements to secure the financial
23 assurances.

24 We did have an amortization schedule that required
25 that trust fund to be built up over the next 16 months or

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1 so, and I think all parties were clear on that.

2 The real purpose of this morning's hearing is to

3 allow OTR, at their request, to bring forward some recent

4 developments surrounding their efforts to clarify terms and

5 conditions in their service agreement with MEL? as well as

6 to provide us with an overview of some of the additional

7 engineering concepts and ideas they have out there to

8 remediate the site.

9 So, perhaps prior to me suggesting that

10 representatives from OTR and Downey, Brand address the

11 Board, I would like to ask if there are any questions on the

12 history and the context that I have attempted to set

13 relative to what I have just covered, past Board action,

14 material in your packet and why we are here today?

15 BOARD CHAIRMAN PENNINGTON: Anybody on the Board?

16 No.

17 MR. CHANDLER: Okay. With that, I would like to

18 follow the outline on A-1 and ask that I introduce Mr.

19 Stephen Meyer, of Downey, Brand, Seymour and Rohwer,

20 retained counsel for OTR.

21 BOARD CHAIRMAN PENNINGTON: Before you do, I

22 neglected to tell everybody that if you wish to speak on

23 this subject, there are forms in the back of the room, and

24 they need to be filled out and turned in, and we will call

25 on you.

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1 Good morning, Mr. Meyer.

2 MR. MEYER: Good morning. I'm Stephen Meyer, with

3 the law firm of Downey, Brand, Seymour and Rohwer, and I'm

4 here this morning with several people.

5 I'm here with my partner, Steve Goldberg. I'm

6 here with representatives of GeoSyntec, Mike Snow and Dr.

7 Jeff Dunn.

8 I'm also here with Mark Kirkland and Stan

9 Patterson, of Oxford Tire Recycling, and finally Michael

10 Normoyle, counsel for the Modesto Energy Limited Partnership

11 is present, along with one of its principals, Joe Grecko.

12 We appreciate this opportunity to come before the

13 Board and present this item. As you know, Downey, Brand and

14 GeoSyntec are new to this matter.

15 We have only been on it for about the past month.

16 We recognize that there is a lot of history to this permit

17 and a lot of water has gone over the darn.

18 I want to assure you that we are familiar with the

19 record, and we are quite familiar with the issues, the major

20 issues in the permitting process. We have met with Board

21 staff.

22 We recognize that there is a need to overcome the

23 understandable skepticism at this stage, and we recognize

24 that we and GeoSyntec, had we been involved in earlier

25 stages of the case, might have found it better -- might have

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1 proceeded differently and perhaps more smoothly.

2 Now, I have to acknowledge that our client has in

3 some respects been somewhat naive in understanding this

4 permitting process and the significance of permitting this

5 pile being one of the first permits in a relatively new

6 statute.

7 In any event, I think we have brought some

8 solutions to issues that were otherwise sending the Board

9 and our client down the road that I don't think was

10 desirable from the perspective of OTR or the Board.

11 Thirty days ago, when we were retained, the permit

12 had just been issued with conditions on financial assurances

13 of \$3.4 million, financial conditions that were and are out

14 of my client's financial grasp. Since then we, together

15 with GeoSyntec, have spent literally hundreds of hours, and

16 tens of thousands of dollars in an effort to avert a

17 financial disaster for my client, OTR, Mark Kirkland, which

18 would be the loss of his business, and what I think would at

19 least be a significant problem for this Board, and that

20 problem being an unpermitted tire pile without an operator

21 and without any financial assurances in place to remedy the

22 pile.

23 Two weeks ago we sent a letter to the Board,

24 enclosing a work plan prepared by GeoSyntec, to review and

25 consider alternatives, alternatives and what we believe to

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1 be less expensive closure options, and we requested a 90-day
2 continuance of the permitting process to do that work and to
3 come back to the Board with closure alternatives that we
4 believe that would lead to financial assurances that would
5 be within the financial capabilities of our client.

6 Today I'm pleased to state that we no longer
7 require any extension and that we are requesting no changes
8 for alterations to the permit issued last month except a
9 recalculation of the financial assurance requirement, in
10 light of the agreement that has now been reached with MELP
11 that the tip fee of \$16 to the Board, in event of OTR going
12 out of business, includes retrieval of tires from the tire
13 pile.

14 I will also touch on this later, but we also will
15 request that the Board accept our closure insurance from
16 Reliance Insurance Company as partial satisfaction of the
17 financial assurance requirements, and we touched on that
18 with your insurance people already.

19 As you may recall, and as Ralph has described
20 today, the Board made its financial assurance requirement
21 last month on a formula of A plus B equals C, with C
22 multiplied against the number of tons in the tire pile to
23 arrive at the financial assurance requirement, in this case
24 of \$3.3, \$3.4 million dollars.

25 Now, OTR had no problem with A, the \$16 tip fee.

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1 The problem, as you well-know, is B, which represented the
2 estimated cost arrived at by the Board to move the tires
3 from the tire pile. The estimate of \$23 was added to the
4 \$16, because while OTR said that the tip fee included the
5 removal of tires from the tire pile, MELP would not so
6 agree, would not so confirm in a letter to this Board.
7 In the face of that lack of agreement, the Board
8 conservatively assumed that it would bear the costs.
9 Now, when I first came onto this matter a month
10 ago, it seemed to me that an obvious solution was to come to
11 terms with MELP, but the prospects of that seemed uncertain
12 in light of the correspondence and the history of the
13 relationship. The reason \$16 -- the reason it seemed like
14 an obvious solution is that, simply put, my client cannot
15 afford to post today financial assurances based on a \$16 per
16 ton figure, even using the Board's estimate with the number
17 of tires in the pile, which is not necessarily a number we
18 concede, but a number we will accept for purposes of
19 arriving at a final assurance requirement.
20 But as I said, the matter is out of reach at \$39 a
21 ton. I was, however, not sure how far I was going to get
22 with MELP, so it was shortly after we came onto the matter,
23 we retained GeoSyntec.
24 GeoSyntec is a company that we are quite familiar
25 with, and we have worked with on other landfill matters, and

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1 we believe that is the best landfill or waste engineer that
2 we know of.

3 We directed GeoSyntec to develop a work plan to
4 explore closure alternatives which we were to present if we
5 could not come to terms with MELP. That was the basis for
6 our request two weeks ago for 90 days.

7 Fortunately, we do not require this fall back.

8 But my client and my firm continued to work with GeoSyntec
9 and the Board, because we recognized that and we acknowledge
10 that the permit terms require that we come back in a year to
11 revisit the closure options in light of any changes in
12 circumstances, such as the future plans of MELP and the
13 renewal or extension of the contract between OTR and MELP?.

14 So, OTR intends, and it has directed GeoSyntec to
15 continue with its work plan with particular focus on the
16 potential development of a monofill for shredded tires as a
17 closure option. We believe that is a real option.

18 My client intends to be in a position to be so
19 permitted in one year's time. My client is interested in a
20 monofill not just to address the closure issues that may
21 arise one year hence, but also because, as a businessman, it
22 is in his interest, it is in his financial interest to have
23 alternative disposal options.

24 My point is that OTR is motivated, and OTR is
25 committed to be in a position to consider other options

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1 should the circumstances of MEL? prove to have changed a
2 year from now.

3 Let me turn to the agreement with MEL?. This
4 agreement was reached after many, many days of discussions,
5 in fact, was only signed off last night at 1:00 in the
6 morning. Actually, it was signed off this morning at 1:00
7 a.m.

8 Fortunately, I wasn't there. My partner, Steve
9 Goldberg was and Mr. Normoyle were handling that matter, and
10 I was able to get some sleep so I could come here to make
11 this presentation.

12 These negotiations are broad ranging. These
13 negotiations were intense.

14 Last week, MEL? flew out one of its decision
15 makers from New York, and we met for the day, all day, in
16 Modesto, trying to come to terms on a variety of issues and
17 particularly the issue of who bore the cost of retrieving
18 the tires in the event OTR went into bankruptcy.

19 As I said, there were many issues. This is one of
20 several but it was the principal issue.

21 A significant factor and we were able to reach in
22 this agreement, a significant factor was reaching the
23 agreement and reaching the amendment that is before the
24 Board was the good efforts of MELP's legal counsel, Michael
25 Normoyle, who is also here — who is here today to confirm

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1 that we have reached the agreement that had alluded us for
2 the last month or more.

3 I want to assure you that our client, as a result
4 of these negotiations, recognizes the need to work
5 cooperatively to ensured that we have a place to dispose of
6 tires and that they have an assured supply of tires to meet
7 those requirements. The agreements that we have reached are
8 recognition of the importance of that cooperation.

9 Now, a question might arise in the minds of some
10 Board Members, what happened to the \$23 for transportation,
11 and how can MELP afford this?

12 First, this question implies that OTR is going out
13 of business, but that proposition of either OTR nor MELP is
14 at all likely, and a point that I want to address in a
15 little greater detail later in my remarks.

16 Second, it is important for you to note that it
17 has been MEIP all along who has been retrieving the tires
18 from the tire pile. It is not a cost that they are
19 therefore unfamiliar with or have not shouldered in the
20 past.

21 Third, it simply does not cost anything close to
22 \$23 a ton to move tires at most a few hundred feet using the
23 existing personnel and the equipment. It may, of course,
24 cost more for the State to retain people, but it does not
25 cost anything like that for MELP or for my client.

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1 I would like to digress for a moment, because I
2 think I perceive from the record I reviewed that there may
3 be some misunderstanding as to who my client is and more
4 importantly who my client is not.
5 OTR is not a family capitalized subsidiary of some
6 corporate giant. Rather, it was a company that was bought
7 by Heights II, a corporation whose sole shareholders are
8 Mark Kirkland, who owns 70 percent of the stock, and his
9 brother, and long time family friend, who owns the balance
10 of the stock.
11 Mark and his company, his family bought OTR from
12 CMS, a Michigan Public Utility last July. This was not a
13 high leveraged acquisition. There was a combination of cash
14 and a promissory note made.
15 I want to assure that CMS has no ownership
16 interest presently, directly or indirectly, in OTR, and that
17 has been confirmed in a letter that we have submitted from
18 CMS.
19 Going back to the issue of leverage, there is a
20 promissory note to OMS that is currently well less than half
21 the total purchase price, and there is no other significant
22 debt. This company has been profitable. It remains
23 profitable, and there is no reason to expect that that is
24 not going to continue.
25 I should also note that the Kirklands are not a

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1 wealthy family who have simply given their son the money to
2 invest. Mark Kirkland's father is a retired Federal
3 probation officer, and Mark Kirkland has put almost all of
4 his net worth into this company.
5 Now, another question that may come to mind is
6 what about MELP's finances, and what happens if MELP goes
7 out of business? Mike Normoyle could better address those
8 issues, but I have a couple of observations.
9 First, we don't expect MELP to go out of business.
10 The power plant represents a very significant investment
11 that we doubt is simply going to be put into moth balls or
12 torn down. The cliff year on SO-4 contracts does not mean
13 that you simply fall to your death when companies collapse.
14 My law firm represents a number of the private
15 power companies in this State. We are quite familiar with
16 the SO-4 contracts, and we have many clients who are facing
17 the so-called cliff year, and I can assure you they are not
18 all sitting around slitting their wrists and wondering what
19 to do.
20 They do expect life after the cliff year. They do
21 expect that they will enter private power contracts.
22 For example, my firm just put together an
23 arrangement between Modesto Irrigation District and Foster
24 Farms in that area. Also, the SO-4 contracts are likely to
25 be renegotiated. That is what is going on, they are

1 renegotiating these contracts.

2 My clients anticipate that they are still going to
3 be on those contracts for nine or more years. This is a
4 very active market as well. These power facilities are
5 being sold.

6 I am familiar with a number of purchases and sales
7 that have gone on in the past year. So, I don't think that
8 MELP's power plant is going to shut down.

9 But the second point, and perhaps the more
10 important point, is that this Board in its permit
11 anticipates the question of MELP's status in requiring that
12 we come back before the Board in a year and revisit the
13 financial assurance issue. That is, I believe, the time to
14 consider that issue.

15 At that point we will know a great deal more about
16 MELP's future, a future that we are a good deal sanguine
17 about then perhaps other, and at that time the financial
18 assurance requirements can be adjusted up or down.

19 I would also note that if something were to happen
20 in the interim, within the next year, you can request us to
21 come back, and we can revisit financial assurances. But you
22 can be sure that when we come back in a year's time, we and
23 GeoSyntec will have alternative cost effective closure
24 options, should that be necessary, and we intend to work
25 with the Board and the Board staff throughout the next year

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1 to keep them informed in terms of what we are doing and to
2 be sure that we are in line with what the Board is looking
3 for us to do.

4 Before turning the presentation over to GeoSyntec,
5 I would like to touch on a financial assurance issue. We
6 calculate that the revised financial assurance under the \$16
7 tip fee, including tire pile retrieval, to be \$1.3 million.
8 My client can meet that requirement today through
9 a \$5,000 (sic) surety bond that is already in place, and
10 \$500,000 in closure insurance, which we have in place today
11 and with the balance funded through the trust fund
12 mechanism.

13 Now, a question has arisen as to whether closure
14 insurance is an acceptable form of financial assurance. The
15 statute under which you -- the statute gives the Board the
16 authority to accept such insurance.

17 But under your regulations it is not a specified
18 form of financial assurance, because closure insurance was
19 not available at the time that your regulations were
20 written.

21 We request that the Board exercise its discretion
22 and accept the closure assurance for three reasons. First,
23 it is clearly acknowledged to be an acceptable form of
24 financial assurance already by MSW landfills.

25 Second, the company writing the insurance, the

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1 Reliance Company, is highly rated, and I believe is well
2 known to the Waste Board.

3 Third, the form used by Reliance is one approved
4 by the Waste Board. For these reasons we request that the
5 Board accept our offer of insurance to meet the financial
6 assurance requirement.

7 What I would now like to do is, I would like to
8 ask that GeoSyntec be permitted to go over some of the
9 closure options that we are considering and that we have had
10 to bring back to the Board in a year's time. We make this
11 presentation because we want you to understand that we are
12 committed to developing options so that a year from now this
13 process will go much more smoothly than this initial
14 application process has to this point.

15 I would be glad to entertain any questions at this
16 point. Mr. Normoyle is also present, or we could reserve
17 questions until after Geosyntec has made its presentation.

18 BOARD CHAIRMAN PENNINGTON: Any questions at this
19 time?

20 Mr. Frazee.

21 BOARD MEMBER FRAZEE: Yes, I do.

22 A number of things that I am not clear on, I may
23 come back later, but let's just understand that the \$16 tip
24 fee that MEIJP is prepared to assume is only in the case,
25 according to the agreement, only in the situation where

1 Oxford is bankrupt. It is not capable of meeting the
2 requirements.

3 MR. MEYER: It speaks more broadly, I believe, in
4 terms of our ceasing business.

5 I believe there is even a time frame in there.

6 So, yes.

7 BOARD MEMBER FRAZEE: The event of default by OTR
8 under the terms of Section 12-A, including the filing of a
9 petition or voluntary or involuntary bankruptcy.

10 The point is that that only comes — that \$16 fee
11 only comes into play. In the meantime if OTR stays in
12 business, they are faced with whatever that cost of moving
13 the tires from the pile to the belt, are they not?

14 MR. MEYER: OTR has reached an agreement with MELP
15 where we have agreed to essentially divide that burden.

16 BOARD MEMBER FRAZEE: Okay. And that's one of the
17 things that up until this point that we have had difficulty
18 getting a handle on.

19 We heard one this — well, this is a test, what we
20 saw going on down there. This is a test now. There is no
21 agreement, and it went back and forth.

22 I think that's why we had some difficulty, and I
23 wanted to pin that down at this time.

24 MR. MEYER: I understand that, and that's why we
25 have, I think, come up with very clear language that both

1 parties have signed off on, that we have reviewed with the
2 Waste Board's counsel to make this as clear as possible.
3 I certainly recognize that it was unfortunate that
4 this matter had not been clarified. I would like to say
5 that I think we were finally able to reach closure on this
6 issue, because I believe our firm worked well with Mr.
7 Normoyle and because I think we certainly involved a number
8 of their high level managers and brought their attention
9 very keenly to this point.

10 BOARD MEMBER FRAZEE: Let me touch a bit on the
11 structure of Oxford Tire, and I don't know whether that's
12 relevant or not, because what we are concerned with is the
13 assurance that the tires are ultimately going to be handled
14 in a manner that's appropriate and consistent with the
15 statute.

16 But you indicated the structure and the type of
17 company that it was and said that they have no other debt
18 other than the note to CMS.

19 MR. MEYER: No other significant debt, that's
20 correct.

21 BOARD MEMBER FRAZEE: Let me suggest to you that
22 it looks to me like they have a significant liability in the
23 fact that they own 72,000 tons of tires that they must
24 dispose of, and the only way -- you know, that standing by
25 itself is an impossibility.

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1 That is something that would bring them to
2 bankruptcy in a short period of time. The only way that can
3 make that succeed is the other phase of the business, which
4 is receiving a disposal fee from other tires being brought
5 in, and again, that's, I think, the basis of our concern is
6 how many more tire are going to be brought in?

7 How big is the pile going to grow, and what is the
8 assurance that that pile is going to be reduced, because
9 that's the bottom line for us?

10 MR. MEYER: We have -- the permit requires that we
11 have a commitment to reduce the net of this pile by 5,000
12 tons a year.

13 So, this pile should not grow.

14 BOARD MEMBER FRAZEE: Another issue that I think
15 is before us right now is with the power plant shutdown
16 date, what is the effective date of that?

17 MR. MEYER: We understand the power plant will
18 reopen on May first.

19 BOARD MEMBER FRAZEE: It's currently shut down?

20 MR. MEYER: It's currently shut down.

21 It's currently shut down because PG&E is able to
22 buy power under its hydro contracts.

23 BOARD MEMBER FRAZEE: So, tires are continuing to
24 accumulate on the site, and I think that's a cause for
25 concern for the Board.

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1 MR. MEYER: Yes, tires are accumulating, although
2 in the number that the Board has estimated at of 72,000
3 tons, they have factored in the increase of the tire pile.
4 This tire pile -- this area, this tire delivery
5 area, where most of the tires have been kept and dropped
6 off, can be cleared out in a matter of a few weeks. The
7 power plant burns these tires at a fairly rapid rate.
8 The nature of the tire business is that in the
9 summer, when we are all thinking we are going on vacation
10 and then we finally look at our car and we say, maybe we
11 need new tires, as a result, in the summer there is a large
12 number of used tires that come on the market, whereas in the
13 winter there is not. So, there is cycle to this.
14 But over the course of the year and at the end of
15 every year, there will be a net reduction of this pile by
16 5,000 tons.
17 BOARD MEMBER FRAZEE: On the subject of the life
18 of the MELP plant, can it be expected to continue to operate
19 or not?
20 I guess the first demonstration will be if at the
21 end of the 90-day shutdown they start up again. I'm not
22 comfortable that that's even going to happen.
23 But beyond that, I think you stated that these are
24 viable facilities and a number of this kind of plant have
25 been sold. I think it's true that a number have been sold

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1 recently but have been sold to the power company for the
2 purpose of shutting them down so they are not committed to
3 the high cost of —
4 MR. MEYER: That's not my experience.
5 My experience is that private power companies — 6 we represent
Baltimore Gas and Electric. We represent Rio
7 Bravo. We represent Cal Pine.
8 These are the big players in this business, and we
9 represent Constellation. These power companies are — I
10 haven't been involved in and I'm not aware of any
11 transactions where any of our client's power plants, the
12 power projects were bought by PG&E.
13 I think the issue as to whether the power plant is
14 going to reopen could be addressed by MELP. But it's our
15 understanding that this power plant will resume operation in
16 May. So, I believe that will occur.
17 They do have a contract. This cliff-year creates
18 this impression that this is an 11-year contract. The SO-4
19 contract is a 20-year contract.
20 It's not as if the price of power drops to zero.
21 I'm not an expert on SO-4 contracts, but it is my
22 understanding we are going to be avoiding costs, but there
23 are other cost elements that they receive. So, it is not — 24
there is a contract, and there is a revenue stream to close
25 in.

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1 I think, again, probably Mr. Normoyle can speak to
2 this, but obviously what is going to be happening — what
3 happens at the tire facilities is that these power
4 facilities are owned by banks, and the banks are looking to
5 see whether there is going to be a pay down on debt.
6 At least I think what will happen over time is
7 that you will see some debt restructuring, but I don't think
8 you will see any closure of the facilities.
9 BOARD MEMBER FRAZEE: I wish I were more
10 comfortable about that.
11 I think I would be if this facility were located
12 in the site where it had potential for co-generation or for
13 the marketing of steam, also, and they are not in that
14 circumstance. So, their sole product from another small — 15 14
megawatts in the scale of things is not particularly
16 efficient, as I understand, that it's probably one of the
17 more high risk, small facilities for shutdown.
18 MR. MEYER: Well, I think, as I said, I think the
19 Board has anticipated that in the requirement that we come
20 back before the Board in a year's time.
21 That is why my client is going to invest some
22 fairly significant sums of money in being in the position of
23 a permitted monofill. That was discussed, reading the
24 record, that's what was discussed, but to come here today
25 and say we are going to have a monofill is a bit of pie in

1 the sky.

2 I mean, you have to get permitted, and that's what

3 my client intends to do, and we intend to be actively

4 involved in the permitting process, together with GeoSyntec.

5 GeoSyntec has extensive experience in the

6 permitting -- in the design of monofill projects, and in

7 particular, they have handled the design of waste tire

8 facilities. They have issued extensive comments to the

9 regional board on waste tire monofill facilities.

10 So, they have some considerable experience, and

11 that's one of the reasons we brought them in here.

12 We recognize that that's going to be a question.

13 But I think we are going to know a good deal more

14 information in a year's time than we know at present.

15 In the meantime, we are prepared to, quote, "based

16 on the financial assurance options that the Board

17 considered," we are prepared to post \$1.3 million, because

18 we have reached the agreement with MELP. I think we have

19 clarified that issue.

20 We recognize this is going to be a continuing

21 issue. We have advised our client that they need

22 instruction, and I believe our client has taken instruction

23 well on this that they need to have competent engineering

24 consulting advice and that our client needs to be in

25 communication with the consultants with the Board on a very

1 regular basis.

2 We do not intend this to be the last contact

3 between our client and this Board or this Board's staff

4 between now and next year. I can tell you with the time

5 that we have spent on this, and we are very familiar with

6 the politics in this, and we are very familiar with the

7 anxiety that this presents, but I think you have to consider

8 the alternative, which is -- one of the alternatives, which

9 is simply we can't make this financial requirement.

10 We don't have three and a half million dollars. A

11 lot of times people think that the question of getting a

12 three and a half million dollar bond is just the question of

13 going to the insurance company and writing a check for a

14 premium. Companies can do that.

15 We -- a company like Waste Management can do that.

16 CMS can do that, but most ordinary mortals and most

17 privately held companies when they go to their bonding

18 company and say I need a three and a half million dollar

19 bond, they say, that's great. We need a three and a half

20 million dollar letter of credit or CD.

21 Basically they want three and a half million

22 dollars cash that you push across the table, and then you

23 write them a premium -- then you write them a check for

24 another one hundred thousand dollars in premiums.

25 So, going back to who my client is. My client

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1 has — I don't want to go into the finances of my client
2 publicly, but my client has an adequate net worth. My
3 client can obtain the necessary insurance and meet the
4 financial requirements for a \$1.3 million.

5 I think that's a fairly significant number for a
6 company like this, ,and I think it reflects the confidence of
7 the insurance company, the bonding company.

8 BOARD MEMBER RELIS: Staying on this matter of the
9 contract, I have this contract, I guess between both of the
10 parties in front of me, and I'm trying to read it and
11 understand it.

12 Let's just go back a minute. I want to be sure
13 I'm clear on the structure of this arrangement.

14 You are saying you would post today \$1.3 million,
15 you call it a closure insurance, or what is the term you
16 use?

17 MR. MEYER: There is \$500,000 in closure
18 insurance.

19 There is a \$500,000 bond, and then we would fund
20 the balance through the trust mechanism, where we already
21 have \$25,000 and we will pay 20 percent of the \$300,000.
22 I'm sure, others can correct me if I'm wrong on this, and
23 pay that down, and then we pay the balance over time over a
24 fairly short —

25 BOARD MEMBER RELIS: The last \$300,000 is on a

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1 understand what you have in front of you.

2 On amendment number 2, this is amending a previous

3 agreement between the parties, between OTh and Modesto, or

4 MELP, that lays out other issues. This is amending that.

5 So, the Board is a beneficiary to this agreement.

6 The first page consists of recitals, and then the language

7 that you want to look at is 12-C, at the bottom of page 1.

8 Pages 2 and 3 are the same. They are just

9 counter-signed. One of the parties have signed one and the

10 other parties has signed the other.

11 So, when you look at it, it's just really a

12 two-page document.

13 So, going back to your question, at the top of

14 page 2 or page 3, if you will, the service fee is already

15 specified in the previous agreement.

16 BOARD MEMBER RELIS: And that says \$16?

17 MS. TOBIAS: Right.

18 BOARD MEMBER RELIS: Okay. Now, assume that \$1.3

19 million is available.

20 That would be available within one year, the total

21 amount, assuming what you put up today or are offering to

22 put up today, plus the prorated amount, a year from now we

23 would have \$1.3 million?

24 MR. MEYER: Seventeen months from now.

25 BOARD MEMBER RELIS: Okay. Now, assume that that

1 amount is available.

2 0Th goes out of business, or rather, MELP doesn't

3 open, and we are looking — and we go back to this

4 agreement. We have \$1.3 million.

5 What do we do at that point? Under the agreement,

6 I understand that MELP would take the tires at \$16 a ton,

7 and thus go into that fund, that \$1.3 million equals 72,000

8 tons at \$16 a ton. MELP is the only game for us, at that

9 point.

10 If they cannot access these tires at \$16 under

11 that agreement, we have \$1.3 million to deal with the tire

12 pile?

13 MR. MEYER: Well, at that point you do have \$1.3

14 million.

15 At that point you have the right and I suspect you

16 will notify us that the financial assurance requirements of

17 this project need to be revisited. I would point out that

18 at that point you have \$1.3 million more than you have right

19 now to address this problem.

20 That is -- I think that the Board in the permit

21 conditions that you have imposed, you have contemplated that

22 in that event we will come back. It's been projected that

23 that event might be a year from now, which I believe is why

24 we are requesting to come back in a year

25 But if that were to happen next month, you can

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1 call us back in to revise the financial assurance

2 requirements on this project.

3 BOARD MEMBER RELIS: Now, presumably as well at

4 that point, there would be 500,000 fewer tires under the

5 conditions of the agreement; is that correct?

6 MR. MEYER: That's correct.

7 BOARD MEMBER RELIS: And we would be monitoring

8 that in some as yet unspecified way, or is that specified?

9 MR. CHANDLER: It's not specified in detail, but

10 staff have understood the manifest and the process of

11 tracking tires coming in as well as understanding the

12 tonnage reporting out that MEL? does as to the amount of

13 tires going up the belt.

14 So, there is a way in which we feel we can

15 calculate the net reduction.

16 BOARD MEMBER RELIS: One last point before we

17 leave this, as I recall, in the agreement there is language

18 that MEL? agrees to take the tires at \$16 a ton as required.

19 Tell us what as required means in the contract.

20 MR. MEYER: This is a requirements contract.

21 If this facility is shut down, for example, they

22 don't have an obligation to take tires. So, it is subject

23 to the—

24 When I was in law school, I got very confused

25 about requirements contracts, but that's what this is. It

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1 is subject to — even as it is now. I mean, we only provide
2 the tires that this facility requires, but they require a
3 lot of tires.

4 So, as long as -- so, it's subject to the
5 requirements of operating the plant.

6 BOARD MEMBER RELIS: Thank you.

7 MR. MEYER: I would like to turn this over to Dr.

8 Jeff Dunn now, of GeoSyntec.

9 The purpose of this presentation is not to argue
10 for a lower financial assurance or a different financial
11 assurance requirement. We are going to meet the financial
12 assurance requirement under the MELP option.

13 But it is to advise you that we are serious, that
14 we recognize that we may need to address other alternatives
15 in a year's time and to show you what we plan to do, and
16 also to indicate to you the level of expertise that we are
17 bringing to this matter.

18 So, I would like to turn it over to Dr. Dunn.

19 BOARD CHAIRMAN PENNINGTON: Good morning, Dr.

20 Dunn.

21 DR. DUNN: Good morning. My name is Jeff Dunn,

22 with GeoSyntec Consultants.

23 I want to thank the Members of the Board for this
24 opportunity to talk on behalf of our client, Oxford Tire.

25 I have some handouts that are copies of the text

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1 of the overheads which I am going to be projecting. You
2 will notice they are black and white, whereas the projected
3 version is in color, but the language is the same. I will
4 get this set up real quickly here.

5 Our firm, GeoSyntec, as Steve Meyer has mentioned,
6 has been working with Downey, Brand and with OTR in the
7 process of looking at closure options over the last three
8 weeks. As Steve mentioned, approximately two weeks ago, a
9 work plan for efforts by my firm was submitted to Board
10 staff.

11 In light of the agreement that was just reached
12 between MEL? and OTR, our scope of work has shifted and, as
13 Steve mentioned, our client is very serious in this, and
14 really our scope of work now is aimed at looking at two
15 issues, or actually one issue, with an associated issue and
16 that is an alternative closure option of a shredded tire
17 monofill.

18 As Steve mentioned, the permit requirements
19 require that OTR come back before this Board in one year's
20 time, and our client has directed us to proceed with looking
21 into permitting and proceeding with permitting activities of
22 a tire monofill and would be aimed at a year's time,
23 assuming this is a viable alternative.

24 At this time, it looks to be a very strong and
25 cost effective viable alternative that OTR would come before

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1 this Board with a permitted tire monofill.

2 My presentation today will just hit two items. The

3 first, very briefly, some of the background on GeoSyntec

4 Consultants and our qualifications. Then, primarily the

5 elements of the closure work plan, which now have shifted to

6 focus on the shredded tire monofill and also the use of

7 conveyor systems for materials handling, in this case

8 moving, the tires for shredding and disposal in the

9 monofill.

10 very briefly, so that the Members of the Board

11 will know some background on GeoSyntec Consultants, and I

12 know you have our statement of qualifications in there

13 succinctly.

14 We are known nationally as a leader in permitting

15 design construction and publisher of a wide variety of waste

16 facilities. The firm's been in existence for approximately

17 13 years, and we have participated in over 500 projects for

18 these types of facilities.

19 We have been a contractor to the Board on closure

20 issues. Specifically, we completed a contract on

21 performance of landfill closure systems, and I also worked

22 very closely with a Member of the Board staff, Robert Pucci,

23 of the Closure Branch, in developing a course on

24 post-closure development of sanitary landfills, which was

25 presented in 1992 and 1993.

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1 The firm has also done a good deal of work in
2 research for the Environmental Protection Agency and
3 National Science Foundation on technical aspects,
4 construction and design of a wide variety of landfills and
5 waste facilities and have presented and co-authored
6 materials through technical guidance documents and also
7 training courses in the State and throughout the United
8 States.
9 We have wide experience with monofills. We have
10 permitted and designed waste tire facilities, and we have
11 worked with the Regional Water Quality Control Board in the
12 Los Angeles area in evaluating tire disposal options.
13 So, that very briefly gives you some background on
14 our firm. Should you have questions, I will be happy to
15 answer those about our qualifications and background.
16 Moving now to issues of the work plan and the
17 monofill disposal option, which, as I mentioned, we see as a
18 very strong option for closure, the work plan elements are
19 as noted on this visual format.
20 The first portion of our work plan is to perform a
21 feasibility of the shredded tire monofill, and we have
22 actually already started into that process, and our initial
23 findings are that the shredded tire monofill is very
24 feasible and very cost effective as a closure option and
25 alternative to the MELP option.

1 As such, we will be developing a conceptual design
2 that will be prepared mainly for purposes of developing
3 engineering cost estimates. We will also be reviewing CEQA
4 requirements which would apply to this facility, principally
5 with Stanislaus County Planning Department, and also would
6 work with other regulatory agencies, most notably the Board
7 staff who we see communicating with quite regularly and
8 closely over the next ten months to year's time and also
9 working with the Regional Water Quality Control Board staff
10 to ascertain and meet the requirements that they might have
11 for this type of facility.

12 We would estimate the overall cost of a shredded
13 tire monofill at the OTR site, and we see that over the next
14 10 to 12 months we could work through the process and
15 probably have a permitted tire monofill. This would include
16 preparing the appropriate CEQA documentation, if required,
17 having certification of an EIR, if one is indeed prepared,
18 obtaining this conditional use permit from Stanislaus County
19 and Solid Waste Facilities Permit from this Board and, also,
20 as appropriate, any permits that might be required from the
21 water board or other agencies.

22 As I mentioned, we see this as a process that
23 could be completed in 10 to 12 months, and then we would
24 come before you in next year's time when this item of
25 closure comes back up and we would have this facility.

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1 Now, the benefits of a monofill are quite a few.

2 I will list some here for you.

3 Most notably, with shredding in volume, reduction

4 of the tire pile, we have calculated approximately an 80

5 percent reduction of the footprint of the tire pile, taking

6 the entire mass and simply shredding it and placing it in

7 much smaller area. We would see isolation of the tires from

8 the environment and completion and construction of a final

9 cover and drainage controls which would keep water out of

10 the shredded tire mass and protect and encapsulate the

11 tires.

12 It would certainly improve the site aesthetics.

13 We see upon completion that the monofill could readily be

14 seeded with native grasses or other plants and return the

15 site to essentially the natural conditions that occurred

16 before tires began to be disposed of there. Overall, our

17 initial evaluation has indicated that this alternative would

18 reduce the overall closure cost.

19 It would also reduce the requirements for

20 financial assurance to fund closure, and would thus be a

21 very efficient and economical alternative.

22 Additionally, a very major plus is that the tire

23 monofill would allow the tires to be recovered and recycled

24 or reused at a later date very efficiently and with minimal

25 effort. They would be processed and stockpiled and ready to

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1 be excavated and used as appropriate.
2 So, the monofill at this point we see as a very,
3 very strong option.
4 Tied to the monofill, one of the other areas that
5 we would be looking at, is in terms of the materials
6 handling of the tires themselves, moving the tires for
7 shredding and disposal in the monofill is the use of
8 conveyor systems. Our research on the review of the
9 background on the OTR facility has indicated to us that
10 conveyor materials handling has not yet been evaluated.
11 It is a proven technology that is widely used
12 throughout the world for moving materials. It is very
13 common in the mining industry. Example, sand and gravel
14 mining, it is pretty much a standard to move material, large
15 tonnages of material a great distance with conveyor systems.
16 Right now there is an earth dam being constructed
17 in Southern California, and the contractor has chosen to use
18 conveyor movement of the materials to build that darn. So,
19 it is not an antiquated technology by any means. It's very
20 common.
21 In comparison to mechanized equipment, such as
22 dump trucks or tracked or wheeled construction type of
23 equipment, it's much more efficient. Our discussions with
24 conveyor manufacturers and designers and suppliers indicates
25 that it would be very easy to install a cost effective

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1 system that could move 50,000 tires per day without any
2 stretch.

3 The net of this is a lower cost to deliver the
4 tires to a monofill on the site. With reduced cost, again,
5 comes reduced cost of closure and reduced financial
6 assurance.

7 That concludes my comments and presentation on
8 some of the technical aspects of the alternatives that we
9 have been asked to look at by our client, and I would be
10 happy to answer any questions that you might have.

11 BOARD MEMBER FRAZEE: First, let me understand
12 that your proposal is to move ahead with permitting of a
13 monofill?

14 DR. DUNN: Yes.

15 BOARD MEMBER FRAZEE: That would be, in effect, an
16 additional insurance as part of the total closure?
17 In other words, you would be delivering at the end
18 of one year, you would be delivering to this Board, if it
19 fell upon us, a permitted facility?

20 DR. DUNN: That's correct.

21 That's our client's intent and what they have
22 directed us to begin.

23 BOARD MEMBER FRAZEE: So, you are suggesting that
24 they should be given some credit for closure, because that's
25 an additional assurance, financial assurance?

1 DR. DUNN: Yes.

2 I don't know if we are asking to be given credit,
3 per Se, but we are saying that in addition to this other
4 alternative that's on the table, we have looked at this, and
5 we see that the cost of the monofill is highly likely to be
6 less than the MEL? option that is being considered and have
7 been discussed.

8 BOARD MEMBER FRAZEE: So, by that you are
9 suggesting that a monofill could be permitted and
10 constructed for less than \$1.3 million?

11 DR. DUNN: Yes.

12 Our initial estimates indicate that that's the
13 case. And that includes and it's not just the construction
14 of the monofill itself but also the cost to shred the tires
15 and move those into the monofill.

16 The cost reduction comes largely in the volume
17 reduction, and therefore, much smaller volume and footprint
18 in acreage required to accept the tire pile, should that
19 ever occur.

20 BOARD MEMBER FRAZEE: Just suggesting that an
21 additional requirement in the permit would be that Oxford
22 Tire, in addition to the financial assurance, within a
23 specified period, say, 12 months, to deliver or have
24 available a permit for a monofill on the site.

25 MR. MEYER: Could I address that point, which

1 would be, we think we can get a monofill permitted in 10 to
2 12 months.

3 Now, that's assuming we don't get sued on the EIR
4 process.

5 I think a monofill is fairly benign. I think it's
6 very benign. There is very little leachability rate.

7 It's the question of hazard having more to do with
8 psychology than engineering and science.

9 So, our point is that we are committed and we are
10 going to go full speed ahead to get this, but it is possible
11 that 10 to 12 months from now we may not have a permit. We
12 are going to use our best efforts.

13 We — I think your staff will know that we are
14 using our best efforts. Hopefully, those best efforts in a
15 year's time will be a permitted monofill.

16 MS. TOBIAS: Mr. Frazee, if I could try to answer
17 the question, I'm not — I was also talking to Ralph about
18 some other alternatives, so, if this isn't correct, then
19 excuse me, but I think that the reason that you are hearing
20 this presentation today is that what they are saying is two
21 things.

22 They are saying that they are going ahead and
23 working on some other alternatives that would, they hope,
24 substitute for the financial assurances that include MELP in
25 the future, if MELP is not there or if they chose not to use

1 MEL? or whatever.

2 So, all we are hearing today is really, I think,

3 their good faith effort that they are continuing to work on

4 this, that they are not just stopping with coming in with an

5 agreement with MEL? but to go on and do this.

6 So, what you are really hearing is that they hope

7 that sometime in the future, maybe in a year, maybe in a

8 little bit more than a year, they would have perhaps another

9 permitted disposal method for these tires that might suffice

10 as an alternative with financial assurances.

11 Does that answer the question?

12 BOARD MEMBER FRAZEE: The track that I'm following

13 here, and the point that I am trying to make, is that they

14 already stated that they are willing to put up \$1.3 million

15 in combination.

16 Then in addition to that, they are willing to

17 proceed with developing an alternative disposal method if

18 the MEL? thing shuts down. So, that gives me an additional

19 comfort level.

20 The alternative to that, of just the \$1.3 million,

21 if things proceed, when we were to review it in a year,

22 supposing two things happen, either Oxford goes out of

23 business or MEL? shuts down, then we are at ground zero with

24 \$1.3 million starting to get a permit for a monofill, if

25 that is the best solution.

1 So, this helps, I think, in the whole procedure.

2 Also, we have some opportunities to see the alternative
3 fully developed, or nearly developed, by that time, in the
4 form of a monofill permit.

5 That's the point that I was trying to get to,
6 though it may be not too concise.

7 MR. MEYER: The monofill also serves to protect my
8 client's investment.

9 We have considerable incentive besides coming back
10 before the Board. In a business world, the fact that we
11 have a business incentive I think should provide further
12 assurance.

13 BOARD MEMBER FRAZEE: The monofill is not as clean
14 and simple as it sounds though, because there are a number
15 of side issues.

16 Not the least of which, I understand, is this
17 property is a leasehold.

18 MR. MEYER: We have been advised by the owner, Mr.
19 Philbin, that he will consent.

20 BOARD MEMBER FRAZEE: Then another issue that I
21 shouldn't raise in context of this but it's always hanging
22 out there, and that's the fact that there are a heck of a
23 lot of tires that are not within the footprint of this, and
24 that has to be addressed at some point.

25 BOARD CHAIRMAN PENNINGTON: Mr. Relis.

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1 BOARD MEMBER RELIS: Responding and linking it to
2 Mr. Frazee's comment, I'm looking at statute, and we have
3 two requirements.
4 One will be for the submission of a detailed plan
5 and schedule for the elimination of the substantial
6 reduction, that's how the statute reads, of existing tire
7 piles using any of the following methods, and then it lists
8 the various methods, and then, as I understand it, our
9 requirements under the statute for submission evidence of
10 financial assurance are the one's specified, and then any
11 other that the Board deems acceptable. So, we have
12 discretionary authority.
13 I would only caution us in this one way, that the
14 permit issues, where we are both a regulatory oversight
15 permitting agency, and this is a local permit, and this will
16 require local permit, we would be at the end of that chain.
17 In other words, we can't control all the steps
18 leading up to that permit. That's in your hands with the
19 local jurisdictions which you may or may not be successful.
20 It adds a very interesting prospect, but it's speculative as
21 to whether or not you would be able to obtain that permit.
22 I just don't want to get us out there too far
23 where we are seeing this as a clear option, but we don't
24 have the authority.
25 MR. MEYER: That's why we are not presenting that

1 questions that you might have at this time.

2 I did speak with Mr. Normoyle and his client, and

3 they do anticipate that the plant will reopen in May. They

4 have not been approached by PG&E to shut down. So, that's

5 our expectation at this moment.

6 BOARD CHAIRMAN PENNINGTON: Do Members have any

7 questions of Mr. Normoyle?

8 MR. CHANDLER: Mr. Pennington, what I would like

9 to do is that after you have heard from others who wish to

10 testify this morning is, as Mr. Relis, I think, suggested,

11 that counsel could just frame a kind of what-if options, and

12 I'm prepared to do that.

13 I would like to just summarize, just to what we

14 see if MELP is up and OTR is down or OTR is up and MELP is

15 down or both are out and try to just have everyone see the

16 five options out there. So, upon conclusion of the speakers

17 this morning, I'm prepared to do that.

18 BOARD CHAIRMAN PENNINGTON: Okay. I have a

19 request from Mr. Michael Snow.

20 Do you still --

21 Okay. The remaining one I have is Mr. Jon

22 Zelihoefer.

23 MR. ZELLHOEFER: Thank you, Mr. Pennington and

24 Members of the Board.

25 As a bit of an introduction, I am an engineer.

1 also have a Masters in Economics, and I came up here today
2 to address, I think, a very related issue to this, but that
3 is the long-term impact of Oxford and the Modesto Energy
4 Limited Partnership in terms of the disposal of scrap tires
5 in the central part of California.

6 Specifically, it is my opinion that as long as
7 Oxford is operating as they are today, they are virtually
8 operating as a subsidized illegal monopoly, and it is making
9 it very difficult for us in the energy business and the
10 alternative materials disposal business to come up with
11 viable alternatives to present to the generators of scrap
12 tires in the central part of California.

13 I would hope that in your considerations today
14 that you look at not only the immediate impacts of the
15 massive pile of tires that you have out at the disposal
16 site, but what is going to happen should Oxford close or
17 should MEL? close.

18 What are you going to do with the approximate 5
19 million tires a year that are currently being handled by
20 Oxford, and this is from their own numbers?

21 They are currently accepting approximately 5.5
22 million tires a year, and they are removing from the
23 stockpile, again, by their numbers, approximately 500,000
24 tires a year, a 10-to-1 ratio. I don't think that was the
25 idea when MEL? went in to use up these surplus tires.

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1 Literally and the way I see it is what we have
2 here is a cash cow for Oxford Tire in the collection of
3 tires, virtually from Stockton to Fresno, as I have been
4 able to determine, they are the disposal company. They have
5 the lowest prices.
6 There is virtual barrier to entry for anybody else
7 that wishes to dispose of tires in an alternative manner,
8 and I would urge you today in your considerations and your
9 discussions and questions not only to think about the
10 anywhere from 3 to 7 million tires that you have, but the
11 approximate 5 million tires a year that are generated in the
12 Central Valley that are going to be piling up.
13 What you are doing is you are preventing
14 alternatives from being developed today because there is no
15 financial advantage in doing so. Oxford is literally the
16 cheapest, most reliable in existence tire recycling facility
17 in Central California.
18 So, that is my comment. I have an alternative but
19 it is considerably different than the burning of tires, and
20 that's not why I am here to present it.
21 But I would certainly urge you to look at what
22 happens to California if Oxford is not available to absorb
23 these tires and we don't have alternatives in place.
24 BOARD CHAIRMAN PENNINGTON: Any questions?
25 Okay. Thank you.

1 Okay. Mr. Chandler.

2 MR. CHANDLER: I think Mr. Relis suggested it
3 might help us to just frame the issue, if we actually laid
4 out, and I would like to ask Kathryn to help me here, with
5 about four scenarios that I see that potentially could be
6 out there.

7 It seems to me that number one would be OTR is
8 open and MEL? remains open. What do we have under this
9 proposal?

10 OTR is open, and MEL? stays open. What we have is
11 a \$500,000 bond, a \$500,000 insurance policy and \$300,000
12 trust, that will be paid over the next 16 or 17 months, or
13 \$1.3 million in financial assurances and a net reduction in
14 the tire pile size of half a million tires annually, 500,000
15 tires net reduction in the size of the tire pile.

16 So, that is clearly option one, which is, I think,
17 what we are seeing represented right now.

18 Obviously we have been looking at what-if
19 scenarios. So, let's look at this scenario.

20 The second option it seems to me we have is if OTh
21 remains open, but MEL? closes. In the event of that
22 situation happening, the permit conditions call for
23 notification by OTR to this Board and that new financial
24 assurances be immediately entered into.

25 OTh remains as a viable entity but MEL? closes for

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1 whatever reason, the permit conditions require that the

2 Board be notified and that we begin renegotiating.

3 The next alternative it seems to be that we could

4 be facing is if OTR closes but MELP remains open. In that

5 instance, we have \$1.3 million in financial assurances.

6 OTR closes, we have the financial assurances.

7 MELP stays open, and MELP under the agreement is required to

8 move the tires.

9 So, in effect, what you have is the ability to pay

10 the tip fee with the financial assurances in place, and MELP?

11 is obligated to meet their responsibilities to move the

12 tires.

13 BOARD CHAIRMAN PENNINGTON: That is true if we

14 have reached the end of the building of the trust fund.

15 MR. CHANDLER: That's true.

16 We would have \$1 million bond (sic) and \$1 million

17 insurance policy (sic) and even into the trust fund, and at

18 the cliff date, 16 months from now, we would have \$1.3 built

19 up in the trust fund, and that's what the Board — 20 BOARD MEMBER

FRAZEE: The other aspect of this,

21 with OTR closed, there are no more tires coming on-site, so

22 you can increase the level of the tires being used in the

23 plant.

24 MR. CHANDLER: That's true.

25 You could actually start to ramp-up, and I want to

1 show you some numbers as to just what they are consuming

2 annually out there. But that is an option.

3 BOARD MEMBER FRAZEE: Is the ratio not 6-to-1 now?

4 MR. CHANDLER: I think it's something like that.

5 BOARD CHAIRMAN PENNINGTON: I'm sorry. The

6 question is would MEL? be able to bring the tires in around

7 that tire pile?

8 MR. CHANDLER: I think that's something that it

9 might be worth asking Mr. Normoyle to address.

10 If this area, I'm assuming, that if OTR closes

11 that that service agreement and us as a beneficiary would

12 still give us recourse to go to MEL? and have them fulfill

13 that obligation of moving tires from the pile to the

14 operation and perhaps even assume the management of that

15 plant or have someone come in and manage that plant, but

16 it's my understanding that we would have recourse in that

17 agreement to have MEL?, in the event that OTR closes, to

18 still fulfill that responsibility.

19 Obviously, that's key.

20 BOARD CHAIRMAN PENNINGTON: Does Mr. Normoyle

21 agree with that?

22 MR. CHANDLER: Under the scenario of OTR no longer

23 being in operation, what are MELP's responsibilities under

24 that scenario relative to the service agreement?

25 MR. NORMOYLE: What we have done, and there are

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1 other comments that I can make, but I will limit them to
2 specifically to this issue.

3 Mike Norinoyle, for the record, and I'm a principal
4 in the firm of Normoyle and Newman in Modesto.

5 If we posit scenario three, which is if OTR closes
6 for whatever reason, and MELP's operation remains open, then
7 we have a situation where the Board would have the \$1.3
8 million that can be used against the tip fee which, under
9 the terms of the amendment that was presented to you and
10 which has been signed by the parties, would obligate MEL? to
11 accept the tires and deliver them from the pile to the
12 delivery area. I will just address the delivery area in a
13 moment, also.

14 The thing that I think is important to emphasize,
15 and this was pointed out earlier, is that the contract
16 between OTh and MEL? is a requirements contract. So, the
17 plant, to the extent that the plant is up and operating and
18 available and will remain available to the Board or its
19 designee for the price \$16 a ton delivered, under those
20 circumstances, it would be available.

21 Now, there has been some question about whether or
22 not the permit application of OTh has included or not
23 included what the parties call the tire delivery area, which
24 is the area near the hoppers where up to 500,000 tires can
25 accumulate. As part of our agreement and our negotiations

1 with OTR, and this is primarily a control issue as much as
2 anything from MEL?, MEL? has decided to accept the
3 responsibility of working with your staff and you to be the
4 one's to permit the tire delivery area.

5 That will become MELP's responsibility, not OTR's.

6 Okay.

7 So, I have touched on a couple of issues, but does
8 that answer anyone's questions?

9 BOARD MEMBER RELIS: Does that require a permit
10 modification?

11 MR. CHANDLER: No.

12 I think what Mr. Normoyle is saying, Mr. Relis, is
13 that when this contiguous operation became bankrupt, the two
14 entities then took over, OTh and MEL?.

15 There are tires in both areas. One is at the tire
16 pile location, and that's what we are talking about today,
17 and that's this 7 million some odd tires.

18 The other is the delivery area. The delivery area
19 is taking more and more tires, and it's getting
20 significantly large in size, and staff are now under the
21 understanding that MEL? will come forward and actually
22 fulfill the tire pile permit obligation for the tire
23 delivery area only.

24 It's a much smaller number of tires, but it's
25 appropriate, because we are now seeing a number of tires, if

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1 you will, being addressed in this tire delivery area, and

2 they will come and get the permit for that.

3 As you recall, we have always just taken those

4 tires out of the equation, and so they are recognizing that

5 they have a responsibility for the tire delivery area, and

6 under that responsibility they will be seeking a permit to

7 financially assure that location and have it properly

8 permitted.

9 BOARD MEMBER FRAZEE: It's difficult to determine

10 for the untrained person where that boundary line is between

11 them, because that deck area sort of melts right in with the

12 tire pile.

13 It's not clearly delineated.

14 MR. NORNOYLE: Actually, operationally between the

15 parties, it is clearly designated, and I don't think there

16 is any question between MELP and OTR about where the

17 boundaries of the tire delivery area are.

18 BOARD MEMBER RELIS: Another point of

19 clarification, while we have you up, in the event that OTR

20 was down and you were up, and, okay, you have this loading

21 area, would you be able to take tires directly in the way

22 that Oxford is taking now, they would just come in from

23 different sources or different vendors bringing them in, and

24 what would be the overriding condition that would give us

25 the assurance that both the pile was going down, the tire

1 pile, and you were not operating in a manner that just kept
2 the status quo or exacerbated the problem?

3 MR. NORMOYLE: I need to be candid with you in
4 telling you that under the terms of the agreement between
5 MEL? and OTR, there are a very limited number of situations
6 where, because of an OTR default, MEL? would be given the
7 right to go out and try to seek transient tires coming from
8 third parties that currently is not getting from Cm.
9 I mean, you have to remember that this is strictly
10 a business matter to MEL?. They operate the plant based
11 upon fuel.

12 If for whatever reason they don't have access to
13 the tires from the tire pile, they have to get them from
14 someplace, and if they are not coming from OTR, then they
15 need to have the right in those limited circumstances to get
16 them from other parties.

17 So, essentially, the Board would come into the
18 picture within the context of an existing contract where
19 MEL? does have certain rights but obviously the intent there
20 would be to try to coordinate to the greatest extent
21 possible to get tires to the pile in a cost effective
22 manner.

23 BOARD MEMBER FRAZEE: I wanted to follow-up on
24 that a little bit. In that instance, if Oxford were to
25 close, with MEL? open, you would have the ability, as was

1 just outlined here, to bring other tires in. Supposing the
2 circumstance arose where we are prepared or the
3 responsibility becomes the State's to dispose of those
4 tires, we are prepared and the numbers are based on the \$16
5 a ton, and supposing a tire hauler comes along and tells
6 MEL? we will supply you tires and pay you a \$25 tipping fee,
7 and then as this permit is structured there is no obligation
8 for you to take the State's tires. You could operate — 9 MR.

NORMOYLE: If you posit that specific

10 scenario, and we are in one of those varied situations where
11 MEL? would have a contractual right to take third party
12 tires, then I think that would become a business decision
13 for MEL? that they would want to be able to exercise.

14 BOARD MEMBER FRAZEE: So, our closure option is
15 not assured in this, because this is not a permit to MEL??

16 MR. NORMOYLE: The thing that I would like to
17 emphasize is that in making the business decision to enter
18 into these negotiations with OTR and to present you with a
19 document that we have presented to you, one of the tasks
20 that we've undertaken is getting a lot more comfortable than
21 MEL?, quite frankly, has ever been in trying to ensure
22 itself that OTR means what it says about having the
23 financial wherewithal to stay in business and to be a player
24 in this marketplace.

25 We are looking at this as a risk which we hope we

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1 will never be exposed to.

2 BOARD MEMBER FRAZEE: I think we are all are.

3 MR. CHANDLER: There is a forth alternative or

4 scenario, and that's where OTR closes and MEL? *closes*, and

5 in that case, today, we would have a million dollars in a

6 bond and the insurance policy, and depending on when this

7 scenario could occur, we would also have the amount

8 deposited in the trust fund, theoretically as much as \$1.3

9 million, which we understand, and recourse against MEL? to

10 have them remove the tires.

11 It may be that -- it's my understanding again that

12 under that contract they would have to fulfill that

13 obligation, that maybe then we would direct them to another

14 location, again if OTR was closed as well.

15 BOARD MEMBER FRAZEE: I need to understand that

16 recourse to MELP where their responsibility comes in in that

17 scenario.

18 MR. CHANDLER: This is real important to get

19 clear. At least as we understand it, based on the

20 negotiations that have occurred.

21 Well, it says OTR closes and MEL? closes, we have

22 the \$1.3 in hand. Would we have any rights?

23 I believe we would have rights or recourse against

24 MEL? to fulfill the arrangement around the removal of the

25 tires.

1 At that point if they both walk away from the
2 site, are we left with any recourse under this agreement?

3 MR. NORMOYLE: I think in the discussions that we
4 have had, we have made it pretty clear that if that very
5 hopefully very unlikely situation were to ever occur, we
6 don't see in that situation anyone having the authority to
7 demand that MELP operate.

8 If it is not operating for whatever reason, what
9 is being suggested is that someone could put a gun to MELP's
10 head and say, whether you want to be operating or not, then
11 we will make you do that.

12 Our understanding in discussions with staff is
13 that if that scenario were to occur, that would be the time
14 when like instantaneously you would want OTR back in front
15 of you and say, it's become very apparent that we don't have
16 enough financial assurances, and that would have to be
17 renegotiated.

18 If MELP is open and is operating, then the
19 contract tells you what or where to dispose the tires at on
20 a delivered basis.

21 I don't don't want anyone to be mislead here, if
22 OTR is closed and MEL? is closed, then our position is that
23 under the contract we have given you we could not be
24 required to reopen and burn the tires.

25 BOARD MEMBER FR.AZEE: Could you be required to

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1 transport the tires to another site or to participate in the
2 closure of the facility?

3 In other words, be a contributory party to the
4 monofill option?

5 MR. NORMOYLE: I don't see that, because again, I
6 tried to draw the distinction between who has the obligation
7 to get the permit.

8 We don't own the tires. We don't control the
9 tires.

10 We are — there as an option, which is made
11 available to what I think is a very cost effective basis.

12 MR. MEYER: We have not understood that MEL? -- as
13 I said, this is a requirements contract.

14 If MEL? were out of business, just practical, if
15 they are out of business, you wouldn't have somebody to go
16 to.

17 This is much like a situation if we set our
18 disposal option was that the Harry Smith, if the Harry Smith
19 Cement Kiln goes out of business, then that closure option
20 is not there, and we have to go somewhere else.

21 I hope that explains that.

22 MR. CHANDLER: Yes. I think that really is a
23 policy question before the Board in that I need to go back
24 and remind the Board in my opening remarks, back in
25 November, we presented to the P and E Committee what's

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1 called Kiefer Road Landfill and the cement industry as an
2 option, and the direction was to go back and use MEL? as the
3 lower cost disposal option, so the calculation have revolved
4 around that.

5 We have a permit that reflects that remediation
6 cost now under this scenario, I can understand that it's
7 represented we only have at that point the \$1.3 million.

8 BOARD MEMBER FRAZEE: There is something that I
9 lost sight of here in this discussion, and that's the permit
10 as we issued it calls for a \$3 million plus guarantee.

11 MR. CHANDLER: That's correct.

12 BOARD MEMBER FRAZEE: So, what we are being asked
13 to do is to reduce that down to \$1.3 million, based on
14 verbal assurances that --

15 MR. CHANDLER: That MEL? will stay open.

16 BOARD MEMBER FRAZEE: That MEL? will stay open and
17 the monofill landfill will be built.

18 MR. CHANDLER: Right.

19 It seems to me there is one final option and
20 that's the no permit. In other words, it's been represented
21 to us today that OTR doesn't have the financial resources to
22 fulfill the permit conditions, and therefore, we don't have
23 a permit in effect.

24 Of course, the results there are no financial
25 assurances for the Board, the million dollars that are

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1 available today or any deposits into the trust fund and no
2 net reduction from the tire pile.

3 BOARD CHAIRMAN PENNINGTON: We are being asked to
4 modify the permit that we approved at the last Board
5 meeting.

6 I wonder if we should not explore to some degree,
7 if we are going to reduce the amount of dollars to be put up
8 for the financial assurance, why not explore the idea of
9 reducing or increasing the number of tires that are going to
10 be coming off that pile.

11 At least from my standpoint, my biggest concern is
12 the 7 million-odd tires that are sitting in a field in
13 Stanislaus County, and I don't see half a million tires a
14 year is really making much of a dent in that pile.

15 If, in fact, it was only half a million tires that
16 come out of there, then it would take better than eight
17 years to get that pile down. It would seem only right if we
18 were going to be asked to adjust the permit in terms of
19 dollars, we should be asking for some adjustment in the
20 number of tires coming off the pile.

21 MR. MEYER: One important point in considering
22 that issue is that it costs us to increase the number of
23 tires, from 500,000 or 5,000 tons a year, significantly
24 increases our costs.

25 There is a balance here. We, in many ways, we

1 bring tires in, and we get paid for them. This tire pile is
2 a tire pile that we didn't put there.
3 We came there and we bought it, and we can reduce
4 it, but 5,000 tons a year, I believe my client is spending a
5 fairly significant amount of money to reduce that.
6 We do plan to be in business. We do plan to
7 continue to reduce the tire pile and in some years we have
8 reduced it more than 500,000 tires.
9 BOARD CHAIRMAN PENNINGTON: I appreciate the fact
10 that if we increase the number of tires taken off the pile,
11 that it does have an economic effect on OTR.
12 However, it is more in my mind it is more
13 assurance that those tires will be gone than spending a
14 couple hundred thousand or so on the monofill, I'm not sure
15 is going to be there, and if the monofill is half-way
16 permitted and 0th goes out of business, who then continues
17 the effort on the monofill?
18 We have to do that.
19 MR. MEYER: We can spend our money in various
20 ways.
21 It would seem that using GeoSyntec, we think -- we
22 don't think this is a real risky venture to put a monofill
23 in. We are prepared to get it permitted and get it built.
24 At that point, if it is the Board's view that we
25 should reduce the tire pile greater than 5,000 tons a year,

1 that would be a point in time where we could do that.

2 I think it's in the public interest that we

3 proceed to permit an alternative there, because if we go out

4 of business, and MELP goes out of business, then I think we

5 are in a much worse circumstance. My client is prepared to

6 invest two or three hundred thousand dollars or more to

7 pursue this monofill.

8 GeoSyntec is not idly suggesting that a monofill

9 is a realistic option for this site. They have been out

10 there. They have spent several days at the site looking at

11 it, and they are very familiar with it.

12 It is an isolated site. We think that the

13 politics in Stanislaus County are such that we are likely to

14 be able to get such a permit.

15 I think it addresses some of the concerns of

16 Stanislaus County that this large pile out there becomes

17 much reduced, and I don't believe it represents any serious

18 hazard.

19 BOARD CHAIRMAN PENNINGTON: I have watched

20 Stanislaus County politics for nearly forty years, and I'm

21 not sure anybody knows what they --

22 MR. MEYER: Well, I appreciate that. Thank you.

23 BOARD MEMBER RELIS: Mr. Chair, point of

24 arithmetical question, now making sure that we even

25 understand whether the pile under the present proposal will

1 go down.

2 If we agree that the pile is currently — it was
3 60,000, and then it grew in the three-month shutdown, it
4 would be 72,000. Then we reduce by 5,000 tons per year
5 under the agreement, but then MEL? is shut down for three
6 months a year.

7 So, have we really reduced the pile? I mean just
8 looking at the math -- if we could get clarification.

9 MR. MEYER: We are committed to reduce that pile.

10 We are committed to reduce that pile 5,000 tons a
11 year. If we have to take those tires to cement kiln or if
12 we have to take those tires to a landfill, if we can't burn
13 them —

14 BOARD MEMBER RELIS: Excuse me.

15 I'm asking our staff whether our permit, if the
16 conditions as proposed would mandate that, mandate the
17 reduction, because remember they - if they shut down three
18 months a year, this is a constant replenishment, and I just
19 wonder whether we got that or missed it in our condition.

20 MR. CHANDLER: I believe the permit conditions
21 require that half a million, 500,000 tires, or 5,000 tons
22 net reduction annually.

23 If you look at what they consume, they consume
24 that amount a month.

25 If you would provide the handout to the Board

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1 Members. You were asking what would happen with the draw
2 down, we have estimated 72,000 tons of tires out there and
3 that includes the 12,000 that I indicated in my opening
4 remarks that we believe will be added at the site.
5 dust simply skip the math for a second and go over
6 to the right-hand column, that equates that that plant,
7 assuming 85 percent capacity factor, in other words, if it
8 runs 365 days a year but is up 85 percent of the time, and
9 that is what the staff estimates its track record to be,
10 they are going to burn 51,000 tons of tires per year, and
11 remember we are estimating 72,000 tons is out there.
12 They are using, under this assumption, they are
13 using 4,250 tons per month.
14 So, when we ask for 5,000 net reduction, we are
15 basically asking for one month's worth of burn down directly
16 from the tire pile. We know that the economics of the
17 situation, and I think Mr. Frazee said it was something like
18 6 in and 1 out, or 4 in and 1 out, I think what Mr.
19 Pennington is indicating is if we have representation today
20 that we want to reduce the financial assurances from \$3.5
21 million to \$1.3 million, do we want to increase the amount
22 of tires coming off that tire pile?
23 At 500,000 tires per year, it's going to take
24 eight years to get the pile down. So, while it indicated
25 that this is a delicate balance as to who can remain

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1 financially solvent here, it seems to me we have an
2 applicant saying they want to reopen the permit conditions,
3 and I can argue that we can look at all the permit
4 conditions, and Mr. Pennington's point is just what are we
5 looking at out there?
6 We are looking at a facility that's burning 51,000
7 tons a year, 72,000 on the pile, reducing 4,000 a month, and
8 we are asking that 5,000 come out of that pile on an annual
9 basis. So, I don't feel we have been overly restricted in
10 our request for a net draw down, and I think that's
11 reflected in the number of years that it would take the pile
12 itself to be reduced.
13 That is how we see the numbers, and obviously MELP
14 and OTR may have some adjustments to this.
15 We are also asking that they pay, as you know, an
16 amortization schedule of about \$100,000 per month to meet
17 the trust fund. It seems to be that \$100,000 a month could
18 go substantially towards paying the tip fee to draw tires
19 off that pile in a substantial way.
20 So, there are a lot of combinations here. I know
21 this is very complex and interrelated. But I'm not
22 convinced that there isn't a solution.
23 It's just frustrating that it's taken us this long
24 and the eleventh hour that we always seem to be dealing with
25 in the negotiations.

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1 But here are some numbers that I think help shed
2 some light on how the consumption of tires, the appetite of
3 tires at that facility are used on an annual basis.

4 BOARD MEMBER GOTCH: Regarding the last option
5 here, which is no permit and no \$1.3 million, and we have
6 the tire pile, basically, what is our cost to get those
7 tires to MEL? to burn the tires?

8 MR. CHANDLER: As I indicated, staff does their
9 calculations, and Mr. Meyer represented that they were much
10 higher then he felt they were.

11 We have represented that we feel it was about \$23
12 a ton to move the tires from the pile to MEL?. That
13 included experience we gained in our tire pile cleanup
14 efforts, our remediation of tire piles around the State and
15 using outside contractors to come in with front-end loaders
16 and labor to physically move the tires from the pile to the
17 hopper, the belt.

18 You heard that they have some other ideas like
19 conveyance systems, and some other approaches that we
20 haven't addressed that are perhaps cheaper but that feasible
21 work is yet to be completed.

22 Did I confuse you on that?

23 BOARD MEMBER GOTCH: No, you didn't.

24 It was something that I did know. Thank you.

25 BOARD CHAIRMAN PENNINGTON: Okay. I think we are

1 at a point of, somewhat -- I take it that there is from
2 OTR's standpoint that half a million tires a year is the
3 cap.

4 I have to tell you that if -- I personally feel
5 that I have to see more tires come off the pile, or we have
6 to stick with what we have done --

7 You are asking us to make a lot of adjustments
8 here. We are reducing the monthly contribution to the trust
9 fund by at least \$100,000, if my arithmetic is correct. We
10 are accepting that MEL? will assume their responsibility,
11 you know, so we are making some real substantial changes
12 here.

13 My main concern is the size of that tire pile. It
14 has got to be brought down. I don't see that 500,000 tires
15 a year will do that.

16 Now, I do congratulate you all, and I do
17 appreciate all the time and effort that all of you have put
18 into trying to come to some resolution. But I keep telling
19 you, and I continue to say, that tire pile gives me great
20 heartburn.

21 That could be a serious environmental disaster.

22 MR. MEYER: That is one of the reasons, Mr. Chair,
23 we are pursuing the monofill. I think that it's a very
24 serious option, and I think at the time, in a year's time
25 when we come back, the Board could consider increasing the

1 reduction.

2 Ralph made the point under the current condition

3 there is \$100,000 a month. There is not \$100,000 a month.

4 My client absolutely does not have \$100,000 a month.

5 That is one of the reasons that we have come back.

6 So, it sort of catches us — it's difficult, it's difficult

7 at the moment to know what we can do in regards to what you

8 are raising in terms of additional tire reduction, but what

9 I would like to request is that we table that until next

10 year when we come in again on reconsideration of financial

11 assurance requirements or that at least that matter be the

12 issue of reducing additional reduction in the permit be

13 considered at some future point but less than a year from

14 now when we have had an opportunity to see where we are on

15 the monofill and so we are also in a better position to

16 understand the economics of what the Board may be

17 requesting.

18 BOARD CHAIRMAN PENNINGTON: It's certainly up to

19 the Board, but I just have to reiterate, that pile has got

20 to be reduced.

21 BOARD MEMBER RELIS: Mr. Chairman, I believe that

22 your position, given -- let's face it, what we have got here

23 is MEL? is our only financial assurance, bottomline, under

24 the proposal that's before us.

25 We wouldn't have enough money under the proposal.

1 We have to be sure that they would operate, and we would be
2 able to get tires taken off that pile at \$16 a ton. That's
3 what we are being asked to do, and I think you are right.

4 The statute is clear, and our responsibility is to
5 take down the tire pile. It doesn't say how, it just gives
6 us a bunch of options and says we have various financial
7 mechanisms discretionary to do that.

8 But I wouldn't have a comfort level unless we can
9 see a substantial reduction annually, and 500,000 is too
10 slow under this. So, I think I'm with you on that.

11 BOARD MEMBER GOTCH: I agree with what you have
12 said. I don't think there is anything more that I could
13 add.

14 BOARD MEMBER FRAZEE: Looking at what I see are
15 alternatives now at this point, we had an original issued
16 permit, and we are looking at the way of making that more
17 palatable.

18 The option of increasing the movement of tires off
19 of the pile to the power plant, I think, is a good one for
20 Oxford as opposed to the current situation. In my mind it's
21 one or the other. I think that the Chairman is right on
22 target on that.

23 But if you look at it from a cash flow situation
24 as opposed to the putting up the amount of money for the
25 bond in the schedule that's set in the current permit and

1 the issues versus being able to do that at the time that you
2 have the cash flow of bringing other tires in albeit that
3 and adjust that ratio, I think that's an option that Oxford
4 ought to work with a lot easier than the one that we are
5 facing.

6 I think it's a good compromise.

7 I have to keep going back to the original premise
8 that this plant was built and why it was sold to the People
9 of California in the first place. I was in the Legislature
10 at the time that this idea came along, and it was driven by
11 the whole goal of averting an environmental disaster,
12 getting rid of that tire pile.

13 I don't know that people really, at the point in
14 time that it was discussed and the action that the
15 Legislature had to take in order to accommodate this, that
16 anyone stopped to do these numbers that indicated that if
17 you ran the plant at full capacity, you would run out of
18 fuel before the time that you amortized the cost of the
19 plant. I certainly didn't think about it at that time, so
20 it becomes very clear that you have to bring in additional
21 tires.

22 We are faced with complying with the statute.

23 From the beginning of this issue, I tried to be
24 accommodating, and I think we have reached the point of the
25 extent of that accommodation. This alternative of modifying

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1 the permit to accept the current or the proposed financial
2 assurances but increasing the annual take of tires from the
3 pile is a reasonable one.

4 I don't know what that number is, whether it's the
5 doubling of that or not that might be reasonable.

6 BOARD CHAIRMAN PENNINGTON: I don't know what the
7 reasonable number is.

8 I would like it to go away tomorrow.

9 MR. CHANDLER: As you know, we have held in
10 abeyance a Cease-and-Desist Order.

11 We did so after the Board agreed to have this
12 hearing today. The Cease-and-Desist Order is prepared and
13 not only does it say you are not to take tires to the tire
14 pile site, but it also asks that tires start being removed
15 from that site.

16 We asked for a three-year schedule to complete
17 that 2,000 tons per month removal. It seems 2,000 tons per
18 month is approximately half the appetite per month of what
19 that energy plant uses, 4,000 tons a month is being
20 consumed.

21 My feel, perhaps we should put on the table, meet
22 you half-way, 50 percent of the tires that are being
23 consumed per month can come from trucks coming into that
24 operation. No tires going into the pile itself, and the
25 other 50 percent of the tires should come off that pile.

1 As a point of trying to open some negotiations
2 here, they are asking for us, as you point out, a reduction
3 today, and I think we can see if there is room to continue
4 to negotiate the very point that you and Mr. Frazee made,
5 which is to meet a higher level of draw down on the tire
6 pile itself.
7 Absent that, I am prepared to issue the
8 Cease-and-Desist Order. I'm just pointing out to the Board
9 that the Board currently reads that not only are they to
10 cease accepting tires at that location but they are to begin
11 drawing down tires from that site to the tune of 2,000 tons
12 per month.
13 BOARD MEMBER RELIS: Mr. Chair, Mr. Chandler has
14 articulated in a reasonable frame work.
15 I know that we are in a hearing today, and we need
16 to make a decision. I wonder what the pleasure of the Board
17 would be to allow — is it appropriate to allow a little bit
18 of time here for the parties to discuss this?
19 Otherwise we are faced with making a decision
20 immediately. So, if we recess for —
21 BOARD CHAIRMAN PENNINGTON: If that is what they
22 would like.
23 I assured them when we stayed the Notice and Order
24 that a decision would be made today. If we couldn't come to
25 some resolve, we would issue that today.

1 I am perfectly willing to come back this afternoon
2 if you feel that there is any area of productivity here.
3 MR. MEYER: We are prepared to discuss the matter
4 with staff, and I don't -- there may be -- we may be able to
5 make additional reductions in the tire pile.
6 But the order of magnitude that Ralph was
7 indicating, I think if we could show them our financials in
8 confidence, this is a profitable company, but this company
9 doesn't have the kind of cash flow — I realize that you
10 would like to see the pile disappear in a year or two.
11 My client doesn't have the financial resources to
12 do that. They would have to pay somebody to take those
13 tires.
14 It's not as if the tire pile sits there as an
15 asset that companies like BFI or Waste Management are just
16 waiting to buy. It is that -- we have to work within the
17 financial constraints of an operator who is committed and
18 who will work with the Board to reduce this tire pile, and
19 we will sit down with staff, and we will negotiate.
20 But it would be an abstraction to suggest that we
21 could reduce this tire pile by the sort of factors that have
22 been suggested by the Executive. It is not something that
23 we can do. It's just not financially there.
24 We are prepared to post \$1.3 million. We are
25 prepared to come to the Board in a year's time, and if we

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1 are successful in the monofill to consider additional
2 reductions, and we are prepared today to discuss reductions,
3 but I'm concerned that the Board Members may be of the
4 impression that my client has the ability to do this or has
5 the impression that my client had the \$3.3 million that your
6 financial assurances last month called for.

7 My client does not have the \$3.3 million.

8 Frankly, no one, absolutely no one is going acquire this
9 pile and agree to incur the liability of reducing or
10 eliminate this pile in a year to two in a market where you
11 are paying MELP \$16 a ton, or where it's a net out of
12 pocket.

13 At this point, it's a liability. It's a
14 liability, but I recognize that the Board wants to see it
15 reduced. It's a liability we want to reduce.

16 We certainly are committed to working with the
17 Board to try to reduce it as best we can. We will be glad
18 to sit down with staff today. I think it would be more
19 productive --

20 BOARD MEMBER RELIS: If I could, I would propose
21 that we adjourn until one o'clock and allow all the parties
22 here to meet and see what they come up with at that time,
23 and you have both HELP and Oxford in the room here today,
24 with their attorneys.

25 BOARD CHAIRMAN PENNINGTON: I support that, but we

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1 are down another Board Member, and I'm sure he would like to
2 be here and participate in this.

3 Actually 1:30 would be better for me.

4 BOARD MEMBER FRAZEE: Mr. Chairman, I'm agreeable

5 to that, but I think we ought to be clear that this is the

6 time for the appli9ant to go back and sit down with

7 themselves.

8 This is not a behind-closed-doors negotiating

9 time. I think we have laid out some possibility for them.

10 It's not a negotiating-with-staff situation.

11 BOARD CHAIRMAN PENNINGTON: I'm sure that you

12 understand that we are not suggesting that you go and

13 negotiate with the staff and that we will approve that.

14 As Mr. Frazee says, we need to look at what you

15 can offer us, and we will take an honest look at it.

16 You understand how we feel?

17 MR. MEYER: We do, and we wouldn't like to -- we

18 realize we are not going to strike a deal with staff but

19 would like to talk to staff about the concept.

20 BOARD CHAIRMAN PENNINGTON: Certainly.

21 Okay. We adjourn or recess until 1:30.

22 (Thereupon the lunch recess was taken.)

23

24

25

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1 SESSION

2 —ooo—

3 BOARD CHAIRMAN PENNINGTON: Okay. This is

4 reconvening the second day of the March Integrated Waste

5 Management Board meeting.

6 We are still dealing with the Oxford Tire

7 Recycling permit issue.

8 Does anyone have any ex partes that they need to

9 report?

10 BOARD MEMBER GOTCH: I had a very brief oral -- I

11. can't talk. I ate too much.

12 A very brief oral discussion with Michael Gersick,

13 of MEL?.

14 BOARD MEMBER RELIS: I ran into John Cupps on the

15 way in, and we briefly discussed the rail-haul vote on the

16 Desert Landfill, and then I had a social conversation with

17 Michael Burn here.

18 That's all.

19 BOARD CHAIRMAN PENNINGTON: I have nothing to

20 report.

21 I had lunch with my wife. I don't have to tell

22 you what we talked about.

23 Mr. Chandler, are you prepared?

24 MR. CHANDLER: I didn't have quite as pleasant a

25 lunch as you had.

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1 I will just recap as I see the situation. I sat
2 down with my staff and tried to put forward what I thought
3 were the objectives of what I felt the Board was looking for
4 here, and we did that.
5 Then at 12:30, I met with representatives from OTR
6 and MELP and put forward a proposal that I thought they
7 should at least consider, and they have countered with a
8 proposal that I will let them reflect shortly.
9 Let me just outline what I felt were the merits of
10 what I felt the Board could possibly consider, that was to
11 recognize that our primary objective is that we want to see
12 a more demonstrable net reduction in the size of the tire
13 pile out there, if we are to consider any of the adjustments
14 to the financial assurances.
15 So, in accordance with any acceptance of the \$1.3
16 million financial assurance that was represented this
17 morning by OTR, that being the insurance bond, the surety
18 bond and the trust fund, that we would see the following
19 conditions as well:
20 No new tires going onto the tire pile; tires taken
21 from designated areas of the pile, and what I wanted from
22 that was that we felt for purposes of fire safety and other
23 measures that we actually could draw tires coming from
24 certain locales and reduce the fire hazard at the site; and
25 a 50-percent reduction or, putting it this way, the flow

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1 of — 50 percent of the flow of tires to MELP by weight
2 would come from the pile, which would represent about 2,000
3 tons per month, or 20,000 tons per year, and that, you
4 recall from this morning's speakers, would be about a three
5 and a half year — that would put us at about the three and
6 a half year mark o getting rid of that tire pile out there.
7 Not being an attorney, I can't say I was very
8 definite in my negotiation skills, and I impressed upon the
9 parties that they weren't negotiating with me. They were
10 really negotiating with the Board, if that's even the right
11 term, and that they needed to recognize these objectives.
12 I think they have, and I am going to ask Steve
13 Meyer to come forward and represent what they feel is an
14 alternative to that, and then the Board can entertain
15 discussions about it.
16 MR. MEYER: We did meet with Ralph, and we do
17 understand the Board's objectives.
18 We have a counter proposal that reflects the fact
19 that we do think that we can reduce the tire pile in a time
20 frame and eliminate this tire pile in a time frame that we
21 believe is acceptable to this Board.
22 We need to stage or step that so that we can find
23 alternatives, business alternatives, for our client, but
24 this is what we believe we can commit to.
25 We will reduce the tire pile, a net reduction for

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1 the first year of 5,000, and the second year we will reduce
2 it 10,000, and the third we will reduce it 20,000, that is
3 20,000 net, and the fourth year we will eliminate the pile,
4 it should eliminate the pile with 40,000.

5 In other words, we will double each year, and at
6 the end of four years, this pile should be gone.

7 This reflects my client's financial situation. I
8 think it reflects his commitment to achieve the objectives
9 of this Board. We intend to be creative. We intend to do
10 this.

11 We would request that the financial assurances in
12 this matter be set at \$1 million, which would be the
13 insurance and the existing bond on the facility. We intend
14 to continue with our other efforts as we described. We
15 intend to continue to commit to work with your Board.

16 I can tell you that this reflects a great deal of
17 soul searching and, in particular, reflects a great deal of
18 reviewing our financial situation, and I hope this is
19 acceptable to the Board.

20 BOARD CHAIRMAN PENNINGTON: Let me ask you, you
21 say 5,000, that would be 500,000 tires the first year, and a
22 million the second year, two million the third, and a total
23 elimination the fourth year?

24 MR. MEYER: Yes. Yes.

25 BOARD CHAIRMAN PENNINGTON: What about the tires

1 coming in there?

2 MR. MEYER: We would still have tires coming in.

3 There would be a net reduction, but it is essential to the
4 client's business that he be able to bring tires into this
5 facility.

6 That is the way he generates the income that
7 allows him to dispose of the tires.

8 There also may have been a matter that I did not
9 bring out, and I do want to bring it out. It's that when I
10 started 30 days ago negotiating with MELP, it was with the
11 objective that the Board would pay \$16 dollars per ton,
12 including the tire retrieval. There were a number of
13 compromises, and the costs to us are somewhat greater than
14 \$16 a ton in some instances, in fact, a large number of
15 tires we will not retrieve ourselves.

16 I just wanted to point that out. It's not \$16 to
17 us.

18 Are there any questions that I could address?

19 BOARD CHAIRMAN PENNINGTON: Questions?

20 Mr. Chesbro.

21 BOARD MEMBER CHESBRO: I'm not sure this is a
22 question for this gentleman.

23 It's just a question in general, and I apologize
24 for having missed part of the discussion this morning, but I
25 guess the question that remains with this, that is obvious

1 to me, is what if somehow the applicant fails to perform?

2 Is the money that's being talked about adequate

3 for the State to take care of the problem? And that is the

4 question that the Board has to ask.

5 Is what is sitting there going to allow us to — 6 if this reduction
of the pile doesn't occur, what position

7 will we be in to then proceed and take care of the problem,

8 and this financial assurance, is it adequate?

9 BOARD CHAIRMAN PENNINGTON: We were led to believe

10 that \$1.3 million was adequate.

11 We are looking at another \$300,000 reduction, but

12 that \$1.3 million was adequate.

13 MR. CHANDLER: I beg your pardon, Dan.

14 BOARD CHAIRMAN PENNINGTON: This morning we talked

15 in terms of \$1.3 million in assurances and that was to be

16 adequate.

17 It seems to me that I'm uncomfortable with the

18 loss of \$300,000. If we are reducing the size of the pile,

19 that should reduce the cost to eliminate it in the event

20 that something goes awry here.

21 MR. CHANDLER: The way that I look at this, this

22 morning we were proposing that they meet us half-way and

23 that they reduce the size of the tire pile by 20,000 tons a

24 year.

25 They can't do that, but this proposal, as I did

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1 the simple math, on average for four years is 18,000 tons
2 per year. If you take the total, and granted it sounds like
3 the budget deficit proposals that we have heard about, but
4 the point is is that I think we are not too far away on a
5 four-year cycle.

6 Our proposal was about three and a half year
7 cycle, including that that's in the Notice and Order.

8 If we issue the Notice and Order and we try to
9 delineate that in three and a half years, we certainly don't
10 have any financial assurances in hand, and that's the no
11 permit, this alternative.

12 This proposal, \$1.3 million, puts \$1 million on
13 the table for the Board to have access to and amortize the
14 pile down over four years, that's on average 18,000 tons per
15 year. So, as you know, the permit calls for a review of the
16 financial assurances in 18 months.

17 BOARD MEMBER CHESBRO: I obviously missed
18 something, but in the conversation over the couple of hours
19 that I missed, we went from \$3.3 million to \$1.3 million, so
20 I don't know what I missed in the transition, but wasn't
21 that the figure that we had been talking about?

22 MR. CHANDLER: You missed a lot, and to try to
23 briefly —

24 BOARD MEMBER CHESBRO: That's a lot of waste.
25 I mean, that's a drastic drop.

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1 MR. CHANDLER: We now have an updated service
2 agreement between OTR and MEL? where MEL? is covering the
3 cost of taking tires from the pile to the belt, so that
4 OTR's representation is that their risk and their obligation
5 is tip fee only, at \$16 a ton, and the contract calls for
6 that to be paid by OTR to MEL?.

7 We are having a representation there for the
8 financial assurances should be in \$1-million to \$1.3
9 million, which they are prepared to post today.

10 BOARD MEMBER RELIS: Point of clarification, in
11 the current proposal that you are suggesting here, what
12 happens to the deal with MEL?, the \$16, does that fall away?

13 MR. MEYER: No, that doesn't fall away.

14 No, that's in place. Our deal remains the same
15 with MEL?.

16 We have amended our agreement with MEL? to provide
17 that in the event of cessation of business by OTR that the
18 Integrated Waste Management Board pays a tip fee of \$16 per
19 ton, including retrieval tires from the tire pile,
20 eliminating the \$23 factor that was basically what B
21 equalled in this equation, A plus B equals C.

22 BOARD MEMBER RELIS: I have one other point.

23 My last read of the -- I'm sorry. I forgot the
24 gentleman's name from MEL?.

25 MR. NORMOYLE: Mike Normoyle.

1 BOARD MEMBER RELIS: Thank you.

2 You had said, and correct me if I'm wrong, but

3 your price or that \$16 figure was not a figure that we could

4 necessarily count on if we were going directly to you.

5 There was nothing to assure that number.

6 If there, was competing access to the burner at 25,

7 how would you honor that?

8 MR. NORMOYLE: Just to clarify that, first of all,

9 I think it's important to remind everybody that our

10 agreement on the \$16 a ton, delivered, is what I call it, is

11 part of an overall package of many issues that we have

12 negotiated and resolved with OTR.

13 Our commitment to that number is based upon — one

14 of the things it's based upon is the issuance of a permit to

15 QTR.

16 If a permit is issued, the assurance that you have

17 through this contract is that if MELP is operating and is

18 able to take these tires, that the Waste Board or its

19 designee can be guaranteed that the price delivered will be

20 \$16 a ton.

21 BOARD MEMBER RELIS: Then I have an observation,

22 if I could, on the proposal before us.

23 It's going in the right direction, but in my view

24 it fails to deliver the upfront. It loads it all years out,

25 and the further out in time the load goes, the less secure I

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1 feel about the progress on the immediate problem, which is
2 the tire pile.

3 It doesn't take it down in year one at the level
4 that I think we were — at least what I heard Members of the
5 Board seemingly in concurrence stating, but I may have been
6 wrong. It seemed like we wanted the big buy-down.

7 MR. CHANDLER: It takes it down to the identical
8 level that the permit calls for.

9 The trade-off is, of course, that we do not have
10 \$3.3 million.

11 BOARD MEMBER RELIS: That's right.

12 We are still giving up the money, and we're not
13 getting a hit in the first year.

14 MR. CHANDLER: In order to ramp up for more than
15 5,000 tons per year to a figure approaching 40,000 tons per
16 year in out year, year four, the proposal of the adjustment
17 that was represented this morning is financial assurances.
18 It's a ramping up with reduced financial assurance
19 deposit coming forward.

20 BOARD CHAIRMAN PENNINGTON: In a sense, though,
21 what this is suggesting to us is that we could go back to
22 the \$3.5 million or the \$1.3 million and without this new
23 added, we would still only be guaranteed getting two million
24 tires off the pile in four years, where this proposal is
25 suggesting that they will eliminate or substantially

1 eliminate the pile in four years.

2 BOARD MEMBER RELIS: I don't argue with the logic

3 or the gross numbers, but I do have a concern about putting

4 that much reliance a few years out in time when a lot of

5 things that I think that this Board is concerned about could

6 materialize.

7 So, it's a matter of degree here. I'm just

8 expressing the degree of concern about year one not the

9 direction of three years or three and a half years.

10 BOARD CHAIRMAN PENNINGTON: How long were we going

11 to — the build-up of the trust fund, the \$300,000, how long

12 is that, over what period did it take to get to \$300,000?

13 MR. CHANDLER: In our original proposal, between

14 now and the cliff date, September '97, about 16 or 17

15 months.

16 BOARD CHAIRMAN PENNINGTON: I'm referring to the

17 proposal that they offered us this morning, that was \$1.3

18 million, you were going to add to the trust fund over a

19 period of time.

20 What was that?

21 MR. MEYER: We were to, as we were discussing this

22 morning, adding to the trust fund approximately \$275,000.

23 BOARD CHAIRMAN PENNINGTON: Over what time period?

24 MR. MEYER: 17 months or 16 months.

25 As Ralph was saying, it was either 16 or 17

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1 months.

2 BOARD CHAIRMAN PENNINGTON: Okay. Somebody good

3 at math, what is that a month?

4 MR. CHANDLER: Over 17 months, that would be the

5 \$300,000 that would be built up by September '97.

6 I think it's about \$30,000. It's about \$17,000.

7 They have \$25,000 in the trust fund currently, and

8 if we back that out, that also required about \$17,000 a

9 month deposit.

10 BOARD CHAIRMAN PENNINGTON: Well, I would --

11 BOARD MEMBER CHESBRO: Again, I may be missing

12 something, but it seems like this depends on some ifs, some

13 really significant if s.

14 If Modesto Energy is functioning, and it can take

15 the tires, if Oxford is functioning and performs. If they

16 don't, if Modesto would take the tires from us without that

17 charge, these are all -- it seems like it's built on all

18 these ifs which seem fairly flimsy to me.

19 I mean, I hope that all those things happen, of

20 course, but that is an awful lot for us to rely on, and that

21 remains a significant concern. Of course, I'm open to

22 having those things answered.

23 MR. CHANDLER: Let me try and answer the first

24 one.

25 I am a little troubled by the fact that we now

1 are, and I think legitimately so, trying to discuss whether
2 or not this makes any sense in the event MEL? is
3 operational.

4 I have to go back to the Committee's direction to
5 staff back in November, and I realize that was quite some
6 time ago, but we came in with some alternatives to take
7 those tires, and cost estimates, to the Kiefer Road Landfill
8 and to the cement kiln, whose numbers were \$9 million and
9 \$11 million, respectively, and the direction we got was to
10 use the low cost disposal alternative, which was the Modesto
11 facility.

12 So, from that point forward, we have been
13 operating on the assumption that the calculations that these
14 financial assurances were derived would be utilizing the
15 MEL?, which is clearly the most cost-effective disposal
16 alternative, using the MEL? plant.

17 Granted, you can then say what happens if MEL? is
18 not operational, and that's a very good question, but the
19 reason why we were using MEL? is because at that time the
20 Committee asked that we look at the lowest cost disposal
21 alternative, which OTR raised significant objections to when
22 we gave them other alternatives that were not at that
23 location.

24 They're behind you. If MEL? closes and OTR
25 remains open, the permit calls that we notify OTR that they

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1 have to restructure their financial assurances.

2 If OTR closes and MEL? closes, at least we have

3 the financial assurances that we had negotiated today,

4 whether it be a million three or a million.

5 The other alternative is the Notice and Order

6 alternative, which is no permit. We go into enforcement

7 mode, and we have no financial assurances, and we pursue

8 enforcement action.

9 BOARD MEMBER CHESBRO: Maybe because I wasn't here

10 this morning, what I haven't gotten is \$3.3 million to \$1.3

11 million, because it hard for me to be talking about \$1.3

12 million.

13 BOARD MEMBER GOTCH: I was here this morning, and

14 I'm not there either.

15 MR. CHANDLER: Maybe we should try to spend more

16 time on that, A plus B.

17 MR. MEYER: When I first came into this, which was

18 30 days ago, I read the transcript, and I looked at the

19 permit conditions, and what I understood was the Board had

20 determined to use the MEL? option as a closure option.

21 The question then to the Board would be, so, what

22 is MELP going to charge us to dispose of the tires?

23 OTR said, well, they will charge you \$16 a ton,

24 because that's what the contract provides, and MEL? said,

25 no, it's \$16 a ton, but that does not include retrieving

1 tires from the tire pile.

2 So, then the Board had a dilemma. So, the Board

3 said, well, at least as well as I could tell, I guess the

4 Board said, well, I guess we have to assume that we are

5 going to incur the cost of retrieving the tires from the

6 tire pile and delivering them to the belt that goes into the

7 power plant.

8 Staff made an estimate that that would cost \$23

9 per ton. So, what was then done to arrive at the financial

10 assurance figure was to take the \$16 per ton, which is the

11 tip fee, add it to what was assumed to be the transportation

12 cost of \$23 per ton, since there was no room between OTR and

13 MEL?, and arrive at \$39 per ton, and then \$39 per ton was

14 multiplied against what the Board estimated to be the total

15 number of tires in the pile, which was I believe 72,000

16 tons, and then to that was added the 20 percent contingency

17 factor, and I believe that's how we came up with the \$3.4

18 million.

19 So, when I got on board, I read the contracts, and

20 I said, well, this -- I read the contracts, and I thought it

21 was pretty clear to me that it was MELP's obligation to go

22 into the tire pile and retrieve the tires and that -- so

23 that B should equal zero, and A is 16, and the closure cost

24 should be based on the \$16 figure.

25 The most productive avenue that I viewed in my

1 efforts would be to sit down with MELP and persuade MELP
2 that hueing to that position, that is taking the position
3 that this does not — the position that I set forth, and
4 what was very clearly this, I said, you are taking this
5 position that retrieval from the tire pile isn't included in
6 the \$16 tip fee is going to put my client out of business,
7 and as a consequence we plan to sue you for large sums of
8 money.

9 At that point we then sat down, and we negotiated,
10 and the objective of my negotiations was to have MELP agree
11 in writing that the tip fee was \$16 and that that tip fee
12 included retrieval of tires from the tire pile.

13 BOARD MEMBER CHESBRO: Is that regardless of who
14 is cleaning up the pile?

15 MR. MEYER: That is the fee that the California
16 Integrated Waste Management Board or its assigned would pay.
17 So, it is the fee that the Waste Board would pay,
18 so when you are saying OTR is out of business, it is our
19 pile, or at least not our pile but the pile that we have to
20 deal with, what is it going to cost us? So, that's -- \$16
21 was applied to that using the MELP contract, and I think we
22 resolved the transportation issue.

23 This was an issue that really took the better part
24 of three weeks, including meetings that lasted until 1:00 or
25 2:00 a.m. last night, because it was part of a larger

1 negotiation.

2 I should make this point, which is we negotiated

3 with MELP on the assumption that if we could get clarity on

4 the tip fee, and get clarity that the tip fee did not

5 include — the tip fee did include retrieval of the tires,

6 that our objective was to reduce the financial assurances at

7 this hearing.

8 We did compromise many other aspects of our

9 contractual relationship in order to do this. This was not

10 at no cost. It was not at no cost to my client.

11 We have arrived here thinking that if we got

12 clarity on this point that the financial assurance

13 requirement would be based on the \$16 per ton. That is how

14 we got from \$3.3 million to \$1.3 million.

15 BOARD MEMBER FRAZEE: Let me take a minute to

16 throw another monkey wrench in the works.

17 The proposal that Oxford came forward with this

18 afternoon, with the 5,000 ton reduction the first year, is

19 no different than the permit that we already approved, that

20 particular portion; is that correct?

21 MR. CHANDLER: That's correct.

22 BOARD MEMBER FRA.ZEE: Keeping in mind that we are

23 going to review this in one year, I don't know if there are

24 two sides to negotiating here or what the Board has gained

25 out of that particular offer.

1 I think what I would prefer to see, again keeping
2 in mind that Mr. Chandler pointed out that that's with a
3 proposal of 5,000, 10,000, 20,000 and elimination over a
4 four-year period is an average of 18,000 tons per year, I
5 would be more comfortable with that thing structured in
6 reverse so that during that first year there is a higher
7 level, and when the one-year review comes along, then we all
8 take a look at it and say, well, now you have done a lot of
9 good things here.

10 You have split the pile in four different
11 components where it's less of a risk. Fire fighting is
12 easier. You are making good progress.

13 Let's renegotiate this four-year thing. Maybe we
14 can stretch it out to five or six or something like that to
15 make it a little easier on you. But I think it ought to be
16 proving something the first year.

17 I can't see what was the value of negotiations if
18 what you come back with is the same reduction when what we
19 started off with saying, I think all of us who are here
20 saying, if we see some improvement and reduction in the
21 pile, not promises but upfront reduction, then we are
22 willing to recognize that the \$1.3 million is a reasonable
23 figure.

24 I don't think that you have come back with
25 anything for me at all.

1 MR. MEYER: I think we have come back -- your
2 permit was for 5,000 a year.
3 So, I think we have come back with elimination of
4 the pile in four years.
5 Also, I think that we -- it's important to
6 understand, I'm sure you do, that my client -- I know that
7 it's not -- I don't mean this in a derogatory fashion, but
8 my client does not make money, and, in fact, it costs my
9 client money to reduce the tire pile. The financial -- 10 there are
financial things we can do.
11 We need some time, and that is why we -- we need
12 some time to figure out places to put these tires, to take
13 them other places, and we believe that we can with time, 5,
14 10, 20, 40, and we can eliminate this pile.
15 I made the point to your Executive Officer, you
16 could say, just take it down two million tires a year, well,
17 at that point, we simply go out of business. I mean, we
18 simply stop. We are not there.
19 So, we really are trying to work within the
20 financial constraints of my client. I think we have made, I
21 think, a substantial proposal that is really quite different
22 than what we were discussing this morning in a proposal that
23 is quite different than we ever thought we were going to
24 have to make coming into this hearing.
25 BOARD CHAIRMAN PENNINGTON: Let me try a different

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1 approach here and see — let me say what I see here.
2 Option number one is the permit that we have said
3 we would issue or have issued. That is \$3.5 million.
4 They tell us they can't do that.
5 If we issue the Order, then they go to court or
6 they do whatever they feel they have to do, but we get
7 nothing. We don't get tires reduced, and we don't get any
8 money for the assurance.
9 The proposal this morning was \$1.3 million, caused
10 by the reduction in the cost of delivery of the tires. In
11 that proposal we got \$1 million now, plus \$300,000 over the
12 next 17 months, and a reduction of 500,000 tires.
13 This proposal that we are talking about now, we
14 get \$1-million now, and we get 500,000 reduction in the
15 tires this year, and then elimination or virtually
16 elimination over the total four-year period.
17 I agree with Mr. Chesbro that there are a lot of
18 ifs here. Life is an iffy thing, too.
19 So, some place we have to settle, and say we are
20 going to issue the Cease-and-Desist Order, and then we go
21 off into our corners and fight, or we have to fix something.
22 What I would propose to you, and I propose to the Board
23 here, and I will put it in a motion, if necessary, is that
24 we go with the million-dollar bond, the assurance and
25 insurance, and the surety and the insurance, and we add to

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1 the trust fund \$15,000 a month for a year, which is
2 \$170,000. That would put us a little over \$200,000, and we
3 revisit this in a year, not 16 or 17 months, revisit this in
4 a year.

5 What we get for that is roughly \$1.2 million, We
6 get the half a million tires reduced, and the agreement that
7 they in the next following three years reduce the pile to
8 almost elimination. At least we are working in that
9 direction, and we are not going home with empty pockets.

10 I'm the one that made the passionate plea this
11 morning about wanting to reduce the pile, and I still feel
12 very strongly about reducing the pile, but if we end up in
13 court, we are not getting the pile reduced.

14 BOARD MEMBER FRAZEE: What was your annual
15 reduction?

16 BOARD CHAIRMAN PENNINGTON: The first year we
17 would stay with the 500,000, and the second year we would go
18 to 1,500,000 tires — or 5,000 tons, that equates to 500,000
19 tires, 10,000 tons in the second year, 20,000 in the third
20 year, and virtually 42,000 in the fourth year.

21 BOARD MEMBER RELIS: Mr. Chair, that is for
22 discussion, or was that a motion?

23 BOARD CHAIRMAN PENNINGTON: Either way you would
24 like to do it.

25 BOARD MEMBER RELIS: I would like to add to the

1 debate.

2 I think what Mr. Frazee brought up in terms of

3 looking at the direction we want to go, it seems to me,

4 again, as difficult as it might be for the company, I go

5 back to both the statute and to our deep concern about — 6 I'm

discounting, as I look to the future, I don't have the

7 experience yet that gives me the confidence of the status

8 quo situation in year one.

9 So, I would propose that we consider what you said

10 on the insurance side, but to take the first year to 10,000,

11 and then we ramp up, we go 10,000, then 15,000, then 20,000

12 and we essentially have a ramp up, but in the first year we

13 get assurance that the pile has gone down, and that's a net

14 reduction, because we don't have the level of confidence, in

15 my view, yet, that this is an altogether satisfactory deal.

16 I would feel, even though that's slower than I

17 would like, it takes us firmly in the direction of reduction

18 from the outset. I will throw that out on the table.

19 BOARD CHAIRMAN PENNINGTON: Again, I would like it

20 gone tomorrow, but I do recognize that while we are talking

21 faith and ifs, it is an economic factor to Oxford Tire or an

22 economic burden on them to reduce the tire pile.

23 It's sixteen cents a tire, or \$16 a ton for what

24 they are reducing. I guess I was only thinking that it was

25 appropriate to give them some opportunity to get themselves

1 ready to do this.

2 Do you think you can do it? I guess I shouldn't

3 say do you think.

4 BOARD MEMBER CHESBRO: While we are contemplating

5 those two options, let me ask our counsel on the record here

6 if my understanding is correct that the way this agreement

7 is structured is that if several of the ifs that I mentioned

8 were to occur, if Oxford is no longer in the picture, and if

9 the Board is required to pay for the cleanup while we still

10 have the Modesto facility, that the lower cost would be the

11 cost to us as well, not just the cost to Oxford of getting

12 the tires to the plant?

13 MS. TOBIAS: That's correct.

14 Basically what they are doing is called a service

15 fee in the contract, and essentially it says that that's

16 their fee for that cost, and we would be able to have that

17 same fee for that cost.

18 BOARD MEMBER CHESBRO: Okay.

19 BOARD MEMBER FRAZEE: Mr. Chair, just something to

20 keep in mind, and looking at the numbers that have been

21 provided to us by staff, and if these are accurate, the

22 plant operating at 87 percent of the time, consumes 51,000

23 tons, that's rounded off to 50,000 tons a year.

24 That means for every nine tires that Oxford is

25 getting paid for to haul away from somebody's property and

1 bring to this site, they are only having to take one tire
2 off the pile.

3 If that's if someone didn't look at that deal
4 going into this thing, you know, that ought to be fairly
5 evident in any proforma for a business. I have been
6 involved in some failures and some winners in business, and
7 no one made me that kind of a deal to get me out of my
8 failures.

9 MR. MEYER: If I showed you the financial
10 statements of this company, I can show you the income, the
11 revenue, the debt on this company.

12 I can assure you, I can absolutely assure you that
13 whatever you imagine this company makes isn't anything like
14 that. Just taking care of the \$15,000 on the debt service,
15 and covering expenses, they don't pay Kirkland anything.
16 We don't have a great deal of money left over.

17 My point is, and I mentioned to Ralph, you could
18 raise it to some higher level. We really have looked at how
19 much money we have.

20 My client very much wants to stay in this
21 business. My client has committed all of his resources to
22 this business.

23 We think we have made the best offer we can make.

24 Trying to — raising it to — you could raise it to 2,000
25 tons a year, and I can tell you categorically that that

1 puts -- until my client can develop some options, and that
2 is what he's working on this year, that that puts my
3 client's company in serious financial jeopardy. My client
4 will probably try to go ahead and do that, but it would -- 5 it
doesn't allow it to -- it will probably break it.

6 You know when I came -- really, when we came to
7 the Board, I thought if I could simply resolve the MEL?
8 issue, that we could do this. By increasing the number of
9 tires we have to take off the pile every year, that takes us
10 in the other direction in terms of profitability.

11 We did make substantial compromises with MEL? to
12 get to this point. I really would wish, and I would hope,
13 that this Board would consider our offer of 5, 10, 20, 40
14 and eliminate.

15 We really think that's what we can do, but we are
16 not offering something that we don't think we can do. I
17 hope that the Board would proceed as we propose.

18 The Board obviously can put the conditions on that
19 it wishes.

20 BOARD CHAIRMAN PENNINGTON: Well --

21 BOARD MEMBER FRAZEE: I think I'm on record as
22 saying from day one of our discussion of this going back
23 several months that I would not want to be a party to an
24 action, a governmental action that puts someone out of
25 business, but I think I have to look at it from having been

1 point, get a report of where you are on the monofill.

2 BOARD MEMBER CHESBRO: I have yet another

3 question, and I'm sorry.

4 Again, forgive me if this was dealt with this

5 morning.

6 How long is the lower rate for taking the tires at

7 MELP available?

8 MR. CHANDLER: I'm not sure I understand your

9 question.

10 How long is the lower rate?

11 BOARD MEMBER CHESBRO: Yes.

12 How long are they going to -- I mean is it for

13 this entire period until the tires are all eliminated?

14 MR. CHANDLER: Yes.

15 It is my understanding that this --

16 MR. MEYER: The term of our contract, which is two

17 years, December 31, 1997.

18 BOARD MEMBER CHESBRO: So, the question is what

19 happens after that?

20 MR. MEYER: We will be back.

21 MS. TOBIAS: Number one, Mr. Pennington's motion

22 is to revisit this in a year, but the permit conditions

23 right now call for them to come back within a year to start

24 revising their permit in case MELP is no longer running.

25 So, we are quite aware of the so-called cliff

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1 date. They would have to revise their financial assurances
2 based on the fact that if MELP is not going to be running.
3 So, essentially this is good for the time period
4 which we are talking about the financial assurances at this
5 current time.

6 BOARD MEMBER FRAZEE: Let me second the motion so
7 that we have something before us.

8 BOARD CHAIRMAN PENNINGTON: Do you want me to run
9 through it again?

10 BOARD MEMBER GOTCH: Yes, please.

11 BOARD CHAIRMAN PENNINGTON: The million dollars
12 made up of half a million of insurance and half a million in
13 surety bond, \$15,000 a month into the trust fund, that is
14 already \$25,000 or \$27,000 now, a tire reduction of 7,500
15 tons the first year, 10,000 tons the second year, 20,000
16 tons the third year and elimination in the fourth year,
17 revisit the permit in a year to see if those numbers have
18 been met.

19 They can give us a report on the monofill in a
20 year on the efforts there. That would be 750,000 tires, a
21 million tires, 2 million tires, and roughly 3.8 million.

22 BOARD MEMBER FRAZEE: That has a one-year review.

23 BOARD CHAIRMAN PENNINGTON: It has a year review
24 to revisit in a year.

25 BOARD MEMBER FRAZEE: I think already in the way

1 that the permit is worded, the reduction of the tire pile
2 would be conducted in such a manner as to reduce the risk of
3 fire.

4 Do we have an ongoing responsibility for
5 inspections to see that that happens?

6 MR. CHANDLER: I'm sorry?

7 BOARD MEMBER FRAZEE: I was asking about our
8 ongoing responsibility that the pile is reduced in such a
9 manner as to reduce the hazard and fire potential.

10 In other words, I don't want to play engineer
11 here, but from the standpoint of splitting the pile,
12 separating the current channels that have been made in the
13 pile, widening those to reduce things of that nature from a
14 good engineering standpoint.

15 MR. CHANDLER: Are you suggesting that we add that
16 kind of condition?

17 BOARD MEMBER FRAZEE: Wasn't that in the original
18 conditions?

19 MR. CHANDLER: It's my understanding that we do
20 have a permit condition that satisfies all the State Minimum
21 Standards on proper fire and lane safety conditions.

22 So, that would be part of the current permit.

23 BOARD MEMBER CHESBRO: Mr. Chairman, I would like
24 to make an amendment to the motion to increase it to a
25 million tires the first year, or I guess that would be

1 10,000 tons.

2 BOARD CHAIRMAN PENNINGTON: There is nobody here

3 that wants to reduce this more than I do, but are we going

4 to push ourselves into the corner where we get nothing?

5 BOARD MEMBER CHESBRO: The argument I guess would

6 be that we have a limited amount of time.

7 We have been essentially -- we are being backed

8 away here on the basis of this lower price, and we have a

9 limited amount of time. I think that if their come-back on

10 that is to say, well, we need to get as many tires out at

11 this earliest opportunity if that is the case.

12 BOARD CHAIRMAN PENNINGTON: There is no question

13 about that, but if we push too hard, we get nothing.

14 BOARD MEMBER RELIS: Mr. Chair, I would like to

15 see a million, and I think it's doable.

16 Obviously, none of us knows here at the table,

17 because we are not in the business, but I think it's in both

18 MELP's and Oxford's interest to do it, and they control a

19 lot of the cost on doing this, so I think it's a doable

20 number.

21 MR. MEYER: I can represent that a tire reduction

22 of one million tires, that my client will have a negative

23 cash flow, will have negative cash flow and will have no

24 working capital to put together this monofill option.

25 You can keep raising the bar, but as you raise the

1 bar, we have to take it from somewhere else. This company

2 just doesn't make that kind of money.

3 I mean, if my client, my client back here is dying

4 at the idea of a million tires a year reducing this. We — 5 750 is

— we just have an extremely hard time.

6 I realize I'm a lawyer and everything that lawyers

7 say is discounted and all of that, and you haven't had a lot

8 of experience with me, but I have been very straight with

9 staff in terms of the financial circumstances of this

10 company. We really cannot afford to do a million tires the

11 first year to pursue these other options.

12 MR. CHANDLER: I hate to go down a different

13 track, but Mr. Chesbro, I thought, raised a very good

14 question, and I am a little troubled by that and need

15 clarity around the response and that is that if this

16 contract agreement between MELP and OTR expires, when,

17 Steve, 18 months from now?

18 MR. MEYER: The end of 1997.

19 MR. CHANDLER: If we are looking at a proposal

20 that goes out four years, is it true or not true that we

21 will have to get a \$16 fee availability to this Board to

22 cleanup that tire pile, if you will, under some future

23 negotiated agreement yet to be settled on what that fee is

24 going to be.

25 I want to be clear on that, because I am unclear.

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1 BOARD CHAIRMAN PENNINGTON: I think you are right,

2 although my motion did say we were going to revisit this in

3 a year.

4 So, it goes further than that.

5 MR. CHANDLER: How do you view that scenario or

6 situation and take what is ever negotiated?

7 What if it's negotiated —

8 MR. MEYER: I think at that time --

9 MR. CHANDLER: If it's negotiated down to \$10, it

10 means that we would pay no more than \$10 to MEL? to retrieve

11 the tires from the pile.

12 MR. MEYER: Right.

13 We would be -- we need to extend it and review our

14 contract, and those discussions will be started in '97, and

15 the Board has the opportunity to revisit this and alter and

16 adjust the financial assurance requirements as they see fit.

17 BOARD MEMBER GOTCH: I need something cleared up,

18 and I guess I need to be reminded of, continuing to bring

19 the tires in, and with the reduction, with the proposal that

20 Mr. Pennington brought up, how many of those tires will end

21 up going back onto the pile?

22 What are we adding to the pile?

23 MR. MEYER: The pile every year will go down.

24 So, in the course of a year, r was making this

25 point earlier, in the summer when we all go on vacation and

1 we decide we need new tires, there are a lot of used tires
2 coming out. In the winter there are not.
3 So, what happens in the course of the summer is
4 that you have a whole lot of tires coming in, you fill this
5 tire delivery area, and if you fill the tire delivery area,
6 you put them on the pile.
7 In the winter, you don't fill the tire delivery
8 area, and you end up taking tires out of the tire pile. So,
9 at some point in the year, tires do come in the tire pile,
10 and at some points of year, they go in the tire delivery
11 area.
12 What we are representing is net/net those tires we
13 will be reducing by this volume, and at the end of four
14 years, this tire pile will be reduced by 75,000 tons.
15 BOARD CHAIRMAN PENNINGTON: My motion said 7,500
16 tons, and it's been seconded. So, let's vote on that
17 motion.
18 BOARD MEMBER FRAZEE: There was a motion to amend.
19 BOARD MEMBER GOTCH: Let me ask one more question.
20 I'm trying to figure out how are we reducing the
21 pile? It sounds like it's pretty much of an even balance of
22 what the tires that come in and the tires that are burned.
23 MR. MEYER: We provide the staff — this is really
24 complicated.
25 We provide the staff the data on the tires coming

1 in and tires being burned, and we know the volume out there
2 as estimated, and it is calculated. I'm a little lost on
3 that, but it is calculated, and we do reduce it, and this
4 tire pile, in fact, has been substantially reduced over the
5 years.

6 MR. CHANDLER: Janet, I think we have to
7 essentially, as trucks go in right now, they are going right
8 into the hopper.

9 If they are under an obligation to start ramping
10 the tire pile down, say, 10,000 tons or 20,000 tons, what
11 they are going to have to do is start having those trucks go
12 to cement kilns or other operations or slow down that part
13 of the business while they start drawing down from the pile
14 itself to meet the permit conditions to meet the net
15 reduction.

16 I understand your point. They are in the business
17 of bringing tires to the location. How are they going to
18 draw down the tire pile?

19 The only way they get to this net figure is by
20 having tires that the haulers bring in to another location
21 or start reducing the amount of tires from hauling so that
22 the appetite of the energy plant is served by the tire pile
23 itself.

24 MR. MEYER: That's correct.

25 BOARD CHAIRMAN PENNINGTON: Okay.

1 BOARD MEMBER FRAZEE: Could I ask a procedural

2 question of counsel?

3 We have, I think, before us a motion to amend.

4 Does that motion require the quorum requirement, or does a

5 motion to amend require only a majority of those present?

6 MS. TOBIAS: Majority, I think, of those present.

7 BOARD MEMBER FRAZEE: That's procedure under

8 Robert's.

9 BOARD CHAIRMAN PENNINGTON: We need a second.

10 BOARD MEMBER GOTCH: I'll second Mr. Chesbro's

11 motion.

12 MR. CHANDLER: Is everyone clear on the motion?

13 BOARD CHAIRMAN PENNINGTON: I was going to go over

14 it.

15 Correct me if I'm wrong, Mr. Chesbro. The

16 substitute motion would change from 7,500 tons the first

17 year to 10,000 tons.

18 BOARD MEMBER CHESBRO: What was the number again?

19 I get confused going back and forth between

20 tonnages and tires.

21 BOARD CHAIRMAN PENNINGTON: The number, the

22 original number was 7,500 tons or 750,000 tires.

23 BOARD MEMBER CHESBRO: To increase it to 10,000

24 tons or a million tires.

25 BOARD CHAIRMAN PENNINGTON: One million tires.

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1 MR. CHANDLER: What was year two?

2 BOARD CHAIRMAN PENNINGTON: Year two is 10 --

3 MR. CHANDLER: 10,000 tons?

4 BOARD CHAIRMAN PENNINGTON: Correct.

5 MR. CHANDLER: And the year three, going to

6 20,000, and the year four, 40,000.

7 BOARD CHAIRMAN PENNINGTON: Correct.

8 MR. CHANDLER: And then elimination.

9 And the financial assurances we said for your

10 proposal, the two, insurance --

11 BOARD CHAIRMAN PENNINGTON: The two bonds plus

12 \$15,000 per month to the trust fund, revisit this in a year

13 with the report on the monofill.

14 Okay. Are we clear?

15 MR. MEYER: I have got to tell you, there is no

16 money for a monofill if we reduce this a million tons. It's

17 sort of counter-productive.

18 BOARD CHAIRMAN PENNINGTON: If you notice, all I

19 said was a report on it.

20 Are we ready for a roll call?

21 Secretary, call the roll, please.

22 MS. KELLY: Board Members Chesbro.

23 BOARD MEMBER CHESBRO: Aye.

24 MS. KELLY: Gotch.

25 BOARD MEMBER GOTCH: Aye.

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1 MS. KELLY: Frazee.

2 BOARD MEMBER FRAZEE: No.

3 MS. KELLY: Relis.

4 BOARD MEMBER RELIS: Aye.

5 MS. KELLY: Chairman Pennington.

6 BOARD CHAIRMAN PENNINGTON: No.

7 The motion to amend carries, so now we have to

8 vote on the main motion.

9 If you would call the roll.

10 MS. KELLY: Board Members Chesbro.

11 BOARD MEMBER CHESBRO: Aye.

12 MS. KELLY: Frazee.

13 BOARD MEMBER FRAZEE: No.

14 MS. KELLY: Gotch.

15 BOARD MEMBER CHESBRO: My motion was to amend, and

16 this is not the amended motion.

17 BOARD MEMBER RELIS: This is still the 10,000 for

18 the first.

19 BOARD CHAIRMAN PENNINGTON: This is the 10,000,

20 the alternate motion, the amended motion amended the

21 original motion.

22 So, now we have to vote on the original and

23 amended motion.

24 Do we want to start over again, or are we clear?

25 Okay.

1 MS. KELLY: Gotch.

2 BOARD MEMBER GOTCH: Aye.

3 MS. KELLY: Relis.

4 BOARD MEMBER RELIS: Aye.

5 MS. KELLY: Chairman Pennington.

6 BOARD CHAIRMAN PENNINGTON: No.

7 That fails because we have to have four.

8 MS. KELLY: We go back to the original motion?

9 BOARD CHAIRMAN PENNINGTON: No, that was the

10 original motion.

11 Now, we are back to the —

12 BOARD MEMBER RELIS: Could I reintroduce?

13 BOARD CHAIRMAN PENNINGTON: Sure.

14 BOARD MEMBER RELIS: Then I would introduce the

15 same procedure with 750,000 or 7,500 tons.

16 BOARD CHAIRMAN PENNINGTON: I would second that.

17 BOARD MEMBER GOTCH: You second that. Okay.

18 If we could add maybe a quarterly revisit rather

19 than the revisit at one year, if we could have an idea of —

20 BOARD CHAIRMAN PENNINGTON: I know what you are

21 getting at, and I think what you would like is a report on

22 how we are doing on this pile.

23 I think what you are asking is certainly that our

24 staff could report on how well they are doing on reducing

25 that. That one in June or July.

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1 Maybe we should look at it in six months. Maybe

2 it just as well people can't hear me.

3 Is that better or more acceptable?

4 BOARD MEMBER GOTCH: Actually, I'm not comfortable

5 with the lessened amount of tires.

6 BOARD CHAIRMAN PENNINGTON: Okay. Well, we have a

7 motion to, if you would like me to go through it, it's the

8 same motion, except it's with 7,500 tons in the first year.

9 Do we have any further discussion on that? Paul

10 has resubmitted.

11]. BOARD MEMBER RELIS: It's a new voice.

12 BOARD CHAIRMAN PENNINGTON: It's a new voice.

13 Will the secretary call the roll.

14 MS. KELLY: Board Members Chesbro.

15 BOARD MEMBER CHESBRO: No.

16 MS. KELLY: Frazee.

17 BOARD MEMBER FRAZEE: Aye.

18 MS. KELLY: Gotch.

19 BOARD MEMBER GOTCH: No.

20 MS. KELLY: Relis.

21 BOARD MEMBER RELIS: Aye.

22 MS. KELLY: Chairman Pennington.

23 BOARD CHAIRMAN PENNINGTON: Aye.

24 I'm sorry. I was not listening.

25 The vote was two to three.

1 Okay. The motion fails.

2 I think what I would like to do at this point is

3 to adjourn or to recess so that the Board can go into Closed

4 Session and talk about some legal costs.

5 If that is okay. if we can do that, we will recess

6 and come back after we meet.

7 (Thereupon a brief recess was taken.)

8 BOARD CHAIRMAN PENNINGTON: Okay. We will come

9 back in session here.

10 I want to reiterate our discussion was dealing

11 with legal matters. Our attorney gave us some advice.

12 Let's see, where are we now?

13 BOARD MEMBER RELIS: We are in the discussion

14 mode.

15 BOARD CHAIRMAN PENNINGTON: Who wants to discuss?

16 BOARD MEMBER RELIS: Mr. Chair, it seems to me

17 that with all deference to those who didn't vote this way,

18 we are starting to be at a point where we are pretty close

19 on agreement and on an approach, at least I thought, and the

20 MELP connection is a significantly different factor than

21 what we had before going into this meeting, at least as it

22 was presented, and that's why, at least I feel, that the

23 last go-around took us close to what we call splitting the

24 difference of the number of tires, and I think it's a

25 responsible position for the Board, because we are making a

1 significant reduction in the tire amount in year one, and we
2 also have a contractual arrangement between the two parties
3 on a cost basis that's significantly different than what we
4 had heard prior.

5 So, I don't know if that persuades anybody, but I
6 would like to see s get some closure on this. I think we
7 need to.

8 BOARD CHAIRMAN PENNINGTON: Well, I certainly
9 agree with you.

10 Does anyone have any thoughts here? We are
11 standing in the water.

12 BOARD MEMBER CHESBRO: I think that under the
13 statute we have the obligation to try and get the **maximum**
14 reduction in the pile that we can, and given the fact that
15 the new proposal involves a substantial reduction in the
16 closure costs and that we have the limited time period that
17 we know of with regards to the contract to provide for the
18 lower cost of getting the tires to the tire plant, I think
19 we have an obligation to try and maximize the number of
20 tires that are going to be taken off of that pile, and I
21 feel that is my responsibility as a Board Member.

22 BOARD CHAIRMAN PENNINGTON: I agree with you. I
23 think that is our obligation.

24 We have already reduced down, I might point out,
25 that from the eight years to four years, so we have

1 certainly reduced the number of tires. I mean we have

2 reduced the number of years.

3 We are reaching to the point that within four

4 years the tires should be eliminated. We have bumped it up

5 in every year. We bump it up the first year, and the first

6 year we give them some opportunity to make their adjustments

7 to meet our demands.

8 We doubled it in the second year. We tripled it

9 in the third year, I mean -- please understand, that I agree

10 with you.

11 That is our obligation, and all those who were

12 here this morning heard me go into great detail about the

13 fact that that pile gives me great heartburn, and I want to

14 get as much out of the pile as possible.

15 I do have to say that if we -- we don't want to

16 end up and get nothing out of it, too. That is why we need

17 to find an area where we can proceed.

18 What is that area? I don't know. I have tried

19 one.

20 BOARD MEMBER GOTCH: I had a lot of comfortability

21 in the earlier motion, I don't know if Mr. Relis made this

22 one or Mr. Chesbro, with the one million in the first year

23 and one million in the second year, where we did not

24 increase in the second year, and I feel like, because I

25 don't feel comfortable with the financial assurances, and I

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1 am not at all comfortable with the amount of tires in that
2 pile, that that's where I am on this.

3 I would like to see at least one million tires
4 reduced in the first year, and then keep it the same for the
5 second year.

6 BOARD CHAIRMAN PENNINGTON: Well, if you would
7 like to make that motion.

8 We have voted on that, but we can certainly try
9 again.

10 BOARD MEMBER GOTCH: Okay. I will make that
11 motion.

12 That would be repeating -- should I start from the
13 beginning? Okay.

14 So, it would be one million in the bond, and
15 \$15,000 a month in the trust, one million ton (sic)
16 reduction in the first year.

17 BOARD CHAIRMAN PENNINGTON: 10,000 tons is what
18 you mean.

19 MR. CHANDLER: Which is equivalent to one million
20 tires.

21 BOARD CHAIRMAN PENNINGTON: You said one million
22 tons.

23 BOARD MEMBER GOTCH. I did? I'm sorry.

24 Yes, 10,000 tons. Thank you for the correction.

25 And then that would repeat in the second year,

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1 also, one million tires in the second year.

2 Then I've lost track of the rest of my notes for

3 the remaining years.

4 BOARD CHAIRMAN PENNINGTON: 20,000 tons in the

5 third year and elimination in the fourth.

6 BOARD MEMBER GOTCH: Correct.

7 BOARD CHAIRMAN PENNINGTON: Do you want to revisit

8 in a year?

9 BOARD MEMBER GOTCH: I would like to revisit it in

10 six months, the permit.

11 BOARD MEMBER RELIS: Could I ask, Ms. Gotch, what

12 is the relevance of the six months or the quarterly report?

13 I mean, it seems to me we either do something —

14 BOARD MEMBER GOTCH: I would just like to have

15 something.

16 BOARD MEMBER RELIS: Is that like a conditional

17 use permit then where you say --

18 BOARD MEMBER GOTCH: No. It would not be like a

19 conditional use permit.

20 It would be more of a follow-up on where we are at

21 that point.

22 BOARD MEMBER RELIS: We could have regular reports

23 on the progress.

24 BOARD MEMBER GOTCH: Okay. Then I will drop the

25 six months and keep it at one year then.

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1 BOARD CHAIRMAN PENNINGTON: Okay.

3 BOARD MEMBER CHESBRO: Second.

4 BOARD CHAIRMAN PENNINGTON: As I understand the motion, it is one
5 million between the insurance and surety bond, \$15,000 a month
6 into the trust fund, 10,000 tons the first year, 10,000 the
7 second year, 20,000 tons the third year, and elimination in the
8 fourth year, and we revisit the permit in a year; is that
9 correct?

10 BOARD MEMBER CHESBRO: And that's net.

11 That's after accounting for the tires that have
12 been taken in.

13 discussion?

14 BOARD CHAIRMAN PENNINGTON: Okay. Any other
15 Will the secretary call the roll.

16 MS. KELLY: Board Members Chesbro.

17 BOARD MEMBER CHESBRO: Aye.

18 MS. KELLY: Frazee.

19 BOARD MEMBER FRAZEE: No.

20 MS. KELLY: Gotch.

21 BOARD MEMBER GOTCH: No.

22 MS. KELLY: Relis.

23 BOARD MEMBER RELIS: I will vote for it, but I'm going to state
24 that I hope that the maker of the motion will bear this in mind
25 when we try it again.

MS. KELLY: Chairman Pennington.

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1 BOARD CHAIRMAN PENNINGTON: No.

2 Well, its seems to be the first year that we are

3 hung up on.

4 BOARD MEMBER GOTCH: It's the first year we are

5 hung up on.

6 BOARD CH4IRMAN PENNINGTON: How about 8,000 tons?

7 BOARD MEMBER CHESBRO: Mr. Chairman, in absence of

8 agreement to back away from our previous position, I think

9 that the proposal that has been made, the proposal that Ms.

10 Gotch has made is reasonable, but in the absence of approval

11 of that, I think we have the permit as the Board approved

12 it.

13 I think that's where we stand.

14 BOARD CHAIRMAN PENNINGTON: Okay. Did you want

15 to—

16 BOARD MEMBER RELIS: I don't --

17 BOARD CHAIRMAN PENNINGTON: Mr. Meyer.

18 MR. MEYER: How about, why don't we -- this

19 doesn't address the first year problems quite, but why don't

20 we do 7,500 the first year — 7,500 the first year, 12,500

21 the next, and then it continues to --

22 BOARD CHAIRMAN PENNINGTON: So, you go 7,500,

23 12,500, 20,000 and then elimination?

24 MR. MEYER: Yes.

25 BOARD CHAIRMAN PENNINGTON: Do we want to try

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1 that?

2 BOARD MEMBER RELIS: I make that motion. That

3 seems like a reasonable —

4 BOARD CHAIRMAN PENNINGTON: The same monetary situation, first year
7,500, second year 12,500 and third

6 year 20,000 and elimination in the fourth year.

7 I would be happy to second that.

8 Any discussion on that?

9 BOARD MEMBER FRAZEE: I was going to suggest, Mr.

10 Chairman, that if the former speaker were here, he would

11 resolve this problem by appointing some new Members.

12 So, perhaps we should call the Governor.

13 BOARD MEMBER GOTCH: I would like to add a

14 six-month progress report to this, and that is what I think

15 I did not articulate earlier.

16 BOARD MEMBER RELIS: That is a progress report?

17 BOARD CHAIRMAN PENNINGTON: Not revisiting the

18 permit.

19 BOARD MEMBER GOTCH: Right, not revisiting the

20 permit.

21 Does the maker of the motion accept that?

22 BOARD MEMBER RELIS: The maker of the motion

23 accepts it, but it's not a condition on the permit.

24 It's a report; is that correct?

25 BOARD CHAIRMAN PENNINGTON: Yes.

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1 BOARD MEMBER RELIS: The maker accepts that.
2 BOARD CHAIRMAN PENNINGTON: Okay.
3 Shall we call the roll.
4 MS. KELLY: Board Members Chesbro.
5 BOARD MEMBER CHESBRO: I pass for the moment.
6 MS. KELLT: Frazee.
7 BOARD MEMBER FRAZEE: Aye.
8 MS. KELLY: Gotch.
9 BOARD MEMBER GOTCH: Aye.
10 MS. KELLY: Relis.
11 BOARD MEMBER RELIS: Aye.
12 MS. KELLY: Chairman Pennington.
13 BOARD CHAIRMAN PENNINGTON: Aye.
14 MS. KELLY: Board Member Chesbro.
15 BOARD MEMBER CHESBRO: I vote no.
16 BOARD CHAIRMAN PENNINGTON: Okay. The four votes
17 have it. That is where we stand.
18 Okay. I think there being no further business, we
19 will adjourn this second day of the March Integrated Waste
20 Management Board meeting.
21 Thank you.
22 (Thereupon the Board Meeting was adjourned at
23 3:20 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, VICKI L. MEDEIROS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Vicki L. Medeiros, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of April, 1996.



VICKI L. MEDEIROS

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