

BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

IN THE MATTER OF THE:)
)
CONSIDERATION OF AN APPEAL)
BY T.Y.R.E.S., INC., OF)
PROPOSED FINDING OF)
UNRELIABILITY)
)

DATE AND TIME: TUESDAY, APRIL 21, 1998
9:30 A.M.

PLACE: BOARD HEARING ROOM
8800 CAL CENTER DRIVE
SACRAMENTO, CALIFORNIA

REPORTER: JENNIFER D. HULBERT, RPR, CSR
CERTIFICATE NO. 11250

BRS FILE NO.: 45036



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APPEARANCES

MR. DANIEL G. PENNINGTON, CHAIRMAN
MR. JOHN AMODIO, MEMBER
MR. WESLEY CHESBRO, MEMBER
MR. DAN EATON, MEMBER
MR. ROBERT C. FRAZEE, MEMBER
MR. STEVEN R. JONES, MEMBER

STAFF PRESENT

MR. RALPH CHANDLER, EXECUTIVE OFFICER
MR. KEITH SMITH, DEPUTY DIRECTOR
MS. LIZ CLAYTON, LEGAL COUNSEL
MS. KATHRYN TOBIAS, LEGAL COUNSEL
MS. MARLENE KELLY, BOARD SECRETARY



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1 SACRAMENTO, CALIFORNIA; TUESDAY, APRIL 21, 1998

2 9:30 A.M.

3

4 CHAIRMAN PENNINGTON: GOOD MORNING. I'D LIKE
5 TO CALL TO ORDER THE CALIFORNIA INTEGRATED WASTE
6 MANAGEMENT BOARD'S PUBLIC HEARING ON THE CONSIDERATION
7 OF AN APPEAL BY T.Y.R.E.S., INC., OF PROPOSED FINDING
8 OF UNRELIABILITY.

9 AND FIRST I'LL ASK THE SECRETARY TO CALL
10 ROLL.

11 THE SECRETARY: BOARD MEMBER AMODIO.

12 THE SECRETARY: PRESENT.

13 THE SECRETARY: CHESBRO.

14 BOARD MEMBER CHESBRO: HERE.

15 THE SECRETARY: EATON.

16 BOARD MEMBER EATON: HERE.

17 THE SECRETARY: FRAZEE.

18 MEMBER FRAZEE: HERE.

19 THE SECRETARY: JONES.

20 BOARD MEMBER JONES: HERE.

21 THE SECRETARY: CHAIRMAN PENNINGTON.

22 CHAIRMAN PENNINGTON: HERE. MR. KAESTNER HAS
23 REQUESTED TO PROCEED FIRST, AND WE WILL VARY OUR PROCEDURE
24 AND ALLOW HIM TO MAKE HIS PRESENTATION FIRST. AND THEN
25 WE'LL GO THROUGH SOME OTHER PROCEDURAL.



1 MR. KAESTNER.
2 MR. KAESTNER: GOOD MORNING, MR. CHAIRMAN, LADIES
3 AND GENTLEMEN.
4 I'D LIKE TO MAKE AN OPENING STATEMENT
5 JUST TO THE EFFECT THAT I'D LIKE TO HAVE SOME
6 OBJECTIONS ENTERED FOR THE RECORD. AS YOU NOTICE,
7 THERE'S A COURT REPORTER HERE TAKING DOWN EVERYTHING
8 THAT WILL BE SAID IN THIS HEARING. FIRST OF ALL, I'D
9 LIKE TO POINT OUT FOR THE RECORD THAT THERE'S BEEN NO
10 PROPER ACCUSATORY PLEADING FILED IN THIS MATTER AGAINST
11 MY CLIENT, T.Y.R.E.S., INC.
12 I'D ALSO LIKE TO POINT OUT UNDER CALIFORNIA
13 LAW THAT MY CLIENT IS ENTITLED TO A FAIR AND IMPARTIAL
14 HEARING AND NOTE FOR THE RECORD THAT THE BOARD IS CURRENTLY
15 A DEFENDANT IN A BREACH OF CONTRACT ACTION BROUGHT BY MY
16 CLIENT, T.Y.R.E.S., INC., AND THAT THE BOARD IS, BECAUSE OF
17 THAT POSITION, NOT IN A POSITION TO FAIRLY HEAR THE
18 EVIDENCE AND RENDER A RULING ON THIS. BECAUSE OF THAT, I,
19 REQUESTED THIS MATTER BE SUBMITTED TO AN ADMINISTRATIVE LAW
20 JUDGE FOR ADJUDICATION.
21 I'D ALSO LIKE TO CHALLENGE CHAIRMAN
22 PENNINGTON ON THE BASIS OF PREJUDICE. MY CLIENT'S BELIEVE
23 THAT CHAIRMAN PENNINGTON HOLDS EITHER BIAS OR ANIMOSITY
24 AGAINST MY CLIENT OR THE PRINCIPALS OF MY CLIENT SUCH THAT
25 MY CLIENT CANNOT RECEIVE A FAIR HEARING TODAY. I'D ALSO



1 LIKE TO CHALLENGE CHAIRMAN PENNINGTON AS THE PRESIDING
2 OFFICER TO THE EXTENT THAT HE PARTICIPATED IN ANY
3 INVESTIGATION OR PROSECUTION AS IT RELATES TO THE ALLEGED
4 FACTS, WHICH THIS -- TO WHICH THIS REGULATION IS BEING
5 APPLIED.
6 I'D ALSO LIKE TO POINT OUT THERE'S BEEN NO
7 COMPLIANCE WITH GOVERNMENT CODE SECTION 11507.5 REGARDING
8 STATEMENT OF DISCOVERY RIGHTS.
9 AND THAT WILL END MY INTRODUCTORY
10 OBJECTIONS.

11 CHAIRMAN PENNINGTON: OKAY. THANK YOU VERY
12 MUCH. SECOND, THE BOARD LEGAL STAFF AND BOARD GRANT
13 STAFF WILL GIVE A PRESENTATION BASED ON THE AGENDA
14 ITEMS AND ANY WRITTEN MATERIALS PROVIDED BY T.Y.R.E.S.,
15 INC.

16 MS. CLAYTON: GOOD MORNING, CHAIRMAN
17 PENNINGTON, MEMBERS OF THE BOARD. I'M LIZ CLAYTON,
18 STAFF COUNSEL. I'LL BE MAKING A BRIEF PRESENTATION ON
19 BEHALF OF THE BOARD THIS MORNING.
20 THE ITEM FOR CONSIDERATION AT THIS
21 SPECIAL BOARD MEETING IS AN APPEAL BY T.Y.R.E.S., INC.,
22 OF A PROPOSED FINDING OF UNRELIABILITY MADE BY THE
23 BOARD'S EXECUTIVE DIRECTOR. THIS FINDING WAS MADE
24 PURSUANT TO THE BOARD'S INTERPRETATION UNDER EXISTING
25 LAW RELATED TO UNRELIABLE CONTRACTORS, GRANTEES, AND



1 BORROWERS AND WAS MEMORIALIZED IN WHAT IS LOOSELY
2 REFERRED TO AS THE UNRELIABLE POLICY OR LEGAL
3 INTERPRETATION POLICY.
4 THE BOARD'S LEGAL INTERPRETATION POLICY
5 IS AN EFFICIENT MEANS TO DECIDE AT ONE POINT IN TIME
6 THE ISSUE OF UNRELIABILITY FOR A CERTAIN ENTITY. THE
7 LEGAL INTERPRETATION POLICY ALSO OFFERS A HEARING IF
8 SOMEONE WANTS TO DISPUTE THE ISSUE OF UNRELIABILITY.
9 IN ADDITION TO THE POLICY, THE BOARD HAS AUTHORITY
10 UNDER NUMEROUS STATUTES AND REGS TO DECIDE WHO WILL GET
11 CONTRACTS, SUBCONTRACT, GRANTS, AND LOANS AND ON WHAT
12 BASIS.
13 IT GOES WITHOUT SAYING THAT THE BOARD HAS
14 AUTHORITY TO NOT ENTER into AN AGREEMENT WITH AN APPLICANT
15 THAT HAS PERFORMED POORLY IN THE PAST, IS NOT CREDITWORTHY,
16 OR IS IN SOME WAY UNRELIABLE. THE BOARD'S AUTHORITY TO
17 NEGOTIATE AGREEMENTS INDEPENDENT OF THE POLICY IS NOT
18 AFFECTED BY THE POLICY. FOR EACH CONTRACT, SUBCONTRACT,
19 GRANT, OR LOAN THAT THE BOARD ENTERS INTO, THE BOARD ALWAYS
20 HAS THE ABILITY TO SCREEN THOSE APPLICANTS NOT QUALIFIED,
21 WHICH INCLUDES AN APPLICANT WHO'S NOT RELIABLE.
22 I'LL QUICKLY REVIEW THE STATUTES AND REGS
23 THAT COULD BE RELEVANT TO FUTURE AGREEMENTS WITH
24 T.Y.R.E.S., INC. THE SECTIONS RELATED TO BOARD CONTRACTS
25 ARE PUBLIC RESOURCES CODE 42846, PRC 48020 THROUGH 28, 14



1 CCR 17023 AND 22. THE SECTIONS RELATED TO LOANS ARE PRC
2 42010, 14 CCR 17935.1 AND .4. AND, FINALLY, THE SECTION
3 RELATED TO GRANTS AND LOANS IS PRC 42872.
4 APPLICANTS FOR AGREEMENTS WITH THE BOARD
5 CAN EITHER OBJECT TO A FINDING OF UNRELIABILITY AS THE
6 LEGAL INTERPRETATION POLICY'S IMPLEMENTED, WHICH IS AN
7 EFFICIENT WAY TO HEAR AN OBJECTION AT ONE TIME. OR
8 APPLICANTS, AS THEY APPLY FOR EACH AGREEMENT, CAN BE
9 DISQUALIFIED AS UNRELIABLE. EITHER WAY UNDER THE
10 POLICY OR UNDER THE INDIVIDUAL STATUTES AND REGS, WE
11 GET TO THE SAME RESULT. APPLICANTS WHO ARE NOT
12 RELIABLE ARE NOT QUALIFIED TO ENTER INTO AGREEMENTS
13 WITH THE BOARD.
14 TODAY WE HAVE AN APPEAL OF AN ENTITY
15 WHO'S BEEN DEEMED UNRELIABLE WITH THE BOARD'S LEGAL
16 INTERPRETATION OF APPLICABLE CONTRACT, GRANT, AND LOAN
17 STATUTES AND REGS. THE BOARD ADOPTED THE POLICY
18 INTERPRETING CONTRACT GRANT AND LOAN LAW IN NOVEMBER
19 1997. ONE OF THE GROUNDS TO DETERMINE WHETHER A
20 CONTRACTOR, GRANTEE, OR BORROWER IS UNRELIABLE IS
21 WHETHER AN ENTITY HAD BEEN INVESTIGATED FOR ALLEGED
22 FRAUDULENT CLAIMS OR REPORTING TO THE BOARD WHICH
23 RESULTED IN DISALLOWANCE OF ANY OF THE CLAIMS TO THE
24 BOARD OR FINDING THAT THE ENTITY DIDN'T COMPLY WITH THE
25 AGREEMENT IN QUESTION.



1 T.Y.R.E.S., INC., RECEIVED A BOARD TIRE
2 RECYCLING GRANT IN JUNE 1996. AFTER SUBMITTING INVOICES
3 FOR REIMBURSEMENT UNDER THE GRANT, T.Y.R.E.S., INC., WAS
4 INVESTIGATED BY THE DEPARTMENT OF FINANCE FOR ALLEGED
5 FRAUDULENT CLAIMS. DOF RECOMMENDED TO THE BOARD THAT THE
6 CLAIMS SUBMITTED BY T.Y.R.E.S., INC., BE DISALLOWED. BASED
7 ON THIS RECOMMENDATION, T.Y.R.E.S., INC'S., CLAIMS FOR
8 GRANT MONEY WERE NOT REIMBURSED AND THE BOARD TERMINATED
9 THE GRANT AGREEMENT. ALSO BASED ON DOF'S RECOMMENDATION,
10 THE BOARD'S EXECUTIVE DIRECTOR MADE A PROPOSED FINDING OF
11 UNRELIABILITY PURSUANT TO THE LEGAL INTERPRETATION POLICY.
12 IN HEARING THIS APPEAL THE BOARD IS ASKED
13 TO DECIDE WHETHER THERE IS CURRENTLY A BASIS FOR THE
14 PROPOSED FINDING OF UNRELIABILITY. THE BOARD CAN
15 UPHOLD THE EXECUTIVE DIRECTOR'S PROPOSED FINDING, WHICH
16 WILL RESULT IN A FINAL FINDING OF UNRELIABILITY.
17 T.Y.R.E.S., INC., WILL BE PLACED ON THE BOARD'S
18 UNRELIABLE LIST AND WILL NOT BE ELIGIBLE TO RECEIVE A
19 BOARD CONTRACT, SUBCONTRACT, GRANT, OR LOAN FOR THREE
20 YEARS FROM TODAY. THE BOARD ALSO CAN OVERTURN THE
21 EXECUTIVE DIRECTOR'S PROPOSED FINDING OF UNRELIABILITY
22 WHICH WILL RESULT IN T.Y.R.E.S. , INC., NOT BEING ADDED
23 TO THE UNRELIABLE LIST.
24 IN MAKING THIS DECISION STAFF IS
25 REQUESTING THAT THE BOARD CONSIDER ANY NEW EVIDENCE OR



1 MITIGATING FACTORS RELATED TO THE FACT THAT THE
2 DEPARTMENT OF FINANCE FOUND T.Y.R.E.S., INC., HAD NOT
3 PROPERLY DOCUMENTED GRANT EXPENSES SUBMITTED TO THE
4 BOARD.
5 THIS CONCLUDES STAFF'S PRESENTATION. WE
6 RECOMMEND THAT THE BOARD UPHOLD THE EXECUTIVE
7 DIRECTOR'S PROPOSED FINDING OF UNRELIABILITY, MAKING
8 THE FINDING FINAL. IF YOU HAVE ANY QUESTIONS, I'LL
9 ANSWER THEM. IF NOT, I BELIEVE THAT T.Y.R.E.S., INC.,
10 WILL BE MAKING AN ADDITIONAL PRESENTATION.

11 CHAIRMAN PENNINGTON: OKAY. ANY QUESTIONS
12 FROM THE BOARD STAFF? IF NOT, MR. KAESTNER.

13 MS. KAESTNER: FIRST OF ALL, MR. PENNINGTON,
14 OBJECT TO THE INTRODUCTION OF THE REPORT. I DON'T
15 BELIEVE IT'S BEEN PLACED IN EVIDENCE HERE TODAY. AND
16 AS SUCH, IT'S A DEPRIVATION OF MY CLIENT'S DUE PROCESS
17 RIGHTS TO CROSS-EXAMINE IT AND TO VIEW THE EVIDENCE
18 AGAINST IT AT THIS TIME.
19 SECOND OF ALL, I'D LIKE TO POINT OUT THIS
20 POLICY WAS, IN FACT, ENACTED ONE YEAR AFTER THE ALLEGED
21 FACTS TOOK PLACE. AND AS SUCH, IT WAS APPLIED EX POST
22 FACTO OR RETROACTIVELY TO MY CLIENT, WHICH IS IN ITSELF IS
23 A DEPRIVATION OF DUE PROCESS, BOTH SUBSTANTIVE AND
24 PROCEDURAL. TO THE EXTENT THAT THIS REGULATION DEPRIVES
25 THE PRINCIPALS, MR. AND MRS. BLANKENSHIP, OF LIBERTY,



1 RIGHTS, OR PROPERTY INTERESTS, THIS POLICY ALSO VIOLATES
2 THEIR RIGHT TO DUE PROCESS AS THEY WERE NOT SPECIFICALLY
3 NAMED IN ANY PLEADING AGAINST T.Y.R.E.S., INC.
4 I'D ALSO LIKE TO POINT OUT AT THIS TIME,
5 AGAIN, THE BOARD HAS NO CONSTITUTIONAL OR STATUTORY
6 AUTHORITY TO CONDUCT THIS HEARING. THE BOARD HAS THE
7 AUTHORITY TO REGULATE SOLID WASTE, BUT DOES NOT HAVE
8 THE AUTHORITY TO REGULATE THE SANCTIONED CONTRACTORS.
9 THIS AUTHORITY BELONGS SOLELY TO THE CONTRACTORS
10 LICENSE BOARD. AS SUCH THE BOARD IS ACTING IN EXCESS
11 OF ITS JURISDICTION AND IN VIOLATION OF MY CLIENT'S DUE
12 PROCESS RIGHTS.
13 AS -- AS YOU MAY HAVE HAD AN OPPORTUNITY TO
14 NOTE, I'VE PASSED OUT SOME CALIFORNIA GOVERNMENT CODE
15 SECTIONS. I'D LIKE THOSE TO BE PLACED INTO EVIDENCE AND
16 ASK THAT JUDICIAL NOTICE BE TAKEN. SPECIFICALLY GOVERNMENT
17 CODE SECTION 11340.5 BASICALLY STATES, "NO STATE AGENCY
18 SHALL ISSUE, UTILIZE, ENFORCE, OR ATTEMPT TO ENFORCE ANY
19 GUIDELINE, CRITERION, BULLETIN, MANUAL, INSTRUCTION, ORDER,
20 STANDARD OF GENERAL APPLICATION, OR OTHER RULE WHICH IS A
21 REGULATION AS DEFINED IN SUBDIVISION G OF SECTION 11342
22 UNLESS THE GUIDELINE, CRITERION, BULLETIN, MANUAL,
23 INSTRUCTION, ORDER, STANDARD OF GENERAL APPLICATION, OR
24 OTHER RULE HAS BEEN ADOPTED AS A REGULATION AND FILED WITH
25 THE SECRETARY OF STATE PURSUANT TO THIS CHAPTER.



1 AND THAT SECTION 11342(G) DEFINES
2 REGULATION. "REGULATION MEANS EVERY RULE, REGULATION,
3 ORDER, STANDARD OF GENERAL APPLICATION, OR THE
4 AMENDMENT, SUPPLEMENT, OR REVISION OF ANY RULE
5 REGULATION, ORDER, OR STANDARD ADOPTED BY ANY STATE
6 AGENCY TO IMPLEMENT, INTERPRET, OR MAKE SPECIFIC THE
7 LAW ENFORCED OR ADMINISTERED BY IT OR TO GOVERN ITS
8 PROCEDURE EXCEPT WHEN IT RELATES ONLY TO THE INTERNAL
9 MANAGEMENT OF THE AGENCY."
10 IN THIS SITUATION YOU'RE ATTEMPTING TO
11 BLOCK MY CLIENT FROM ACCEPTING SUBCONTRACTS THROUGH
12 OTHER CONTRACTORS AND DENY THEM A PROPERTY OR LIBERTY
13 RIGHT. THEREFORE, THIS IS A DEPRIVATION OF THEIR DUE
14 PROCESS RIGHTS.
15 CALIFORNIA GOVERNMENT CODE SECTION 11349.1(A)
16 SAYS, "THE OFFICE OF ADMINISTRATIVE LAW SHALL REVIEW ALL
17 REGULATIONS ADOPTED PURSUANT TO THE PROCEDURE SPECIFIED IN
18 ARTICLE 5 COMMENCING WITH SECTION 11346 AND SUBMITTED TO IT
19 FOR PUBLICATION IN THE CALIFORNIA REGULATORY CODE
20 SUPPLEMENT AND FOR TRANSMITTAL TO THE SECRETARY OF STATE
21 AND MAKE DETERMINATIONS USING ALL OF THE FOLLOWING
22 STANDARDS: NECESSITY FOR THE REGULATION, AUTHORITY FOR THE
23 ENTITY PASSING THE REGULATION, CLARITY, CONSISTENCY,
24 REFERENCE, AND NONDUPLICATION. IN REVIEWING THE
25 REGULATIONS PURSUANT TO THIS SECTION, THE OFFICE SHALL



1 RESTRICT ITS REVIEW TO THE REGULATION AND THE RECORD OF THE
2 RULE-MAKING PROCEEDING. THE OFFICE SHALL APPROVE THE
3 REGULATION OR ORDER OF REPEAL IF IT COMPLIES WITH THE
4 STANDARDS SET FORTH IN THIS SECTION AND WITH THIS CHAPTER.
5 SPECIFICALLY CALIFORNIA GOVERNMENT CODE SECTION
6 11425.50(E), A PENALTY MAY NOT BE IMPOSED, MAY NOT BE BASED
7 ON A GUIDELINE, CRITERION, BULLETIN, MANUAL, INSTRUCTION,
8 ORDER, STANDARD OF GENERAL APPLICATION, OR OTHER RULE
9 SUBJECT TO CHAPTER 3.5 UNLESS IT HAS BEEN ADOPTED AS A
10 REGULATION PURSUANT TO CHAPTER 3.5."
11 NOW, I HAD SOME COPIES MADE OF A LETTER SENT
12 FROM CHARLENE MATHIAS OF THE ADMINISTRATIVE LAW OFFICE - -
13 OFFICE OF ADMINISTRATIVE LAW ADDRESSING AN INQUIRY FROM
• 14 ASSEMBLYMAN FIRESTONE REGARDING CALIFORNIA INTEGRATED WASTE
15 MANAGEMENT BOARD'S ADOPTION OF THIS POLICY. IT WAS
16 MS. MATHIAS' RESPONSE THAT THE WASTE MANAGEMENT BOARD HAD
17 ADOPTED THE POLICY FOR UNRELIABLE CONTRACTORS AND HAD NOT
18 DONE IT PURSUANT TO THE RULE-MAKING PART OF THE
19 ADMINISTRATIVE PROCEDURE ACT.
20 SO OUR POSITION, QUITE CLEARLY, IS THE BOARD
21 IS ATTEMPTING TO ENFORCE A RULE OR REGULATION WITHOUT
22 FOLLOWING THE LAWS UNDER THE ADMINISTRATIVE PROCEDURE ACT
23 OF THE STATE OF CALIFORNIA. FURTHER, IN ENFORCING THIS
24 RULE AGAINST MY CLIENT, T.Y.R.E.S. , INC., AND JOHN AND
25 HAZEL BLANKENSHIP INDIVIDUALLY, THEY ARE DEPRIVING MY



1 CLIENTS OF DUE PROCESS OF LAW GUARANTEED UNDER THE
2 CONSTITUTION OF THE UNITED STATES AND CALIFORNIA
3 CONSTITUTION.
4 THE FAILURE OF THE INTEGRATED WASTE
5 MANAGE -- EXCUSE ME -- WASTE MANAGEMENT BOARD TO COMPLY
6 WITH THE ADMINISTRATIVE PROCEDURE ACT WAS POINTED OUT
7 TO EXECUTIVE DIRECTOR RALPH CHANDLER ON SEVERAL
8 OCCASIONS AND THERE WAS NO RETRACTION OF THE POLICY AND
9 THAT'S WHY WE'RE HERE TODAY.
10 I'VE ALSO PASSED OUT A DECLARATION FROM
11 HAZEL BLANKENSHIP REGARDING HER UNDERSTANDING OF THE
12 CIRCUMSTANCES. YOU'LL NOTE THAT MRS. BLANKENSHIP
13 DELEGATED THE AUTHORITY AND RESPONSIBILITY FOR
14 PREPARATION OF THE GRANT REIMBURSEMENT INVOICES TO AN
15 EMPLOYEE OF T.Y.R.E.S., INC. THIS EMPLOYEE PREPARED
16 ALL THE DOCUMENTATION. MS. BLANKENSHIP SIGNED OFF ON
17 IT. AND SHORTLY THEREAFTER THIS EMPLOYEE DEPARTED
18 T.Y.R.E.S., INC.'S, EMPLOY ABSCONDING WITH VALUABLE
19 RECORDS, UNSIGNED CHECKS, AND OTHER IMPORTANT COMPANY
20 DOCUMENTS. A POLICE REPORT WAS FILED IN THE MATTER.
21 IT WAS FILED AS AN INCIDENT REPORT BECAUSE NO ONE WAS
22 INJURED AND THERE WERE NO EYE WITNESSES TO THE THEFT.
23 HOWEVER, AS MRS. BLANKENSHIP STATES IN
24 HER DECLARATION, THIS EMPLOYEE SUBSEQUENTLY SHOWED UP
25 WORKING FOR A COMPETITOR, ATD, WHO BEGAN CALLING ALL OF



1 T.Y.R.E.S., INC.'S, SUPPLIERS AND ALL OF T.Y.R.E.S.
2 INC'S., COLLECTION ACCOUNTS, WHICH LENDS CREDENCE TO
3 OUR BELIEF THAT THIS PERSON DID, IN FACT, SELL THESE
4 COLLECTION ACCOUNTS TO THE COMPETITOR AFTER STEALING
5 THEM FROM T.Y.R.E.S., INC.
6 I'D ALSO LIKE TO NOTE FOR THE RECORD THAT
7 THERE WAS A DEPARTMENT OF FINANCE INVESTIGATION WHICH
8 WAS OVERSEEN BY THE ATTORNEY GENERAL'S OFFICE. THE
9 ATTORNEY GENERAL DECLINED TO PROSECUTE OR INVESTIGATE
10 FURTHER. AND AS SUCH, THE POLICY INSTITUTED BY THE
11 BOARD IS -- IS PUNISHING OR ATTEMPTING TO PUNISH MY
12 CLIENT FOR MERELY BEING INVESTIGATED. THAT IN ITSELF
13 IS A DEPRIVATION OF MY CLIENT'S DUE PROCESS RIGHTS.
14 I'D LIKE TO ALSO POINT OUT THAT
15 T.Y.R.E.S., INC., WAS SELECTED IN 1995 AS THE SMALL
16 BUSINESS AWARD WINNER IN THE STATE OF CALIFORNIA BY THE
17 GOVERNOR. I'D ALSO LIKE TO POINT OUT THAT MY CLIENT
18 HAS HAD NUMEROUS LONG-TERM CONTRACTS WITH RESPONSIBLE
19 CORPORATIONS IN CALIFORNIA THAT USE WASTE TIRES FOR
20 THEIR FUEL, CEMENT PLANTS AND KILNS.
21 AND I WAS HOPING TO HAVE LETTERS OF
22 RECOMMENDATION FROM THOSE PEOPLE TODAY. I RECEIVED ONE
23 AT THE LAST MOMENT FROM RIVERSIDE CEMENT. AND I'D BE
24 HAPPY TO INTRODUCE IT IF I COULD HAVE SOME COPIES MADE
25 AND CIRCULATE THEM SOMETIME.



1 CHAIRMAN PENNINGTON: WE'LL MAKE THAT PART OF
2 THE RECORD AND CIRCULATE IT.

3 MR. KAESTNER: OKAY. I'D ALSO LIKE TO REQUEST AT
4 THIS TIME IF THE BOARD DOES, IN FACT, FIND THAT MY CLIENT
5 IS UNRELIABLE, THAT THEY STAY THE APPLICATION OF THE
6 FINDING FOR 30 DAYS TO ALLOW MY CLIENT AN OPPORTUNITY TO
7 PURSUE A JUDICIAL APPEAL OF THAT FINDING.

8 AND I BELIEVE, LADIES AND GENTLEMEN, THAT
9 CONCLUDES MY PRESENTATION UNLESS LIZ HAS ANYTHING ELSE
10 TO OFFER, WHICH I WOULD HAVE NO --

11 CHAIRMAN PENNINGTON: YOU STARTED BY REFERRING
12 TO THE REPORT AND SUGGESTING THAT IT WAS NOT MADE A PART OF
13 THE RECORD. AND ALTHOUGH THE DEPARTMENT OF FINANCE
14 CONSIDERS IT CONFIDENTIAL, WE'LL BE HAPPY TO WAIVE THAT
15 CONFIDENTIALITY IF YOU WANT IT TO BE MADE A PART OF THE
16 RECORD, IF YOU WANT THAT REPORT TO BE MADE A PART OF
17 THE RECORD.

18 MR. KAESTNER: WELL, MY OBJECTION WAS THAT WE
19 HAVE NO OPPORTUNITY TO CROSS-EXAMINE THE PEOPLE THAT
20 PREPARED THE REPORT. THE REPORT ALONE IS HEARSAY.

21 CHAIRMAN PENNINGTON: WELL, I THINK WE HAVE A
22 REBUTTAL FROM -- FROM YOU ALL TO THAT REPORT. I DON'T
23 THINK THAT COMES AS ANY SHOCK TO YOU.

24 MR. KAESTNER: NO. MY POINT IS, YOUR HONOR --
25 YOUR HONOR -- CHAIRMAN PENNINGTON, THAT WE HAVE HAD NO



1 OPPORTUNITY TO CROSS-EXAMINE. WE WERE GIVEN AN OPPORTUNITY
2 TO ANSWER SOME OF THE ALLEGATIONS, BUT NO ADEQUATE
3 OPPORTUNITY TO TALK TO THE PERSON THAT PREPARED THE REPORT
4 AND --

5 CHAIRMAN PENNINGTON: I SEE. SO YOU DON'T
6 WANT TO MAKE IT A PART OF THE RECORD.

7 MR. KAESTNER: I DON'T SEE HOW WE CAN. IT'S
8 HEARSAY EVIDENCE. I DON'T SEE HOW IT CAN BE
9 ADMISSIBLE.

10 CHAIRMAN PENNINGTON: OKAY.

11 MR. KAESTNER: AND IF IT'S INADMISSIBLE AS
12 EVIDENCE, YOU KNOW, BASICALLY THERE'S NO EVIDENCE TO
13 SUPPORT THE FINDING EVEN IF THE POLICY WAS APPLIED
14 PROPERLY.

15 CHAIRMAN PENNINGTON: OKAY. I'M NOT CLEAR ON WHY
16 THE BLANKENSHIPS DIDN'T PURSUE THIS EMPLOYEE FURTHER. BUT
17 I READ WHAT HER DECLARATION SAYS HERE, BUT CERTAINLY IT
18 WOULD SEEM THAT IF THEY HAD RAISED THIS MUCH HAVOC WITH
19 THEIR BUSINESS, THAT THEY WOULD ATTEMPT TO PROSECUTE THEM
20 IN SOME FASHION.

21 MR. KAESTNER: WELL, THEY DID FILE A POLICE
22 REPORT, YOUR HONOR -- YOUR HONOR -- CHAIRMAN
23 PENNINGTON. THE POLICE -- POLICE TOOK THE REPORT,
24 FILED IT AS AN INCIDENT REPORT. SINCE THERE WERE NO
25 EYE WITNESSES TO THE THEFT, THEY HAD NO BASIS WHICH TO



1 PURSUE MR. SAPIENGER, S-A-P-I-E-N-G-E-R, FOR THE
2 RECORD. THE POLICE DID CONTACT HIM, AND IT WAS A CASE
3 OF HE SAID, SHE SAID.

4 CHAIRMAN PENNINGTON: OKAY. ANYBODY ELSE?
5 MR. EATON, ANY QUESTIONS?

6 BOARD MEMBER EATON: YEAH. IN MRS. BLANKENSHIP'S
7 DECLARATION, SHE STATES THAT THIS EMPLOYEE WAS UNDER AN
8 EMPLOYMENT AGREEMENT; IS THAT CORRECT?

9 MR. KAESTNER: TO MY UNDERSTANDING. I MEAN
10 I'M NOT A PARTY TO HER, YOU KNOW, EMPLOYMENT
11 AGREEMENTS.

12 BOARD MEMBER EATON: DID SHE SIGN THE DECLARATION
13 UNDER PENALTY OF PERJURY?

14 MR. KAESTNER: SHE DID.

15 BOARD MEMBER EATON: OKAY.

16 MR. KAESTNER: BUT I HAVE NO PERSONAL
17 KNOWLEDGE OF THAT.

18 BOARD MEMBER EATON: WELL, AS HER REPRESENTATIVE
19 HAVE YOU SEEN THE EMPLOYMENT AGREEMENT?

20 MR. KAESTNER: NO, I HAVEN'T.

21 BOARD MEMBER EATON: WAS IT A WRITTEN OR AN ORAL
22 AGREEMENT?

23 MR. KAESTNER: IT'S MY UNDERSTANDING IT WAS AN
24 ORAL AGREEMENT.

25 BOARD MEMBER EATON: DO YOU KNOW WHAT THE TERMS OF



1 THE AGREEMENT WERE?

2 MR. KAESTNER: HE WAS TO BE PAID ON AN
3 INCENTIVE BASIS FOR SELLING EQUIPMENT THAT THE
4 CORPORATION WAS IN THE PROCESS OF LIQUIDATING AND ON AN
5 INCENTIVE BASIS FOR PREPARING THE GRANT DOCUMENTATION
6 AND GETTING IT PUT TOGETHER IN A TIMELY FASHION. I
7 THINK HER DECLARATION SAYS HE WAS TO BE PAID
8 APPROXIMATELY \$2500 UPON COMPLETION OF THAT IF IT WAS
9 DONE IN A TIMELY FASHION.

10 BOARD MEMBER EATON: AND SO THERE WAS NO DURATION
11 TO THE CONTRACT; IS THAT CORRECT?

12 MR. KAESTNER: AS I UNDERSTAND, NO.

13 BOARD MEMBER EATON: SO YOU HAD AN ORAL CONTRACT
14 WITH NO SET PARAMETERS AS TO THE BEGINNING AND THE END OF
15 THE CONTRACT; IS THAT CORRECT?

16 MR. KAESTNER: I HAVE PERSONAL KNOWLEDGE OF
17 IT.

18 BOARD MEMBER EATON: PERHAPS, THEN, YOU COULD,
19 FOLLOWING UP ON THE CHAIRMAN'S QUESTION, EXPLAIN TO ME THAT
20 IF YOU HAD AN EMPLOYMENT AGREEMENT THAT YOU DIDN'T SEEK
21 CIVIL REMEDIES FOR BREACH OF THAT EMPLOYMENT CONTRACT, OR
22 MAYBE YOU DID. COULD YOU ENLIGHTEN US ON THAT?

23 MR. KAESTNER: YES. I MEAN - -

24 BOARD MEMBER EATON: DID YOU PURSUE A CIVIL ACTION
25 ON BREACH OF CONTRACT?



1 MR. KAESTNER: NO, WE DIDN'T. AND THE REASON
2 IS IF THEY WERE TO PURSUE HIM, WHAT WOULD THEY GAIN BY
3 FILING A CIVIL ACTION AGAINST SOMEONE WHO HAS BASICALLY
4 NO VISIBLE MEANS OF SUPPORT? YOU GET A JUDGMENT WHICH
5 IS VALUELESS.

6 BOARD MEMBER EATON: OKAY. I DON'T HAVE ANYTHING
7 FURTHER AT THIS TIME.

8 CHAIRMAN PENNINGTON: MR. JONES.

9 BOARD MEMBER JONES: THANK YOU, MR. CHAIRMAN. I
10 HAVE A COUPLE OF QUESTIONS. THE -- YOU SAY THAT IN ONE OF
11 YOUR STATEMENTS THAT THE CONTRACTORS BOARD IS THE ONLY ONE
12 THAT SHOULD BE LOOKING AT THIS. I'M WONDERING WHO DID THE
13 BLANKSHIPS COME TO FOR THE GRANT DOLLARS THAT ARE THE
14 BASIS FOR THIS? CONTRACTORS BOARD OR THE WASTE BOARD?

15 MR. KAESTNER: NO. THEY CAME TO THE WASTE
16 BOARD. THAT'S QUITE EVIDENT.

17 BOARD MEMBER JONES: OKAY. AND SO I -- I DON'T
18 UNDERSTAND HOW, IF WE ARE THE ADMINISTRATORS OF GRANT FUNDS
19 THAT ARE FROM THE PEOPLE OF CALIFORNIA, HOW WE DON'T HAVE
20 OVERSIGHT AS TO THE CRITERIA HOW WE'RE GOING TO GIVE THOSE
21 GRANT FUNDS OUT.

22 MR. KAESTNER: THERE IS NO ARGUMENT THERE AT
23 ALL. YOU HAVE TOTAL AUTHORITY TO SET THE CRITERIA
24 UNDER WHICH THE FUNDS ARE GIVEN OUT, BUT YOU HAVE
25 ABSOLUTELY NO AUTHORITY TO REGULATE LICENSED



1 CONTRACTORS AND SANCTION THEM. THAT IS ENTIRELY
2 DIFFERENT. WHAT THE BOARD PROPOSES TO DO HERE TODAY IS
3 TO SANCTION MY CLIENT FOR A PERIOD OF THREE YEARS - -
4 BOARD MEMBER JONES: NOT --
5 MR. KAESTNER: -- DEPRIVE THEM OF THE RIGHT TO
6 BOTH CONTRACT AND SUBCONTRACT THROUGH OTHER CONTRACTORS
7 THAT HAVE CONTRACTS WITH THE BOARD. THAT IS NOT
8 SOMETHING THAT WAS -- IS WITHIN THE PURVIEW OF THE
9 WASTE MANAGEMENT BOARD.
10 BOARD MEMBER JONES: OUR GRANT DOLLARS THAT WE
11 ADMINISTER, IT IS NOT WITHIN OUR PURVIEW TO SET UP A
12 CRITERIA BY WHICH WE ARE GOING TO ENSURE THOSE DOLLARS
13 BE SPENT?
14 MR. KAESTNER: I THINK, MR. JONES, I ANSWERED
15 THAT. I SAID YOU HAVE 100 PERCENT AUTHORITY TO SET UP
16 THE CRITERIA BY WHICH YOU DISTRIBUTE GRANT FUNDS.
17 BOARD MEMBER JONES: THANK YOU.
18 MR. KAESTNER: WHAT YOU DO NOT HAVE IS THE
19 AUTHORITY TO SANCTION AND REGULATE LICENSED CONTRACTORS
20 IN THE STATE OF CALIFORNIA.
21 BOARD MEMBER JONES: I AGREE.
22 MR. KAESTNER: PARTICULARLY APPLYING A POLICY
23 RETROACTIVELY, MAKING SOMETHING THAT'S ILLEGAL THAT
24 HAPPENED -- ALLEGEDLY HAPPENED A YEAR PRIOR SUDDENLY
25 ILLEGAL. THAT IS OUR POSITION.



1 BOARD MEMBER JONES: THAT -- WE'RE NOT -- I MEAN I
2 DON'T KNOW ABOUT THE LEGALITY OR ILLEGALITY. THIS IS
3 A -- THE POLICY IN QUESTION IS THE BASIS FOR AWARDING
4 OUR DOLLARS. IT IS NOT ANYTHING OTHER THAN THAT. AND
5 T.Y.R.E.S., INC., HAS THE OPPORTUNITY TO TEAM UP WITH
6 ANYBODY TO PUT A PACKAGE FORWARD IN THE GRANT
7 APPLICATION PROCESS. WHAT THIS POLICY DOES IS SAYS
8 THAT THERE ARE CRITERIA THAT IS ESTABLISHED VERY
9 SIMILAR TO -- TO ANY GRANT THAT WE GIVE OUT AT THIS BOARD.
10 AND ONE OF THE CRITERIA IS IF YOU'RE NOT RELIABLE, YOU'RE
11 GOING TO GET MARKED DOWN. YOU'RE NOT GOING TO GET IT.
12 MR. KAESTNER: I UNDERSTAND, BUT I BELIEVE
13 THAT MISSTATES THE POLICY. THE POLICY SAYS A
14 CONTRACTOR WILL BE DENIED EITHER A CONTRACT OR A
15 SUBCONTRACT FOR BEING INVESTIGATED. THAT'S WHAT IT
16 SAYS. THE POLICY DOESN'T SAY WE HAVE THE AUTHORITY TO
17 SET CRITERIA. I'M NOT EVEN GOING TO ARGUE THAT. YOU
18 HAVE 100 PERCENT OF THE AUTHORITY TO SET THE CRITERIA
19 BY WHICH YOU DISTRIBUTE YOUR FUNDS.
20 YOU DO NOT HAVE THE AUTHORITY TO INTERFERE
21 WITH MY CLIENT'S PROSPECTIVE CONTRACTUAL RELATIONSHIPS WITH
22 OTHER BUSINESS ENTITIES AND PERSONS IN THE STATE OF
23 CALIFORNIA. AND THAT IS WHAT THIS POLICY PURPORTS TO HAVE
24 THE AUTHORITY TO DO AND THAT PURPORTS TO HAVE THE AUTHORITY
25 TO DO IT RETROACTIVELY.



1 BOARD MEMBER JONES: ON THE -- SINCE THE DOF
2 REPORT ISN'T GOING TO BE INCLUDED AS PART OF THE RECORD,
3 THE INVOICES THAT WERE REVIEWED BY DOF, OF THOSE INVOICES
4 THAT WERE PART OF THE GRANT APPLICATION, HOW MANY OF
5 THOSE WERE PAID TO YOUR CLIENT?

6 MR. KAESTNER: I HAVE NO PERSONAL KNOWLEDGE OF
7 THAT. I BELIEVE NONE OF THEM WERE PAID. HOWEVER, I
8 ALSO BELIEVE, BASED ON MRS. BLANKENSHIP'S DECLARATION,
9 THAT BON SMITH, THE ACCOUNTANT THAT SPENT THREE DAYS IN
10 THEIR OFFICES, LEFT THE OFFICE AFTER THREE DAYS OF
11 POURING OVER ALL THE RECORDS AND INVOICES TELLING
12 MRS. BLANKENSHIP THAT HE WAS GOING TO RECOMMEND THAT
13 BETWEEN 50 AND \$60,000 OF THOSE INVOICES WAS ACTUALLY
14 GOING TO BE PAID.

15 BOARD MEMBER JONES: FIFTY TO 60,000 OF -- WHAT
16 WAS THE ORIGINAL GRANT APPLICATION?

17 MR. KAESTNER: I BELIEVE IT WAS A HUNDRED
18 THOUSAND.

19 BOARD MEMBER JONES: THE FACT THAT THEY DIDN'T GET
20 ALLOWED AND THE FACT THAT WE'VE GOT -- WE HAVE A
21 RECOMMENDATION NOT TO HAVE PAID THOSE BECAUSE THEY WERE
22 NOT SUBSTANTIATED, WHAT WAS YOUR -- WHAT WAS YOUR
23 CLIENT'S REACTION WHEN THEY DISALLOWED ALL OF THE
24 GRANTINGS? WHAT -- WHAT DID THEY DO ABOUT THAT?

25 MR. KAESTNER: YOU'RE ASKING ME TO SPECULATE



1 THERE. I HAVE NO PERSONAL KNOWLEDGE OF THAT.

2 BOARD MEMBER JONES: BECAUSE I -- I DON'T
3 REMEMBER -- I WASN'T ON THE BOARD THEN, BUT I DON'T
4 KNOW THAT ANYTHING CAME FORWARD AS TO -- AS TO AN
5 ACTION. I MEAN THEY WERE DISALLOWED. THEY HAD BEEN
6 APPROVED A GRANT. THEY WERE DISALLOWED, AND I DON'T
7 KNOW IF AN ACTION EVER CAME IN FRONT OF THIS BOARD TO
8 CONTEST THAT.

9 MR. KAESTNER: I BELIEVE AT THE TIME --

10 BOARD MEMBER JONES: THAT SEEMS TO BE THE BASIS OF
11 THIS CASE.

12 MR. KAESTNER: WELL, I BELIEVE AT THE TIME IN
13 QUESTION, MY CLIENT WAS ALSO STRUGGLING TO REGAIN A
14 \$750,000 WASTE TIRE CLEAN-UP CONTRACT THAT HAD BEEN AWARDED
15 BY THIS BOARD IN JUNE OF 1996. AND HER PREOCCUPATION WITH
16 THAT WAS THE CIRCUMSTANCE UNDER WHICH SHE DID NOT MAINTAIN
17 OVERSIGHT OF THIS EMPLOYEE THAT PREPARED THE
18 DOCUMENTATION. SHE HAD HER EYE ON THE BIG PICTURE, WHICH
19 WAS OBTAINING THE WASTE TIRE CLEAN-UP GRANT CONTRACT --
20 EXCUSE ME -- WASTE TIRE CLEAN-UP CONTRACT IN THE AMOUNT OF
21 \$750,000 FOR HER COMPANY. AND THAT IS THE ACTION WHICH SHE
22 SPENT MOST OF HER TIME PURSUING.

23 BOARD MEMBER JONES: THANKS, MR. CHAIRMAN.

24 CHAIRMAN PENNINGTON: MR. FRAZEE?

25 BOARD MEMBER FRAZEE: THE STATEMENT SUBMITTED INTO



1 THE RECORD OF THE SIGNATURE OF HAZEL BLANKENSHIP, IT
2 APPEARS TO MAKE THE CASE THAT THERE SHOULD BE NO HOLD
3 AGAINST THE BLANKENSHIPS FOR SUBMITTING INACCURATE
4 DOCUMENTS IN THAT THAT DUTY WAS ASSIGNED TO A THIRD
5 PARTY, SPECIFICALLY MR. SAPIENGER. AND SO IF THERE
6 WERE ANY DISCREPANCIES IN THE FILING OF THOSE CLAIMS,
7 THAT ALL FALLS TO MR. SAPIENGER AND NOT TO THE
8 BLANKENSHIPS; IS THAT --

9 MR. KAESTNER: ULTIMATELY THE PRESIDENT OF THE
10 CORPORATION HAS AUTHORITY OVER ALL OF THE EMPLOYEES AND
11 ULTIMATE RESPONSIBILITY. BUT I THINK HER DECLARATION MAKES
12 IT QUITE CLEAR THAT BECAUSE OF THE ONGOING CONTRACT ISSUE,
13 THAT SHE WAS TOTALLY DISTRACTED FROM THE GRANT ISSUE AND
14 PUT IT INTO THE HANDS O AN EMPLOYEE.

15 BOARD MEMBER FRAZEE: BUT DID SHE SIGN THE
16 REIMBURSEMENT APPLICATIONS HERSELF?

17 MR. KAESTNER: I HAVE NO PERSONAL KNOWLEDGE.
18 I WOULD ASSUME SHE MUST HAVE IN ORDER FOR THEM TO BE
19 PROCESSED.

20 BOARD MEMBER FRAZEE: SO, THEN, SHE IS ASSUMING
21 FULL RESPONSIBILITY FOR THOSE APPLICATIONS.

22 MR. KAESTNER: WELL, I THINK THE DEPARTMENT OF
23 FINANCE SAID THAT IT WAS IMPOSSIBLE TO TELL WHO HAD
24 ACTUALLY DOCTORED THE DOCUMENTS. AND AS SUCH, AGAIN,
25 SHE'S THE PRESIDENT OF THE CORPORATION. SHE'S



1 ULTIMATELY RESPONSIBLE. BUT I -- I ASK EACH AND EVERY
2 ONE OF YOU ON THE BOARD HOW MANY THINGS GO OUT OF YOUR
3 OFFICE UNDER YOUR SIGNATURE EVERY DAY THAT YOU DO NOT
4 HAVE INTIMATE KNOWLEDGE OF.

5 BOARD MEMBER FRAZEE: I HOPE NONE.

6 MR. KAESTNER: THAT'S -- THAT'S CERTAINLY THE
7 HOPE, BUT I COULD IMAGINE THAT IT HAPPENS FROM TIME TO
8 TIME, PARTICULARLY WHEN YOU'RE WHOLLY PREOCCUPIED WITH
9 OTHER ISSUES THAT SEEM TO BE OF FAR GREATER IMPORTANCE
10 AT THE TIME.

11 BOARD MEMBER FRAZEE: BUT THE POINT I THINK I'M
12 SEEKING HERE IS THE FACT THAT IF SOME OTHER THIRD PARTY
13 PREPARED THESE DOCUMENTS HAS NO BEARING ON THIS WHATSOEVER.
14 IT'S THE ULTIMATE RESPONSIBILITY OF THE APPLICANT TO
15 SUBMIT -- SIGN AND SUBMIT THESE DOCUMENTS. AND SHE ALONE
16 BEARS FULL RESPONSIBILITY FOR THAT ACTION.

17 MR. KAESTNER: YES. BUT I THINK YOU ALSO HAVE
18 TO BE AWARE THAT THIS POLICY AFFECTS NOT ONLY
19 MRS. BLANKENSHIP, BUT MR. BLANKENSHIP TOO. HE ALSO,
20 BECAUSE HE IS A MEMBER OF THIS CORPORATION, WILL BE
21 DEPRIVED OF AN OPPORTUNITY TO MAKE A LIVING BECAUSE OF
22 THIS DESIGNATION. THIS GOES JUST BEYOND FINING THE
23 CORPORATION.
24 THE POLICY ITSELF SAYS NOT ONLY DOES THE
25 CORPORATION GET SANCTIONED, BUT THE -- THE OWNERS AND THE



1 MANAGING EMPLOYEES THEREOF. PEOPLE THAT COULD BE OUT OF
2 THE COUNTRY FOR THE THREE MONTHS DURING THE TIME COULD
3 BE -- COULD COME BACK AND FIND THIS POLICY APPLIED TO THEM.
4 AND THAT'S WHAT MAKES IT TOTALLY ARBITRARY AND CAPRICIOUS.
5 IT COULD BE APPLIED OR NOT APPLIED. IT IS NOT APPLIED
6 EVENHANDEDLY. AND IT IS APPLIED WHETHER OR NOT YOU HAVE
7 ANY KNOWLEDGE OF THE CIRCUMSTANCES THAT GIVE RISE TO THE
8 DESIGNATION.

9 BOARD MEMBER FRAZEE: SO YOU'RE INDICATING, THEN,
10 THAT MR. BLANKENSHIP IS BEING DENIED A RIGHT THAT HE WOULD
11 HAVE AS AN INDIVIDUAL TO APPLY FOR ONE OF THESE GRANTS?

12 MR. KAESTNER: HE WOULD HAVE -- HE WOULD BE DENIED
13 THE RIGHT TO GO TO WORK FOR ANOTHER COMPANY THAT DOES WASTE
14 TIRE PICKUP BECAUSE HE AS BEEN DESIGNATED UNRELIABLE UNDER
15 THIS POLICY BECAUSE HE IS A PART OWNER IN T.Y.R.E.S., INC.

16 BOARD MEMBER FRAZEE: THANK YOU.

17 BOARD THE SECRETARY: ACTUALLY, I DON'T KNOW IF
18 THIS IS THE APPROPRIATE TIME. I HAVE JUST SOME CLARIFYING
19 QUESTIONS FROM COUNSEL'S SIDE. OKAY. IF YOU MIGHT
20 JUST SUCCINCTLY DIFFERENTIATE BETWEEN THE POLICY AND
21 REGULATION APPROACH. BECAUSE I UNDERSTAND WHAT WE ARE
22 ACTING ON IS A POLICY, AND I HAVE ARGUMENTS HERE, I
23 THINK, RELATIVE TO A REGULATION, SO...

24 MS. CLAYTON: CERTAINLY. ACTUALLY, THIS WAS
25 GOING TO BE PART OF MY REBUTTAL TO MR. KAESTNER'S



1 ARGUMENT, SO I'LL JUST GO AHEAD AND ANSWER THAT
2 QUESTION AND MAKE MY REBUTTAL AT THE SAME TIME.
3 MR. KAESTNER HAS APPARENTLY TRIED TO ARGUE
4 THAT THE BOARD'S UNRELIABLE POLICY IS AN UNDERGROUND
5 REGULATION. HE HANDED OUT TO YOU A ONE-PAGE HANDOUT
6 WITH SOME SECTIONS FROM THE GOVERNMENT CODE, PART OF
7 THE APA THAT DEFINES WHAT IS A REGULATION, WHAT TYPE OF
8 AN AGENCY'S DOCUMENTS NEED TO BE PUT IN REGULATIONS.
9 SO, FOR EXAMPLE, GOVERNMENT CODE 13 --
10 11340.5(A), THE FIRST ONE ON THE SHEET, GUIDELINES,
11 CRITERION, BULLETIN, MANUALS, INSTRUCTIONS, ORDERS, THESE
12 WILL BE THE TYPE OF DOCUMENTS THAT WOULD NEED TO BE PUT IN
13 REGULATION. AND IF THEY'RE NOT, THEY WOULD BE UNDERGROUND
14 REGULATIONS. THIS IS HALF THE EQUATION.
15 STAFF DOESN'T DISPUTE THIS DEFINITION OF
16 WHAT A REGULATION IS. THE OTHER HALF OF THE EQUATION
17 THAT MR. KAESTNER DIDN'T BRING UP IS WHAT IS NOT A
18 REGULATION, WHAT TYPE OF AN AGENCY'S DOCUMENTS DO NOT
19 NEED TO BE PUT IN REGULATION AND DON'T NEED TO GO
20 THROUGH THE APA PROCESS. AND THAT IS LEGAL
21 INTERPRETATIONS OF EXISTING STATUTES OR REGULATIONS,
22 WHICH IS WHAT OUR POLICY DOES, DO NOT NEED TO BE PUT IN
23 REGULATIONS.
24 50 WE HAVE AUTHORIZING STATUTES FOR OUR
25 CONTRACT, GRANT, AND LOAN PROGRAMS. AND SO WHAT OUR



1 POLICY DOES IS MAKE MORE EXPLICIT AND INTERPRETS THE
2 GUIDELINES FOR CRITERION FOR APPLICANTS WHO WILL BE
3 QUALIFIED TO RECEIVE BOARD CONTRACT, GRANTS, OR LOANS.
4 AND, THEREFORE, UNDER THE APA DEFINITION OF REGULATION,
5 OUR POLICY IS NOT A REGULATION. IT'S A LEGAL
6 INTERPRETATION.
7 BOARD THE SECRETARY: THANK YOU. I HAVE TWO MORE
8 CLARIFYING QUESTIONS. I'M HEARING THE ARGUMENT THAT, YOU
9 KNOW, ONLY THE CONTRACTORS BOARDS CAN SANCTION. CAN YOU
10 JUST TELL US WHAT ARE OUR RELEVANT RESPONSIBILITIES AND
11 AUTHORITIES AS FIDUCIARY AGENTS OF THE -- OF PUBLIC MONEY
12 THAT WE ADMINISTER? I THINK THIS GETS TO MR. JONES' POINT
13 THAT, YOU KNOW, WE'RE NOT SEEKING TO GO BEYOND, YOU KNOW,
14 THE BOUNDS OF OUR RESPONSIBILITY AND AUTHORITY. BUT I
15 WANTED TO JUST HAVE IT ON RECORD THAT WE HAVE
16 RESPONSIBILITIES AND AUTHORITIES AS, YOU KNOW, FISCAL
17 AGENTS THAT'S THE BASIS FOR THIS POLICY.

18 MS. CLAYTON: RIGHT. THIS WAS ANOTHER PART OF
19 MY REBUTTAL.

20 BOARD THE SECRETARY: SORRY. I CAN DEFER. I'M
21 SORRY. I'M NOT TRYING TO STEAL THIS FROM YOU.

22 MS. CLAYTON: I'M NOT SURE WHY MR. KAESTNER
23 HAS BROUGHT UP THE ISSUE OF THE CONTRACTORS STATE
24 LICENSING BOARD. THE GRANT AGREEMENT, WHICH IS THE
25 ISSUE HERE TODAY, WAS AN AGREEMENT WHERE T.Y.R.E.S.,



1 INC., WOULD BUY EQUIPMENT WITH THE GRANT MONEY. AND SO
2 THIS WAS NOT A SERVICES AGREEMENT AT ALL. THE
3 CONTRACTORS STATE LICENSING BOARD REGULATES LICENSES
4 RELEVANT TO CONTRACTOR LICENSING AND SERVICES. AND
5 THEY WOULD HAVE NOTHING TO DO WITH THE GRANT. MAYBE
6 MR. KAESTNER HAS THIS PROCEEDING MIXED UP WITH ANOTHER
7 PROCEEDING THAT WOULD RELATE TO CONTRACTOR LICENSING.
8 IN TERMS OF THE BOARD'S FIDUCIARY DUTIES
9 IN RELEASING GRANT MONEY, ABSOLUTELY THE BOARD HAS A
10 DUTY. AND THE BOARD ROUTINELY ON EVERY GRANT CHECKS
11 ALL THE INVOICES SUBMITTED. THE GRANT IS AWARDED. NO
12 MONEY IS ACTUALLY GIVEN TO THE RECIPIENT UNTIL THE
13 PURCHASES ARE MADE, INVOICES COME IN, THE STAFF CHECK
14 THOSE INVOICES TO MAKE SURE THAT, INDEED, THEY MATCH UP
15 WITH WHAT THE GRANT MONEY WAS INTENDED TO BE SPENT FOR.
16 AND AT THAT POINT MONEY CAN BE RELEASED.
17 WELL, AS YOU SEE, WHAT HAPPENED IN THIS
18 INSTANCE IS THE GRANT MONEY WAS NOT RELEASED BECAUSE
19 THE INVOICES WERE NOT PROPERLY DOCUMENTED. AND IF,
20 INDEED, EQUIPMENT WAS PURCHASED, IT COULDN'T BE
21 JUSTIFIED UNDER THE GRANT AGREEMENT. SO WHAT WE DID
22 UNDER GRANT LAW AND UNDER THE GRANT AGREEMENT THE BOARD
23 HAD TO DO WHICH WAS NOT RELEASE THAT MONEY.
24 BOARD THE SECRETARY: MY LAST QUESTION, I JUST
25 WANT TO MAKE IT CLEAR THAT THE AUTHORITIES THAT WE'VE



1 EXERCISED, THESE ARE SIMILAR TO THE AUTHORITIES OTHER STATE
2 GOVERNMENTAL ENTITIES HAVE AND THAT, YOU KNOW, HAVE WE
3 BROKEN ANY NEW GROUND? HAVE WE ESTABLISHED ANY PRECEDENT
4 IN POLICY OR APPLICATION THAT YOU'RE AWARE OF?

5 MS. CLAYTON: WE BASED THE POLICY, THE
6 STRUCTURE OF THE POLICY, ON FEDERAL LAW. AND WHEN THE
7 POLICY FIRST IN, I THINK, AUGUST OF 1997 CAME FORWARD
8 TO THE -- I BELIEVE IT WAS THE POLICY COMMITTEE, THE
9 COMMITTEE ASKED THAT QUESTION AND ASKED STAFF TO NOT
10 FORWARD THE ITEM TO THE BOARD, BUT GO BACK AND DO SOME
11 RESEARCH. SO WE RESEARCHED FEDERAL LAW AND FOUND OUT
12 THAT INDEED THERE IS A DEBARMENT PROCESS FOR FEDERAL
13 CONTRACTS.
14 WE ALSO DD A MINI SURVEY OF OTHER STATE
15 AGENCIES AND DISCOVERED THAT THERE WERE NO OTHER STATE
16 AGENCIES THAT HAD THE EXACT SAME POLICY THAT WE DID, BUT
17 THAT OTHERS WHO EITHER HAD SOMETHING IN THE WORKS OR HAD
18 SOME TYPE OF PROCESS IN PLACE THAT WOULD ALLOW THEM TO
19 DISQUALIFY UNRELIABLE CONTRACTORS, BUT THAT THE BOTTOM LINE
20 WAS UNDER OUR STATUTORY AUTHORITY TO DETERMINE WHO IS AND
21 ISN'T QUALIFIED TO RECEIVE A BOARD CONTRACT, SUBCONTRACT,
22 GRANT, OR LOAN THAT THE BOARD DID HAVE THE AUTHORITY TO
23 ADOPT THE POLICY.

24 BOARD THE SECRETARY: THANK YOU. THANK YOU,
25 MR. CHAIRMAN.



1 MR. KAESTNER: I'D LIKE TO ASK MS. CLAYTON
2 JUST TO TELL ME WHAT THE STATUTORY AUTHORITY IS RATHER
3 THAN JUST A BLANKET STATEMENT THAT IT'S THERE. BECAUSE
4 I'VE SPENT SOME AMOUNT OF TIME RESEARCHING IT, AND I
5 HAVE BEEN UNABLE TO FIND THE STATUTORY AUTHORITY BY
6 WHICH THE BOARD IS GRANTED THIS POWER.

7 MS. CLAYTON: THE STATUTORY AUTHORITY IS WHAT I
8 READ INTO THE RECORD DURING MY PRESENTATION, AND I'LL BE
9 HAPPY TO SHARE THAT WITH YOU IN WRITING IF YOU WEREN'T ABLE
10 TO WRITE THAT DOWN. BUT WE'VE GOT SPECIFIC CONTRACT,
11 GRANT, AND LOAN AUTHORIZING STATUTES. AND IN ALL OF THOSE
12 STATUTES, IT'S THE BOARD'S AUTHORITY AND THE BOARD'S DUTY
13 TO ENTER INTO AGREEMENTS ONLY WITH QUALIFIED ENTITIES.

14 CHAIRMAN PENNINGTON: MR. CHESBRO?

15 BOARD MEMBER CHESBRO: NO.

16 CHAIRMAN PENNINGTON: NO QUESTIONS FOR
17 MR. CHESBRO.

18 CHAIRMAN PENNINGTON: MR. JONES?

19 BOARD MEMBER JONES: I DO. THANK YOU,
20 MR. CHAIRMAN. YOU BROUGHT UP AN ISSUE THAT HADN'T BEEN
21 BROUGHT UP BEFORE, I DON'T THINK, AS PART OF THE
22 RECORD. YOU HAD MADE A COMMENT THAT DOF COULDN'T
23 VERIFY WHO DOCTORED THE DOCUMENTS IN QUESTION. AS PART
24 OF THE POLICY -- AND I'M NOT SURE THAT'S WHAT WE'RE
25 HERE TO DO. BECAUSE I THINK WHAT MR. FRAZEE WAS SAYING



1 IS WHEN MRS. BLANKENSHIP SIGNED THAT GRANT APPLICATION,
2 SHE, IN FACT, WAS TAKING RESPONSIBILITY AS ANYBODY HERE
3 THAT'S EVER RUN A BUSINESS UNDERSTANDS THAT YOU ARE
4 ULTIMATELY RESPONSIBLE FOR YOUR EMPLOYEES.
5 BUT THE FACT THAT YOU BROUGHT UP THAT DOF
6 STATED THAT THE DOCUMENTS WERE DOCTORED, NO. 2 OF THE
7 UNRELIABLE CONTRACTORS POLICY 2(A) SAYS, "AN
8 INVESTIGATION FOR ALLEGED FRAUDULENT CLAIMS AND
9 REPORTING TO THE BOARD RESULTING IN A DISALLOWANCE OF
10 ANY AND ALL CLAIMS TO THE BOARD OR A FINDING THAT THE
11 PERSON OR ENTITY INVESTIGATED DID NOT COMPLY WITH THE
12 PROVISIONS OF THE APPLICABLE AGREEMENT."
13 I THINK THAT'S PRETTY GERMANE BASED ON
14 THE FACT THAT, AS YOU STATED, DOF IDENTIFIED DOCTORED
15 AGREEMENTS FROM THE GRANT APPLICANT. AND THE FACT THAT
16 WE DIDN'T PAY THOSE BECAUSE THEY WERE DOCTORED I THINK
17 IS THE HEART AND SOUL OF THIS ENTIRE FINDING, THAT
18 THERE WAS -- THAT THE GRANT APPLICATION WAS UNRELIABLE.
19 AND I THINK THAT THE FACT THAT WE ARE
20 SHEPHERDING TAXPAYER DOLLARS IS PRETTY GERMANE HERE AS
21 TO DO WE ALLOW THE FACT THAT DOF CONCLUDED THAT
22 DOCUMENTS GIVEN TO A STATE AGENCY WERE DOCTORED AND
23 KEEP GIVING THAT ENTITY THAT FILED THOSE APPLICATIONS
24 CARTE BLANCHE TO KEEP DOING IT? IS THAT -- WOULD THAT
25 BE THE RESULT THAT YOU WOULD PREFER?



1 MR. KAESTNER: I DON'T THINK I'VE STATED THAT
2 AT ALL, MR. JONES. WHAT I'VE SAID IS THAT T.Y.R.E.S.,
3 INC., SUBMITTED DOCUMENTATION THAT THE DEPARTMENT OF
4 FINANCE DETERMINED -- WELL, NOW WE'RE TALKING ABOUT A
5 REPORT THAT'S NOT EVEN IN EVIDENCE.

6 BOARD MEMBER JONES: I DIDN'T BRING IT UP, THOUGH.
7 YOU BROUGHT IT. I JUST THOUGHT I'D GO A LITTLE FURTHER.

8

9 MR. KAESTNER: I THINK WHAT I'D LIKE TO DO IS
10 ADDRESS MY COMMENTS TO THE ULTIMATE RESPONSIBILITY.
11 AND T.Y.R.E.S., INC., DID PAY THE PRICE. THE ENTIRE
12 GRANT WAS DISALLOWED, AND THEY WERE NOT REIMBURSED FOR
13 ANY OF THE EXPENDITURES THAT THEY HAD MADE UNDER THE
14 TERMS OF THE GRANT THAT COST THEM IN EXCESS OF 50 TO
15 \$60,000. THAT THEY DID PAY THE PRICE FOR. AND, IN
16 FACT, NO TAXPAYER MONEY WAS, IN FACT, EXPENDED SO THAT
17 THERE WAS NO DETRIMENT TO THE TAXPAYERS.
18 I'D ALSO LIKE TO ADDRESS MS. CLAYTON'S
19 ISSUE WHERE SHE SAYS THAT OUR POLICY ONLY INTERPRETS
20 OTHER STATUTES IN PLACE. IF YOU LOOK AT CALIFORNIA
21 GOVERNMENT CODE SECTION 11342(G), SPECIFICALLY DOWN AT
22 THE FOURTH -- EXCUSE ME -- THE THIRD LINE, WHICH SAYS,
23 "OR STANDARD ADOPTED BY ANY AGENCY TO IMPLEMENT,
24 INTERPRET, OR MAKE SPECIFIC THE LAW ENFORCED OR
25 ADMINISTERED," THE POLICY INTERPRETS THE LAW.



1 IF YOU FIND THAT IT'S NOT IN A
2 REGULATION, IT CLEARLY INTERPRETS THE LAW AS
3 MS. CLAYTON HAS SAID TODAY. AS SUCH, IT IS A
4 REGULATION. AND AS SUCH, GOVERNMENT CODE SECTION
5 11425.50(E) SAYS A PENALTY MAY NOT BE IMPOSED. CLEARLY
6 DENYING T.Y.R.E.S., INC., THE RIGHT TO ENTER INTO
7 SUB CONTRACTUAL AGREEMENTS WITH OTHER CONTRACTORS IN THE
8 STATE OF CALIFORNIA IS A PENALTY.
9 NOW, YOU HAVE THE AUTHORITY, AS I'VE SAID
10 MANY TIMES, TO DECIDE WHETHER OR NOT TO GIVE SOMEONE A
11 GRANT UNDER WHATEVER TERMS THE BOARD ESTABLISHES. THAT
12 IS ENTIRELY WITHIN YOUR PURVIEW. HOWEVER, YOU DO NOT
13 HAVE THE AUTHORITY TO PENALIZE A CONTRACTOR AND
14 PROHIBIT THEM FROM GOING INTO PROFITABLE RELATIONSHIPS
15 WITH OTHER LICENSED CONTRACTORS OR OTHER ENTITIES IN
16 THE STATE OF CALIFORNIA.
17 AND THAT IS WHAT THIS REGULATION DOES.
18 WHETHER YOU CALL IT A POLICY OR AN INTERPRETATION, IT
19 IS A REGULATION THAT IS GOING TO PENALIZE MY CLIENT
20 RETROACTIVELY FOR SOMETHING THAT WAS NOT ILLEGAL. AND
21 I DON'T KNOW HOW TO MAKE IT ANY -- ANY PLAINER. THE
22 STATUTE THAT I'VE PROVIDED IS QUITE CLEAR. MS. CLAYTON
23 HAS -- HAS ALLUDED TO OTHER STATUTES THAT GIVE THEM THE
24 AUTHORITY, BUT WE DON'T HAVE THEM HERE TO COMPARE.
25 AND SHE'S ALSO ALLUDED TO STATE AUTHORITY



1 FOR DENYING CONTRACTORS THE RIGHT TO CONTRACT. AND I
2 BELIEVE THE STATUTE IS GOVERNMENT -- OR PUBLIC CONTRACT
3 CODE 1028.5, WHICH SAYS ANYONE WHO HAS BEEN CONVICTED
4 OF A FELONY MAY BE PROHIBITED FROM CONTRACTING WITH THE
5 STATE FOR THREE YEARS. BUT CLEARLY WE DON'T HAVE THAT
6 HERE.
7 AND THAT IS THE BASIS ON WHICH THE BOARD
8 COULD ADOPT A SANCTION AGAINST T.Y.R.E.S., INC., IF
9 THERE HAD BEEN A FELONY CONVICTION. BUT YOU CAN'T
10 CONVICT A CORPORATION OF A FELONY, AS FAR AS I KNOW.
11 YOU HAVE TO CONVICT AN INDIVIDUAL. AND WE'RE TALKING
12 ABOUT T.Y.R.E.S. , INC., HERE AND NOT AN INDIVIDUAL.
13 AND WE'RE TALKING ABOUT AN INDIVIDUAL THAT WAS A FORMER
14 EMPLOYEE THAT'S GONE WHO KNOWS WHERE NOW.
15 SO I JUST -- I CANNOT SEE HOW THIS
16 POLICY, REGULATION, INTERPRETATION, RULE, WHATEVER CAN
17 BE APPLIED EX POST FACTO TO MY CLIENT AND PENALIZE
18 THEM.
19 CHAIRMAN PENNINGTON: I WOULD -- I'D LIKE THE
20 RECORD TO SHOW, THOUGH, THAT THE REASON THAT THERE WAS
21 NO MONEY DISBURSED WAS BECAUSE OUR STAFF WAS DILIGENT
22 AND FOUND THAT THERE WAS A PROBLEM WITH THE SUBMITTALS
23 BY T.Y.R.E.S., INC., AND IT WAS NOT ANYTHING THAT
24 T.Y.R.E.S. , INC., DID THAT SAVED THE TAXPAYER.
25 MS. CLAYTON?



1 MS. CLAYTON: I HAVE JUST SEVERAL QUICK
2 COMMENTS IN REBUTTAL TO MR. KAESTNER'S ARGUMENT. FIRST
3 OF ALL, HE POINTED OUT GOVERNMENT CODE 11342(G) DOES
4 STATE THAT A REGULATION MEANS EVERY RULE AND THEN THE
5 THIRD LINE DOWN -- AND USES THE WORD "INTERPRET." NOW,
6 AGAIN, THIS IS JUST HALF THE CASE.
7 THERE IS A SEMINAL SUPREME COURT CASE ON
8 THIS ISSUE ABOUT WHAT -- THE REGULATION THAT DISCUSSES
9 THIS VERY GOVERNMENT CODE SECTION. AND THE CASE IS
10 VERY CLEAR THAT INTERPRETATIONS OF LAW BY A STATE
11 AGENCY ARE NOT REGULATIONS AND DO NOT HAVE TO BE PUT IN
12 REGULATIONS. AND IF MR. KAESTNER DOESN'T HAVE THAT
13 CASE AND CAN'T FIND IT AND CAN'T READ IT, I DON'T KNOW
14 THAT IT'S MY DUTY NECESSARILY TO POINT THAT OUT TO HIM.

15 MR. KAESTNER: WELL, I THINK IT WOULD BE RELEVANT
16 TO CITE IT HERE, AT LEAST FOR THE RECORD.

17 MS. CLAYTON: THIS IS THE TIDEWATER CASE.
18 SECOND OF ALL, MR. KAESTNER BROUGHT UP THE PUBLIC
19 CONTRACTING CODE SECTION. IT'S VERY CLEAR THAT ONCE
20 CONVICTED OF A FELONY, CERTAIN TYPES OF FELONIES
21 RELATED TO FRAUD AND FALSIFICATION OF RECORDS, THAT AN
22 ENTITY CAN FOR THREE YEARS BE PROHIBITED FROM
23 BIDDING - - BIDDING, NOT BEING AWARDED, BUT THEY CAN'T EVEN
24 BID A STATE CONTRACT.
25 NOW, IF MR. KAESTNER HAD READ THE AGENDA



1 ITEM AND IF T.Y.R.E.S., INC., HAD WANTED TO COMMENT ON
2 THE AGENDA ITEM THAT WAS BROUGHT FORWARD THREE TIMES,
3 TWICE TO THE POLICY AND ONCE TO THE BOARD, ON THE
4 UNRELIABLE POLICY, IT'S VERY CLEAR THAT WE CONSIDERED
5 THAT CODE SECTION AND VERY CAREFULLY WHEN WE MADE THIS
6 INTERPRETATION OF EXISTING LAW MADE SURE THAT THE
7 POLICY DID NOT CONFLICT WITH THIS PUBLIC CONTRACT CODE
8 SECTION.
9 OUR POLICY WOULD ALLOW ANY ENTITY WHO'S
10 EVEN ON THE LIST TO APPLY. THEY COULD BID ON A BOARD
11 CONTRACT, SUBCONTRACT, GRANT, OR LOAN. BUT IF THEY'RE
12 UNRELIABLE, THEY CAN'T BE AWARDED THAT CONTRACT. AND I
13 THINK THAT THAT'S AN IMPORTANT DISTINCTION.
14 AND, FINALLY, MR. KAESTNER SAID HE'S
15 UNFAMILIAR WITH THE LAW THAT GIVES THE BOARD THE
16 AUTHORITY TO MAKE THE DECISIONS ABOUT UNRELIABILITY.
17 AGAIN, ALL OF THIS LAW IS CITED AND EXPLAINED IN DETAIL
18 IN THE AGENDA ITEM, THE MOST RECENT ONE BEING THE
19 NOVEMBER 19TH, 1997, BOARD MEETING. AND I'LL JUST
20 POINT OUT AGAIN THAT WE DIDN'T HAVE ANY OPPOSITION AT
21 ANY THREE OF THOSE PUBLIC HEARINGS TO THIS POLICY. AND
22 I WOULD HAVE THOUGHT THAT IF T.Y.R.E.S., INC., THOUGHT
23 THAT IT WAS AN UNDERGROUND REGULATION, THEY WOULD HAVE
24 BROUGHT IT UP AT THAT TIME.
25 CHAIRMAN PENNINGTON: OKAY. I THINK UNLESS



1 THERE'S MORE QUESTIONS FROM THE MEMBERS OF THE BOARD, I

2 THINK WE CAN MOVE FORWARD FROM HERE. THANK YOU.

3 MR. KAESTNER: I HAVE JUST ONE MORE RESPONSE.

4 CHAIRMAN PENNINGTON: SURE.

5 MR. KAESTNER: MS. CLAYTON SAID THAT THERE WAS

6 PUBLIC DISCUSSION OF THE -- OF THE POLICY. THAT MEANS

7 NOTHING IF THE POLICY IS APPLIED RETROACTIVELY. I MEAN

8 WHAT REASON WOULD ANYBODY HAVE TO COME IN AND ARGUE ABOUT A

9 LAW THAT IS PASSED AFTER AN ALLEGED INFRACTION TAKES

10 PLACE. DO YOU SEE WHAT I'M SAYING? THE POLICY IS NOT

11 BEING APPLIED RETROACTIVELY. IT'S GOOD GOVERNMENT. THE

12 POLICY IS GOOD GOVERNMENT.

13 CHAIRMAN PENNINGTON: IT'S NOT BEING APPLIED

14 RETROACTIVELY.

15 MR. KAESTNER: THE POLICY IS GOOD GOVERNMENT.

16 WE'RE NOT ARGUING THAT. WHAT WE'RE SAYING IS THE WAY

17 POLICY HAS BEEN PROMULGATED DOES NOT COMPLY WITH

18 GOVERNMENT CODE SECTION 11340, THE ADMINISTRATIVE

19 PROCEDURE ACT. WHAT WE'RE ALSO SAYING IS IT'S BEING

20 APPLIED RETROACTIVELY EX POST FACTO TO ALLEGED

21 CIRCUMSTANCES THAT TOOK PLACE A YEAR BEFORE THE POLICY

22 WAS ENACTED. THAT IS A VIOLATION OF SUBSTANTIVE DUE

23 PROCESS WHICH IS GUARANTEED BY THE CONSTITUTION OF

24 CALIFORNIA AND OF THE UNITED STATES. AND -- AND NO

25 STATUTORY AUTHORITY CAN ABROGATE THOSE TWO



1 CONSTITUTIONS. THEY'RE THE LAW OF THE LAND.

2 CHAIRMAN PENNINGTON: I THINK IT'S BEING
3 APPLIED NOW, ISN'T IT?

4 MR. KAESTNER: IT'S BEING APPLIED NOW TO FACTS
5 THAT TOOK PLACE BEFORE THE LAW WAS ENACTED. THAT'S EX
6 POST FACTO APPLICATION.

7 CHAIRMAN PENNINGTON: OKAY. OKAY. THANK YOU
8 FOR BEING HERE THIS MORNING. IF THE BOARD WISHES, I
9 CAN MAKE A MOTION. IS THERE ANY DISCUSSION?

10 BOARD MEMBER FRAZEE: MR. CHAIRMAN?

11 CHAIRMAN PENNINGTON: YES, MR. FRAZEE.

12 BOARD MEMBER FRAZEE: I HAVE A BIT OF DISCUSSION
13 OR PERHAPS QUESTION OF OUR BOARD COUNSEL.

14 CHAIRMAN PENNINGTON: OKAY.

15 BOARD MEMBER FRAZEE: THE POLICY IN QUESTION IS A
16 QUESTION OF OUR AUTHORITY TO IMPOSE THE POLICY. HOWEVER,
17 THAT POLICY, SINCE THERE IS NO BID FROM T.Y.R.E.S., INC.,
18 THAT HAS BEEN DENIED, THAT POLICY HAS NOT BEEN APPLIED TO
19 T.Y.R.E.S., INC.; IS THAT CORRECT?

20 MS. CLAYTON: THAT'S CORRECT.

21 BOARD MEMBER FRAZEE: SO THE PROTEST ON THE PART
22 OF T.Y.R.E.S., INC., IS MERELY TO THE POLICY, NOT TO OUR
23 DENYING T.Y.R.E.S. , INC., OF ANY RIGHT.

24 MS. CLAYTON: AT THIS TIME, YES.

25 BOARD MEMBER FRAZEE: THEN I THINK THAT'S AN



1 IMPORTANT DISTINCTION. BECAUSE THEY MAY -- ALL OF WHAT
2 WENT ON HERE MAY HAVE SOME VALUE IF THE POINT WERE REACHED
3 WHEREIN T.Y.R.E.S., INC., MADE A BID AND WAS DENIED
4 THAT BID ON THE GROUNDS OF THIS POLICY. THAT OCCASION
5 HAS YET TO OCCUR.

6 MS. CLAYTON: THAT'S CORRECT.

7 BOARD MEMBER FRAZEE: AND SO THE ONLY QUESTION
8 BEFORE US IS IS THIS A GOOD POLICY. IT HAS NOTHING TO DO
9 WITH T.Y.R.E.S., INC.

10 MS. CLAYTON: YES AND NO. IF WE WERE AT A
11 POINT WHERE T.Y.R.E.S. , INC., HAD BEEN -- HAD APPLIED
12 FOR A CONTRACT, SUBCONTRACT, GRANT, OR LOAN AND HAD
13 BEEN DENIED, THEN ACTUALLY THERE WOULD BE TWO ISSUES.
14 ONE WOULD BE THE APPLICATION OF THE POLICY, BUT THE
15 OTHER IS THE APPLICATION OF THE BOARD'S AUTHORITY UNDER
16 WHATEVER AUTHORIZING --

17 BOARD MEMBER FRAZEE: AND THAT'S THE QUESTION.

18 MS. CLAYTON: -- STATUTE WE'RE LOOKING AT,
19 WHETHER IT'S A CONTRACT, GRANT, OR LOAN. WHATEVER
20 AUTHORIZING STATUTE WE HAVE, THE BOARD HAS INDEPENDENT
21 AUTHORITY TO FIND THAT UNRELIABLE AT THAT POINT. SO
22 WE -- WE'RE REALLY GOING DOWN TWO TRACKS ON HOW THE
23 BOARD CAN FIND THEM UNRELIABLE.

24 BOARD MEMBER FRAZEE: AND SINCE THIS POLICY WAS IN
25 PLACE, THERE HAVE BEEN REP'S OUT FOR BID FOR TIRE CLEAN-UP



1 PROJECTS. AND IF I'M CORRECT, T.Y.R.E.S. , INC., WAS NOT A
2 BIDDER FOR ANY OF THOSE.

3 MS. CLAYTON: THAT'S CORRECT.

4 BOARD MEMBER FRAZEE: SO I HAVE DIFFICULTY SEEING
5 WHERE THEY HAVE A CASE AT ALL IN THIS STANDING. THE POLICY
6 HAS NOT BEEN APPLIED TO THEM. THEY HAVE NOT APPLIED TO
7 TEST THE POLICY AT ALL. SO TO ME, THAT -- THE WHOLE
8 SITUATION BEFORE US IS A MOOT ISSUE. IT HAS NO BEARING
9 ON WHAT'S BEFORE US AT THIS POINT.

10 SO WITH THAT, I WOULD MAKE A MOTION THAT
11 WE UPHOLD THE DECISION OF THE EXECUTIVE DIRECTOR TO
12 PLACE T.Y.R.E.S., INC., ON THE LIST OF UNRELIABLE
13 CONTRACTORS.

14 BOARD MEMBER AMODIO: MR. CHAIRMAN, I'D LIKE TO
15 SECOND THAT MOTION.

16 MR. KAESTNER: MR. CHAIRMAN, I'D LIKE TO INTERJECT
17 THAT THIS IS AN APPEAL.

18 BOARD MEMBER JONES: WAIT. WAIT. WAIT.

19 MR. KAESTNER: THIS IS NOT A DISCUSSION OF THE
20 POLICY.

21 BOARD MEMBER JONES: MR. CHAIRMAN?

22 CHAIRMAN PENNINGTON: ONE SECOND, OKAY? YES,
23 MR. JONES.

24 BOARD MEMBER JONES: I AGREE WITH THE MOTION AND
25 MR. FRAZEE, BUT I THINK THAT -- I THINK THAT PART OF



1 THE POLICY WAS ANYBODY THAT WAS LISTED OR WAS
2 IDENTIFIED THAT THEY WOULD END UP IN THIS CATEGORY HAD
3 A RIGHT TO APPEAL WITHIN 90 DAYS THAT - - OR 60 DAYS
4 WHATEVER -- WHATEVER THE DATE WAS TO COME FORWARD AND
5 BRING -- AND BRING -- BRING EVIDENCE AS TO WHY THEY
6 SHOULDN'T BE PLACED ON A LIST.
7 50 I THINK THAT WHILE I AGREE WITH
8 MR. FRAZEE THAT THE ISSUE NEVER CAME UP, I THINK PART
9 OF THE POLICY IN TRYING TO BE FAIR TO EVERYBODY WAS IF
10 YOU'RE -- YOU KNOW, WE'RE GOING TO NOTIFY -- I THINK
11 WE'VE NOTIFIED THREE OR FOUR PEOPLE THAT THEY, IN FACT,
12 WOULD END UP ON PART OF THIS LIST AS PART OF THAT
13 CRITERIA. AND T.Y.R.E.S., INC., ASKED FOR THE APPEAL.
14 THEY SAID, "WE WANT TO APPEAL THE FACT THAT WE'RE EVEN
15 ON THE LIST." SO I THINK THAT'S THE ISSUE. AND I
16 DON'T THINK THAT WE HEARD A WHOLE LOT THAT -- THAT
17 TALKED ABOUT THAT.
18 SO I SUPPORT YOUR MOTION, BUT I JUST
19 WANTED TO GET ON THE RECORD THAT PART OF THIS PROCESS
20 IS THE FACT THAT ANYBODY THAT WOULD BE IDENTIFIED HAD
21 THAT OPTION. T.Y.R.E.S., INC., WAS THE ONLY ONE OF THE
22 THREE OR FOUR THAT TOOK ADVANTAGE OF THE OPTION TO COME
23 FORWARD AND PROTEST THE FACT THAT THEIR NAME WOULD EVEN
24 BE ON THAT LIST. AND I THINK THAT'S WHAT WE'RE DOING
25 TODAY.



1 BOARD MEMBER FRAZEE: MR. CHAIRMAN, I WANT TO
2 RESTATE THE MOTION FOR CLARITY. I MOVE THAT THE BOARD
3 FINDS THAT IT HAS THE STATUTORY AUTHORITY AND THE LEGAL
4 INTERPRETATION TO ACT AND AGREES WITH THE PROPOSED
5 FINDING OF UNRELIABILITY MADE BY THE EXECUTIVE DIRECTOR
6 AND THAT THE FINDING SHOULD BECOME FINAL. T.Y.R.E.S.,
7 INC., WILL BE PLACED ON A LIST OF UNRELIABLE
8 CONTRACTORS, SUBCONTRACTORS, GRANTEES, AND BORROWERS
9 AND SHALL BE INELIGIBLE TO RECEIVE BOARD CONTRACT,
10 SUBCONTRACT, GRANT, OR LOANS UNTIL APRIL 22ND IN THE
11 YEAR 2001.

12 THE SECRETARY: MR. CHAIRMAN, I WOULD SECOND
13 THAT MOTION.

14 CHAIRMAN PENNINGTON: OKAY. IS THERE ANY
15 OTHER DISCUSSION ON THE MOTION?

16 MR. KAESTNER: I'D LIKE TO THEREFORE ASK THAT
17 THE BOARD STAY THE APPLICATION OF THIS FINDING FOR 30
18 DAYS PENDING JUDICIAL APPEAL OF THIS FINDING AT THIS
19 TIME.

20 CHAIRMAN PENNINGTON: WE HAVE TO FIRST VOTE ON
21 THE MOTION. WILL THE SECRETARY CALL THE ROLL?

22 THE SECRETARY: BOARD MEMBER AMODIO.

23 THE SECRETARY: YES.

24 THE SECRETARY: CHESBRO.

25 BOARD MEMBER CHESBRO: AYE.



1 THE SECRETARY: EATON.
2 BOARD MEMBER EATON: AYE.
3 THE SECRETARY: FRAZEE.
4 MEMBER FRAZEE: AYE.
5 THE SECRETARY: JONES.
6 BOARD MEMBER JONES: AYE.
7 THE SECRETARY: CHAIRMAN PENNINGTON.
8 CHAIRMAN PENNINGTON: AYE. MOTION CARRIES. MR.
9 KAESTNER - - KAESTNER, YOU'VE ASKED US TO STAY THIS, AND I
10 WOULD SAY THAT YOU HAVE A COURT HEARING; IS THAT CORRECT,
11 FRIDAY? I THINK THAT ISSUE - -
12 MR. KAESTNER: THERE IS A COURT HEARING
13 PENDING ON FRIDAY REGARDING A TEMPORARY STAY OF THE
14 BOARD'S APPLICATION ON THIS POLICY UNTIL SUCH TIME AS A
15 PERMANENT WRIT OF PROHIBITION OR MANDATE CAN BE HEARD.
16 CHAIRMAN PENNINGTON: SO I THINK THE COURT --
17 WE'LL LEAVE STAYING IT TO THE COURT. OKAY. THANK
18 YOU.
19 I BELIEVE WE HAVE AN OPPORTUNITY FOR SOME
20 OPEN DISCUSSION HERE AND I THINK MR. JONES WANTED TO --
21 BOARD MEMBER JONES: YEAH. I'LL DO THIS REALLY
22 QUICKLY. I NEED TO TALK TO -- I NEED TO ASK A COUPLE OF
23 QUESTIONS OF TIRE STAFF ON WE WERE -- I NEED TO KNOW HOW WE
24 ARE DOING ON THE TIME LINES FOR THE OXFORD TIRE PILE ON THE
25 NOTICE AND ORDERS. WHERE ARE WE AT AS FAR AS THEIR MEETING



1 THE TIME LINES THAT WERE ESTABLISHED BY THIS BOARD? THAT
2 INCLUDED THE CLOSURE PLAN, FINANCIAL ASSURANCE ISSUE, AND
3 THOSE THINGS. IF I COULD GET AN ANSWER FROM BERNIE OR
4 WHOEVER.

5 BOARD MEMBER CHESBRO: MR. CHAIRMAN, WHILE
6 BERNIE'S COMING UP I WOULD LIKE TO POINT OUT -- AND I'M NOT
7 GOING TO OBJECT TO THIS DISCUSSION, BUT THERE HAVE BEEN
8 OCCASIONS WHEN I HAVE BROUGHT ITEMS UP THAT WERE NOT
9 LISTED ON THE AGENDA LIKE THIS AND WAS RULED OUT OF
10 ORDER AND NOT ALLOWED TO ADDRESS THE ISSUE. I HAVE NO
11 OBJECTION TO IT GOING FORWARD, BUT I HOPE THAT I WON'T
12 FACE SIMILAR PROBLEMS IN THE FUTURE WHEN I ATTEMPT TO
13 BRING UP SOMETHING FOR DISCUSSION. I REALIZE IT'S NOT
14 FOR DECISION.

15 BOARD MEMBER JONES: YEAH.

16 MR. CHESBRO: BUT I JUST WANT TO -- WANTED FOR
17 THE RECORD TO POINT THAT OUT.

18 BOARD MEMBER JONES: YEAH. I HAD TWO ISSUES.

19 MR. CHESBRO: GO AHEAD, STEVE. I'M NOT GOING
20 TO SHOW YOU DOWN.

21 BOARD MEMBER JONES: NO PROBLEM, WESLEY.

22 MR. CHESBRO: I JUST WANTED TO POINT IT OUT
23 FOR THE RECORD.

24 CHAIRMAN PENNINGTON: LET THE RECORD SHOW
25 CHESBRO HAS --



1 BOARD MEMBER EATON: I WOULD LIKE MR. JONES TO
2 DEFINE THE WORD "SHORT."
3 BOARD MEMBER AMODIO: CAN I SECOND THAT?
4 BOARD MEMBER JONES: WE WERE TOLD AT OUR HEARING
5 BY MICHAEL THAT THE INSURANCE WOULD BE IN PLACE, AND I'VE
6 BEEN NOTIFIED THAT THE INSURANCE HAS NOT BEEN IN PLACE.
7 SO I - - I THINK WE NEED TO ASK THESE QUESTIONS NOW
8 BECAUSE OF THE TIME INVOLVED.
9 THANK YOU, MR. CHESBRO. I APPRECIATE
10 THAT.
11 MR. VLACH: ALL RIGHT. MR. CHAIRMAN, MEMBERS, MY
12 NAME IS BERNIE VLACH FROM THE PERMITTING AND ENFORCEMENT
13 DIVISION. AND I CAN GIVE YOU THE STATUS REPORT ON THE
14 ENFORCEMENT ORDER. AND RICHARD CASTLE IS HERE. HE CAN
15 SPEAK PROBABLY MORE CLEARLY ABOUT THE FINANCIAL ASSURANCES
16 PART OF IT.
17 THE STAFF, AT THE BOARD'S REQUEST, DID
18 PREPARE A CLOSURE AND REMEDIATION ORDER FOR THE OXFORD
19 TIRE RECYCLING FACILITY, AND IT WAS MAILED TO OXFORD
20 TIRE ON APRIL THE 6TH. WE - - A COPY WAS ALSO MAILED TO
21 MR. ED PHILBIN, WHO'S THE PROPERTY OWNER, ON THAT SAME
22 DATE. THE ITEMS WERE MAILED CERTIFIED MAIL, AND WE DID
23 RECEIVE RETURN RECEIPTS FROM BOTH THE OWNER AND THE
24 OPERATOR.
25 THE ORDER IN ESSENCE - - I CAN SUMMARIZE THE



1 ORDER VERY QUICKLY HERE IF YOU'D LIKE ME TO DO THAT. THE
2 ORDER REQUIRED THAT THE OPERATOR OF OXFORD TIRE RECYCLING
3 IN NORTHERN CALIFORNIA SUBMIT A -- AN ACCEPTABLE CLOSURE
4 PLAN TO THE BOARD WITHIN 30 DAYS OF THE ISSUANCE DATE. AND
5 THAT CLOSURE PLAN NEEDED TO INCLUDE A SCHEDULE TO COMPLETE
6 THE REMEDIATION OF THE REMAINING TIRES THERE OVER THE NEXT
7 14 MONTHS. AND THIS GOES BACK TO THE AGREEMENT THAT THE
8 BOARD HAD WITH OXFORD TIRE THAT WAS SIGNED LAST YEAR.
9 THE CLOSURE PLAN ALSO REQUIRED THAT
10 THE -- THE BOARD ALSO REQUIRED THAT THE CLOSURE PLAN
11 INCLUDE THE FINAL DISPOSITION LOCATION OF THE TIRES
12 THAT WERE TO BE REMEDIATED AND A CLOSURE COST ESTIMATE
13 FOR THE REMEDIATION PROJECT. THEN THERE WERE SOME
14 REMEDIES IN HERE. IF - IF THE CLOSURE PLAN WAS -- WAS
15 NOT SUBMITTED WITHIN 30 DAYS, THEN AT THE TIME THAT - -
16 THAT OXFORD WAS REQUIRED BY THE AGREEMENT TO COMMENCE
17 REMEDIATION, WHICH IS APPROXIMATELY JUNE 1ST, 1998,
18 THEN THE STAFF AND THE BOARD WOULD EXPECT THAT OXFORD
19 WOULD BEGIN REMEDIATING, EVEN WITHOUT A CLOSURE PLAN,
20 ABOUT ONE-FOURTEENTH OF THE TIRES EACH MONTH BEGINNING
21 AROUND JUNE 1ST.
22 THE ORDER ALSO WENT ON TO SAY THAT OXFORD
23 TIRE WAS REQUIRED TO SUBMIT A REVISED FINANCIAL
24 ASSURANCE DEMONSTRATION WITHIN 60 DAYS OF THE APPROVAL
25 OF THE CLOSURE PLAN BECAUSE WE NEEDED THE CLOSURE PLAN



1 IN ORDER TO -- TO GET THE BASIS FOR THE FINANCIAL
2 ASSURANCE DEMONSTRATION. THERE WAS A REMEDY THERE TOO
3 THAT IF OXFORD FAILED TO SUBMIT THE FINANCIAL ASSURANCE
4 DEMONSTRATION WITHIN 60 DAYS, THAT THE BOARD WOULD
5 PREPARE A CLOSURE COST ESTIMATE AND ON THAT BASIS
6 REQUIRE A DEMONSTRATION TO BE SUBMITTED WITHIN 60 DAYS
7 OF THE PLAN DEVELOPED BY THE BOARD.
8 THERE WAS ALSO MENTION IN THE ORDER THAT IF
9 OXFORD WISHED TO CONTINUE AFTER THE REMEDIATION PROCESS HAD
10 BEEN COMPLETED, THEY WISHED TO CONTINUE TO OPERATE A WASTE
11 TIRE STORAGE FACILITY, THAT THEY WOULD NEED TO SUBMIT A --
12 A PERMIT REVISION APPLICATION NO LATER THAN THE SEVENTH
13 MONTH OF THE 14-MONTH REMEDIATION PERIOD.
14 AND THEN, LASTLY, THE AGREEMENT REITERATED
15 SOMETHING THAT WAS IN THE -- OR -- I'M SORRY. THE ORDER
16 REITERATED SOMETHING THAT WAS IN THE OXFORD TIRE/BOARD
17 AGREEMENT, WHICH SAID THAT OXFORD TIRE WOULD NOT RECEIVE --
18 WOULD NOT RECEIVE FURTHER ANY -- OR NOT ACCEPT OR PERMIT
19 FURTHER DELIVERIES OF WASTE TIRES OF ANY TYPE AT THE
20 FACILITY UNTIL THE REMEDIATION HAD BEEN COMPLETED.
21 50 THAT -- THAT'S BASICALLY THE ESSENCE
22 OF THE - - OF THE ORDER. WE HAVE NOT HEARD YET FROM
23 OXFORD TIRE. WE HAVE NO INDICATION AT THIS POINT
24 WHETHER THEY -- WE WILL RECEIVE A CLOSURE PLAN, LET
25 ALONE AN ACCEPTABLE CLOSURE PLAN WITHIN 30 DAYS OF



1 APRIL THE 6TH.
2 THERE IS SOME ADDITIONAL INFORMATION,
3 HOWEVER, ABOUT THE FINANCIAL ASSURANCE -- THE EXISTING
4 FINANCIAL ASSURANCE DEMONSTRATION FOR OXFORD TIRE. AND
5 I'D LIKE TO LET, AT YOUR PLEASURE, MR. RICHARD CASTLE
6 FROM THE STAFF EXPLAIN WHAT'S GOING ON THERE.
7 MR. CASTLE: HELLO, MEMBERS OF THE BOARD. MY NAME
8 IS RICHARD CASTLE FROM THE FINANCIAL ASSURANCES SECTION.
9 AND WE HAVE TWO TYPES OF INSURANCE ON THIS POLICY. WE'VE
10 TALKED -- OR ON THIS FACILITY. WE'VE TALKED ABOUT THESE IN
11 THE PAST. WE HAVE THE LIABILITY INSURANCE FOR IN CASE
12 THERE HAPPENS TO BE A FIRE OR ANY OTHER EXPOSURES AT THE
13 SITE. IT'S OUR UNDERSTANDING THAT THAT POLICY IS IN PLACE
14 AND IN EFFECT.
15 WE HAD RECEIVED A CANCELLATION ON THAT AT ONE
16 POINT, AND WE HAVE ALSO RECEIVED NOTICE THAT THAT
17 CANCELLATION WAS RESCINDED AND THE POLICY WAS RENEWED. AND
18 I'VE BEEN IN CONTACT WITH THE INSURER AND PROVIDED THEM
19 WITH BLANK CERTIFICATES OF INSURANCE TO SEND US A NEW
20 CERTIFICATE FOR THAT. AND WE'RE YET WAITING FOR THAT TO
21 ARRIVE, BUT THEY HAVE MADE IT KNOWN TO US THAT THE POLICY
22 IS IN EFFECT FOR LIABILITY.
23 THE OTHER INSURANCE POLICY THAT WE HAVE
24 IS FOR CLOSURE INSURANCE, AND THAT POLICY IS FOR \$1
25 MILLION FOR CLOSURE OF THE FACILITY. ON MARCH 30TH --



1 AND I BELIEVE YOU'RE ALL AWARE OF THESE, BUT I'LL RUN
2 THROUGH THE DATES REAL QUICK. MARCH 30TH WE RECEIVED A
3 NOTICE OF CANCELLATION DUE TO OXFORD'S NONPAYMENT OF
4 THE PREMIUM ON THE CLOSURE INSURANCE POLICY. THE NEXT
5 DAY, BASICALLY APRIL 1ST, WE RECEIVED A RESCISSION OF
6 THAT CANCELLATION FROM THE INSURANCE COMPANY BECAUSE
7 THEY HAD COME TO AN AGREEMENT WITH OXFORD ABOUT PAYING
8 THE PREMIUM.
9 FOLLOWING THAT ON APRIL 10TH, WE RECEIVED A
10 NEW NOTICE OF CANCELLATION DUE TO -- OUR ASSUMPTION IS THAT
11 THE PREMIUM WASN'T PAID SINCE THAT'S WHAT'S IDENTIFIED ON
12 THE CANCELLATION IS NONPAYMENT OF PREMIUM. AGAIN STARTED A
13 NEW 120-DAY CLOCK ON THE CLOSURE INSURANCE POLICY. WE'VE
14 CONTACTED THE INSURANCE' AGENCY REGARDING THAT, AND JUST
15 THIS MORNING FINALLY GOT AN ANSWER FROM THEM THAT THE
16 PREMIUM PAYMENT HAD BEEN SENT TO THE WRONG PREMIUM PAYMENT
17 FINANCE COMPANY, HAS SINCE BEEN FORWARDED TO THE CORRECT
18 PREMIUM PAYMENT FINANCE COMPANY, AND IT'S THEIR
19 UNDERSTANDING THE POLICY IS IN EFFECT.
20 HOWEVER, WE STILL DO NOT HAVE A
21 RESCISSION OF THE NOTICE OF CANCELLATION IN HAND. I
22 MADE THEM AWARE THAT WE WILL HAVE TO HAVE THAT SO THAT
23 WE KNOW THAT WE HAVE A POLICY IN PLACE. SO AT THIS
24 POINT SINCE WE DON'T HAVE ANY WRITTEN DOCUMENT ON THAT
25 PREMIUM BEING PAID, WE'RE STILL WITHIN THE LATEST



1 120-DAY CANCELLATION CLOCK, WHICH MAKES THE POLICY --
2 THE POLICY WILL EXPIRE AUGUST 8TH OF THIS YEAR.
3 THAT'S WHERE WE'RE AT WITH THE COVERAGE AT THIS POINT.
4 BOARD MEMBER JONES: THOSE - - THOSE WERE MY
5 QUESTIONS, MR. CHAIRMAN. I THINK THAT -- I THINK THAT IF
6 THEY EVER FIND OUT, YOU KNOW, WHERE THEY SENT THE CHECK, IF
7 YOU GET CLARIFICATION ON THAT, THEN THAT'S FINE. BUT IF IT
8 IS NOT -- IF WE DON'T HEAR VERY SHORTLY THAT -- IF THEY
9 DON'T SIGN THOSE CERTIFICATES, THEN, MR. CHAIRMAN, I'D LIKE
10 AN ITEM AT SOME POINT IF THOSE POLICIES -- IF WE DON'T GET
11 THAT CERTIFICATE OF INFORMATION, THEN DOROTHY NEEDS TO SET
12 SOMETHING UP WITH THE CHAIRMAN AND WE HAVE A HEARING, GIVE
13 IT TO TEN-DAY NOTICE AND LET'S GET ON WITH LIFE. BUT
14 THANKS.
15 AND THANKS FOR INDULGENCE. IT'S JUST
16 WHEN I HEARD ABOUT THIS INSURANCE, I DID NOT WANT THIS
17 TO WAIT VERY LONG. SO I APPRECIATE IT. THANK YOU.
18 CHAIRMAN PENNINGTON: OKAY. THANK YOU,
19 MR. JONES. ANYBODY ELSE HAVE ANYTHING TO BRING UP IN
20 OPEN DISCUSSION? IF NOT, WE'RE ADJOURNED.
21
22 (THE MEETING WAS THEN ADJOURNED AT 10:50
23 A.M.)
24
25



Reporter's Certificate

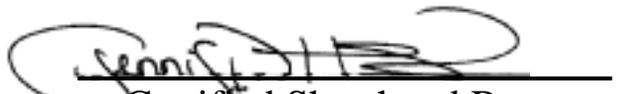
* * * * *

I, Jennifer D. Hulbert hereby certify:

that on the 21st day of
April, 1998, I did report In
shorthand the testimony of the foregoing
proceedings;

that on the conclusion of the above entitled
matter, I did transcribe my shorthand notes Into
typewriting;

that the foregoing transcript Is a true and correct
record of my shorthand notes thereof.



Certified Shorthand Reporter
Certificate No. 11250



Please note: These transcripts are not individually approved and reviewed for accuracy.

California Environmental Protection Agency
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Daniel G. Pennington, Chairman
Robert C. Frazee, Vice Chairman
John Amodio, Member
Wesley Chesbro, Member
Dan Eaton, Member
Steven R. Jones, Member

REGULAR BUSINESS MEETING

Tuesday, April 21, 1998
9:30 a.m.

Board Room
8800 Cal Center Drive
Sacramento, CA 95826

AGENDA

Note:

- *Agenda items may be taken out of order.*
- *Persons interested in addressing the Board must fill out a speaker request form and present it to the Board Secretary on the date of the meeting.*
- *If written comments are submitted, please provide 20 two-sided copies in advance of the Board meeting and include on the first page of the document the following information: date, addressee, board meeting or name of committee meeting, agenda item number, and name of person submitting document.*
- *Public testimony may be limited to five minutes per person.*
- *Any information included with this agenda is disseminated as a public service only, and is intended to reduce the volume and costs of separate mailings. This information does not necessarily reflect the opinions, views, or policies of the CIWMB.*
- *To request special accommodations for those persons with disabilities, please contact the Board's Administrative Assistant at (916) 255-2156.*

Important Notice: The Board intends that Committee Meetings will constitute the time and place where the major discussion and deliberation of a listed matter will be initiated. After consideration by the Committee, matters requiring Board action will be placed on an upcoming Board Meeting Agenda. Discussion of matters on Board Meeting Agendas may be limited if the matters are placed on the Board's Consent Agenda by the Committee. Persons interested in commenting on an item being considered by a Board Committee or the full Board are advised to make comments at the Committee meeting where the matter is first considered.

To comply with legal requirements, this Notice and Agenda may be published and mailed prior to a Committee Meeting where determinations are made regarding which items go to the Board for action. Some of the items listed below, therefore, may, upon recommendation of a Committee, be pulled from consideration by the full Board. To verify whether an item will be heard, please contact the Board's Administrative Assistant at (916) 255-2156.

Please note: These transcripts are not individually approved and reviewed for accuracy.

1. CONSIDERATION OF AN APPEAL BY T.Y.R.E.S. INC. OF PROPOSED FINDING OF UNRELIABILITY
2. OPEN DISCUSSION
3. ADJOURNMENT

Notice:

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

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

INTEGRATED WASTE MANAGEMENT BOARD
8800 Cal Center Drive
Sacramento, CA 95826

Request Line: (916) 255-2563/FAX (916) 255-2602
Patti Bertram, Administrative Assistant (916) 255-2156

NOTE: BOARD AND COMMITTEE AGENDAS ARE AVAILABLE ON THE INTERNET. THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD'S HOME PAGE IS AS FOLLOWS: [HTTP://WWW.CIWMB.CAGOV/](http://www.ciwmb.cagov/)

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CALIFORNIA GOVERNMENT CODE-THE ADMINISTRATIVE PROCEDURE ACT

California Government Code §11340.5 (a)

“No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in subdivision (g) of Section 11342, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.”

California Government Code § 11342 (g)

“Regulation” means every rule, regulation, order, standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of the agency....”

California Government Code § 11349.1 (a)

“The office (Office of Administrative Law) shall review all regulations adopted pursuant to the procedure specified in Article 5 (commencing with Section 11346) and submitted to it for publication in the California Regulatory Code Supplement and for transmittal to the Secretary of State and make determinations using all of the following standards:

- (1) Necessity.
- (2) Authority
- (3) Clarity
- (4) Consistency
- (5) Reference
- (6) Nonduplication

In reviewing regulations pursuant to this section, the office shall restrict its review to the regulation and the record of the rulemaking proceeding. The office shall approve the regulation or order of repeal if it complies with the standards set forth in this section and with this chapter.”

California Government Code §11425.50 (e)

“A penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule subject to Chapter 3.5 (commencing with Section 11340) unless it has been adopted as a regulation pursuant to Chapter 3.5 (commencing with Section 11340)”

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California Government Code § 11425.40 (a)

“The presiding officer is subject to disqualification for bias, prejudice, or interest in the proceeding.”

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I, HAZEL M. BLANKENSHIP, declare that:

1. I am the President of Technical Yield and Recovery of Energy Sources, Inc., (T.Y.R.E.S., Inc.) and was the corporate officer primarily responsible for preparing the grant application and subsequent grant reimbursement requests for CIWMB Grant TR5-95-1 502, In 1996.
2. I delegated responsibility for the preparation of the grant reimbursement invoices to an employee of T.Y.R.E.S., Inc., Rennae Sapiernger. Under his employment agreement that he was to compile the necessary grant documentation in return for a percentage inducement of \$2,500. Further, he was paid on commission basis to buy and sell various pieces of equipment for the company. During the time tire document preparation took place I was almost completely distracted, on a daily basis, attempting to resolve issues surrounding the CIWMB Tire pile clean up contract that we had been awarded in June. This contract was critical to the ability of our company to stay in business and the ongoing efforts to sage the contract and begin work on clean ups was a full time effort.
3. On December 10, 1996 John Blankenship and I met with Chairman Pennington regarding the status of our clean up contract and came away from the meeting feeling that the “political considerations” had been addressed and that the CIWMB was going to go forward with sole sourcing the original contract to our company. On the afternoon of that same day we received a call from our Operations Manager, Conrad Batham, that a Texas Firm with whom we had previously done business, had called alerting him to the fact that there was a concern about a piece of equipment that had not been ordered had been billed to the CIWMB. We also learned that Rennae had not shown up for work for the previous two days, that valuable files were missing and that we were receiving up to 40 calls per days from our collection account customers saying that they had been called by ATD and were offering lower prices to pick up their waste tire.

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4. On December 11, 1996, the Project Manager for the Grant, Nate Gauff of the CIWMB, met with John Blankenship and me. We learned that, during a routine inquiry made by Nate on the previous day that one of the submitted invoices was completely false and we told him that we were taking our files back to Los Angeles to try to reconstruct the files that were now missing with the untimely departure of our employee.

5. I was told by telephone conference call with Chairman Pennington on December 19, 1996 that the grant reimbursement documents had been turned over to the Department of Justice for an investigation and that was the reason that the clean up contract with our company was not going forward. I received a FAXed letter from Mr. Pennington later that day stating that the clean up contract was not going forward because the contract had never been valid due to a licensing dispute.

6. In March of 1996 we were audited by a Mr. Richard C. "Bon" Smith from the Department of Finance regarding the allegations of fraudulent submissions to the CIWMB for grant reimbursements. Mr. Smith spent three days in our offices.

7. Mr. Smith told me on the very first day of the audit that he was going to write a report critical of the CIWMB in that "they had absolutely no proper accounting procedures in place for authorizing the expenditure of funds or for tracking how and why money was spent". Mr. Smith concluded his audit after three days of intensive searching of the records and, as he left the office, assured me that he would recommend that "between \$50,000 and \$61,000 of grant monies be awarded for legitimate reimbursement expenses that were backed up by proper records".

8. When the final report from the DOF was issued it was over the signature of another individual and contained no criticism of the CIWMB and recommended that no reimbursements be made. There is a record of numerous meetings between staff from the DOF and the CIWMB regarding this "investigation" but there is a significant discrepancy between what the auditor told me and what the final report said.

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9. I reported the embezzlement and theft of records by our employee to the Sheriffs Department of San Bernardino County. The response of the police was, as it had been in a previous break-and-enter theft by another employee, that unless someone had been hurt or killed or that there were numerous witnesses to the acts that they had better things to do.

10. Rennae Sapienger immediately went to work for a would-be competitor, American Tire Disposal, (ATD). Our collection accounts records and other valuable business data were simultaneously obtained by ATD. It should be noted that this same company, ATD, is the company that lodged the original protest with the Department of General Services and then with the CIWMB that resulted in the opinion of Kathryn Tobias that a Class A General Engineering License was required to clean up waste tires even though the RFQ issued by the CIWMB did not require such a license.

11. The Department of Justice determined that they were not going to further pursue or investigate the CIWMB allegations based on the findings of the DOF. In the Spring of 1997 T.Y.R.E.S., Inc. submitted a response to the 1997 RFQ as part of a 3 company team, with the other two companies being nationally qualified. They were routinely disqualified as one of the "team companies" didn't fill in an appropriate blank as "non applicable". The contract was awarded to the same large construction company, Sukut Construction, that had subcontracted out all of the projects in 1995 to T.Y.R.E.S., Inc.

12. During 1997, four clean up jobs were put out to bid. In one case ATD was the lowest bidder, was awarded the job and it was completed. In another job ATD was high bidder but asserted that the tires would go to "end use" instead of being landfilled, was awarded the job and then paid highest price for landfilled tires. In the two jobs that were put out to bid where T.Y.R.E.S., Inc. was low bidder the work orders were rescinded by Gale Rehburg of the CIWMB and the jobs did not go forward.

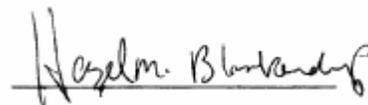
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13. This “unreliable policy” was formulated within weeks of our filing a claim against the CIWMB for breach of contract. The “policy” was implemented against T.Y.R.E.S., Inc. 10 days after we filed a lawsuit against the board for breach of contract.

14. It should be noted that two very prominent legislators, Senator Jack O’Connell and Assemblyman Brooks Firestone, have consistently attempted to bring the discrepancies and ill-advised machinations of Ralph Chandler and Kathryn Tobias to the board members. This is a case of the so-called government against the “little guys”. This company was awarded the “Best Small Business Award in California by the Governor” in 1995. This company won the contract from the Board in 1996 because we are the most qualified and can do the best and most economical job. We are here before you today because of egos, political considerations and personal agendas, not what is best for the people of the state of California.

15. I have reason to believe that Chairman Pennington is personally biased against me and that the “unreliable policy” is retaliatory in nature. Aside from the breach of contract conflict that has been on-going since June, 1996, I revealed to Chairman Pennington and to various Senior Advisors in the Governor’s Office that Kathryn Tobias had been directing staff to call for the payment of prevailing wage for all CIWMB contracts well after the Director of Industrial Relations had informed her that such contracts did not, in fact, call for the payment of prevailing versus minimum wages. I therefore embarrassed Mr. Pennington politically and, as such, he is biased and prejudiced against me personally.

I swear, under the laws of the State of California, that the testimony that I have given is true under penalty of perjury on April 20, 1998, at Santa Barbara, California.

A handwritten signature in black ink, reading "Hazel M. Blankenship". The signature is written in a cursive style and is positioned above a horizontal line.

Hazel M. Blankenship

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FROM :ASSEMBLYMEMBER FIRESTONE 916 327 3518

1998.03-12

15:11

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STATE OF CALIFORNIA

PETE WILSON, *Governor*

OFFICE OF ADMINISTRATIVE LAW

555 CAPITOL MALL. SUITE 1280
SACRAMENTO. CA 95114
(916) 323-6225

February 10, 1998

The Honorable Brooks Firestone
California State Assembly
State Capitol
Sacramento, California

Dear Assemblyman Firestone:

We received your January 27 letter asking whether or not the California Integrated Waste Management Board adopted a policy for unreliable contractors, grantee and borrowers pursuant to the rulemaking part of the Administrative Procedure Act. According to Our research, the Board did not.

We are pleased to have the opportunity to provide you with the information you requested. Please don't hesitate to contact our office if we can assist you in the future.

Sincerely,



Charlene Mathias
Assistant Chief Counsel