

A P P E A R A N C E S

Mr. Daniel G. Pennington, Chairman
Mr. Robert C. Frazee, Vice Chairman
Mr. Dan Eaton, Member
Mr. Steven R. Jones, Member

I N D E X

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1 SWORN IN BY THE COURT REPORTER ALL AT ONE TIME.

2 THE SECOND, THE BOARD'S LEGAL STAFF WILL DESCRIBE
3 THE LEGAL FRAMEWORK OF THE HEARING, INCLUDING RELEVANT
4 STATUTE REGULATIONS IN VIEW OF THE HEARING'S
5 PROCEDURES AND ISSUES TO BE DECIDED.

6 THE THIRD, THE BOARD STAFF WILL MAKE A
7 PRESENTATION TO THE BOARD REGARDING COMPLIANCE, NON-
8 COMPLIANCE AND RECOMMENDATION.

9 FOURTH, OXFORD TIRE RECYCLING WILL MAKE A
10 PRESENTATION TO THE BOARD.

11 FIFTH, THE BOARD STAFF WILL MAKE A REBUTTAL
12 PRESENTATION.

13 AND SIXTH, THE OXFORD TIRE RECYCLING MAY MAKE A
14 REBUTTAL PRESENTATION.

15 AFTER EACH PRESENTATION THE BOARD MEMBERS MAY ASK
16 QUESTIONS. THERE WILL BE -- THERE WILL NOT BE ANY
17 CROSS-EXAMINATION OF EITHER PARTY.

18 NOW, WILL ALL THE PARTIES THAT ARE TO BE
19 WITNESSES HERE OR TO TESTIFY ON THIS HEARING ITEM
20 PLEASE STAND WHILE THE COURT REPORTER ADMINISTERS THE
21 OATH. ARE THERE OTHER PEOPLE THAT ARE GOING TO SPEAK
22 ON BEHALF -- OKAY.

23 WHEREUPON,

24 THOSE PARTIES WHO SHALL TESTIFY,

25 HAVING BEEN FIRST DULY SWORN, DID TESTIFY AS FOLLOWS:

26 CHAIRMAN PENNINGTON: OKAY. I THINK WE'LL
27 START WITH THE LEGAL STAFF.

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TESTIMONY OF MS. SMALL

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MS. SMALL: GOOD MORNING, CHAIRMAN

PENNINGTON, MEMBERS OF THE BOARD. MY NAME IS SUZANNE

SMALL. I'M HERE ON BEHALF OF THE LEGAL OFFICE TO SET

FORTH THE BASIC STRUCTURE OF THIS HEARING AND THE

AUTHORITY UNDER WHICH WE ARE ATTEMPTING TO ACT.

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UNDER THE PUBLIC RESOURCES CODE SECTION

42800 IN THE FOLLOWING SECTIONS THE WASTE BOARD HAS

THE AUTHORITY TO REGULATE AND PERMIT WASTE TIRE

FACILITIES. UNDER THOSE SECTIONS THERE ARE VARIOUS

REQUIREMENTS THAT APPLY TO THE PERMITTING OF WHICH

WASTE TIRE FACILITIES WHICH STORE OVER 4900 TIRES.

THOSE ARE MAJOR WASTE TIRE FACILITIES.

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FURTHER, UNDER THOSE PERMITTING

REQUIREMENTS THERE IS ALSO A PORTION OF THE STATUTE

WHICH REFERS TO THE REVOCATION OF A PERMIT UNDER THE

CIRCUMSTANCES IN WHICH A PARTICULAR ENTITY IS NO

LONGER IN COMPLIANCE WITH THE PERMIT REQUIREMENTS.

THAT IS FOUND AT PUBLIC RESOURCES CODE SECTION 42842.

UNDER THOSE CODE SECTIONS WE ARE REQUIRED TO GIVE

APPROPRIATE NOTICE TO THE ENTITY WHICH WE ARE PLANNING

TO TAKE ACTION AGAINST.

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THE WASTE BOARD DID PERSONALLY SERVE

OXFORD TIRE RECYCLING OF NORTHERN CALIFORNIA WITH

NOTICE OF THIS PENDING ACTION ON JULY 20TH, 1998, BY

1 SERVING THEIR AGENT FOR SERVICE AS LISTED WITH THE
2 CALIFORNIA SECRETARY OF STATE, AND THAT IS CT
3 CORPORATION IN LOS ANGELES. THAT WAS PERSONAL
4 SERVICE.

5 WE HAVE COMPLIED WITH ALL OF THE
6 STATUTORY REQUIREMENTS TO DATE. AND THIS HEARING IS
7 BEING ENTERTAINED BY THE ENTIRE BOARD ACTING AS THE
8 BOARD RATHER THAN A FOUR-MEMBER PANEL WHICH IS
9 DISCUSSED WHEN THE BOARD IS ACTING AS EA OR ON BEHALF
10 OF THE EA, BECAUSE IN THE TIRE STATUTE WE ARE ACTING
11 AS THE ENTIRE BOARD.

12 WHAT I WOULD LIKE TO DO NOW IS BRIEFLY
13 DISCUSS THE TWO ISSUES THAT ARE BEING RAISED AT THIS
14 TIME. THOSE TWO ISSUES ARE OTR'S FAILURE TO SUBMIT A
15 COMPLETED CLOSURE PLAN AND ITS FAILURE TO KEEP IN
16 PLACE AN ACCEPTED FINANCIAL ASSURANCE MECHANISM.

17 TITLE 14 OF THE CALIFORNIA CODE OF
18 REGULATIONS, SECTION 18442, REQUIRES THAT A COMPLETE
19 CLOSURE PLAN BE SUBMITTED WITH THE PERMIT APPLICATION.

20 OTR HAS NEVER SUBMITTED A COMPLETE CLOSURE PLAN THAT
21 HAS BEEN APPROVED OR ACCEPTED BY THE BOARD. THIS
22 ISSUE WILL BE DISCUSSED IN DETAIL AS TO THE FACTS BY
23 MR. TOM MICKA OF THE FACILITIES AND OPERATIONS
24 SECTION.

25 THE SECOND ISSUE WE ARE GOING TO BE
26 DISCUSSING AND PRESENTING IS OTR'S FAILURE TO MAINTAIN
27 FINANCIAL ASSURANCES FOR CLOSURE COSTS.

1 DEMONSTRATIONS OF FINANCIAL ASSURANCES FOR THE CLOSURE
2 COSTS FOR THE OXFORD FACILITY MUST BE MAINTAINED
3 PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS
4 SECTION 18470.

5 ALL OF THE CODE SECTIONS AND REGULATION
6 SECTIONS THAT I AM QUOTING FROM OR REFERENCING ARE
7 ATTACHED TO THE PACKET THAT WAS FORWARDED OUT TO THE
8 PUBLIC.

9 THERE WILL BE A FURTHER DISCUSSION OF
10 THE FACTS SURROUNDING THE FAILURE TO MAINTAIN THE
11 FINANCIAL ASSURANCE MECHANISMS PRESENTED BY MR.
12 RICHARD CASTLE OF THE FINANCIAL ASSURANCES SECTION.

13 NOW I WOULD LIKE TO BRING TWO THINGS TO
14 THE ATTENTION OF THE PUBLIC AND TO THE BOARD. NUMBER
15 ONE IS, THERE IS A TYPOGRAPHICAL ERROR ON PAGE 1 OF
16 THE AGENDA ITEM. IN THE SECOND-TO-LAST LINE IT
17 REFERENCES A LETTER OF MARCH 24, 1998. THAT IS A
18 TYPOGRAPHICAL ERROR, IT SHOULD BE 1995.

19 AND NOW I WOULD LIKE TO GO THROUGH THE
20 ATTACHMENTS.

21 ATTACHMENT 1 IS A CLOSURE PLAN SUBMITTED
22 BY OTR, WHICH IS HOW I WILL REFER TO OXFORD IN THE
23 FUTURE, DATED 6/9/94.

24 ATTACHMENT 2 IS A LETTER DATED JULY 5,
25 1994, FROM THE BOARD ADDRESSED TO ROBERT B. RYAN.

26 ATTACHMENT 3 IS A CLOSURE PLAN SUBMITTED
27 BY OTR DATED 8/16/94.

1 ATTACHMENT 4 IS A LETTER FROM JOHN
2 SCHAUB TO GARTH ADAMS DATED JANUARY 26, 1995.

3 ATTACHMENT 5 IS A LETTER OF FEBRUARY 24,
4 1995, FROM GARTH ADAMS TO STAN PATTERSON.

5 ATTACHMENT 6 IS A LETTER DATED MARCH 24,
6 1995, TO STAN PATTERSON FROM GARTH ADAMS.

7 ATTACHMENT 7 IS A CLOSURE PLAN SUBMITTED
8 BY OTR WITH A LETTER TO RALPH CHANDLER DATED MARCH
9 5TH, 1997.

10 ATTACHMENT 8 IS A BOARD AGENDA ITEM
11 PREPARED FOR APRIL 24, 1997, REGARDING THE
12 CONSIDERATION OF THE STATUS OF THE MAJOR WASTE TIRE
13 FACILITY PERMIT FOR OXFORD TIRE RECYCLING.

14 ATTACHMENT 9 WAS THE CLOSURE PLAN
15 SUBMITTED BY OTR WITH A LETTER ADDRESSED TO DOROTHY
16 RICE DATED MAY 13, 1998.

17 ATTACHMENT 10 IS A LETTER DATED JUNE 19,
18 1998, FROM THE BOARD TO OTR.

19 ATTACHMENT 11 IS A NOTICE OF
20 CANCELLATION FROM RELIANCE INSURANCE COMPANY OF
21 ILLINOIS.

22 ATTACHMENT 12 IS A WASTE TIRE FACILITY
23 PERMIT ISSUED TO OTR.

24 ATTACHMENT 13 ARE ALL THE APPLICABLE
25 STATUTES AND REGULATIONS THAT WE WILL BE OPERATING
26 WITH IN THIS HEARING.

27 THERE IS ALSO AN ATTACHMENT 14, 15, 16,

1 AND 17, WHICH ARE AVAILABLE IN THE BACK OF THE ROOM.

2 ATTACHMENT 14 IS THE CLEANUP AND
3 ABATEMENT ORDER ISSUED TO MR. KIRKLAND AND MR. FILBIN,
4 AND THAT IS ATTACHMENT 14. AND THE DATE ON THAT ORDER
5 IS 4/30/97, AS EXECUTED BY SUSAN HAPPUSBERGER.

6 ATTACHMENT 15 IS BOARD RESOLUTION 98-
7 251, AN ACTION TAKEN BY THE BOARD AND CERTIFIED ON
8 JULY 30, 1998.

9 ATTACHMENT NO. 16 IS AN ADDITIONAL
10 CLEANUP AND ABATEMENT ORDER ISSUED TO OXFORD TIRE
11 RECYCLING OF NORTHERN CALIFORNIA, AND TO MR. ED
12 FILBIN. AND THE DATE ON THAT ORDER IS APRIL 6, 1998,
13 AS EXECUTED BY DOROTHY RICE.

14 AND ATTACHMENT 17 IS RESOLUTION 98-290,
15 WHICH IS THE RESOLUTION PREPARED FOR THIS MATTER.

16 AT THIS TIME I WOULD LIKE TO GIVE MR.
17 MICKA AN OPPORTUNITY TO MAKE HIS PRESENTATION.

18 TESTIMONY OF MR. MICKA

19 MR. MICKA: GOOD AFTERNOON, MR. CHAIRMAN AND
20 MEMBERS OF THE BOARD. MY NAME IS TOM MICKA.

21 OXFORD TIRE RECYCLING OF NORTHERN
22 CALIFORNIA OPERATES A WASTE TIRE FACILITY IN WESTLEY,
23 CALIFORNIA. BY 1995 CIWMB STAFF ESTIMATED THAT MORE
24 THAN 70,000 TONS OF WASTE TIRES HAD BEEN STOCKPILED AT
25 THIS FACILITY.

26 ADJACENT TO THIS STOCKPILE IS A WASTE
27 TIRE TO ENERGY FACILITY DESIGNED TO BURN DOWN THE

1 WASTE TIRE STOCKPILE, AND OPERATED BY MODESTO ENERGY A
2 LIMITED PARTNERSHIP.

3 THE WASTE TIRE STATUTES ENACTED IN 1990
4 REQUIRED OPERATORS AND OWNERS OF FACILITIES STORING
5 MORE THAN 4,999 WASTE TIRES TO ACQUIRE A MAJOR WASTE
6 TIRE FACILITY PERMIT FROM THE CIWMB.

7 AS PART OF THE APPLICATION PROCESS
8 OXFORD WAS REQUIRED TO SUBMIT A COMPLETE CLOSURE PLAN.

9 CLOSURE PLANS SHOULD OUTLINE THE PROPOSED STEPS TO BE
10 TAKEN TO CLOSE THE FACILITY UNDER VARIOUS
11 CIRCUMSTANCES PRESENTED IN THE REGULATIONS.

12 A NUMBER OF CLOSURE PLANS WERE SUBMITTED
13 TO THE CIWMB BY OXFORD BOTH BEFORE AND AFTER OXFORD
14 WAS ISSUED A MAJOR WASTE TIRE FACILITY PERMIT.
15 HOWEVER, NONE OF THE CLOSURE PLANS WERE CONSIDERED BY
16 THE CIWMB TO BE COMPLETE.

17 THE FIRST CLOSURE PLAN SUBMITTED BY
18 OXFORD WAS ON JUNE 9TH, 1994, AS PART OF OXFORD'S
19 ORIGINAL APPLICATION FOR A MAJOR WASTE TIRE FACILITY
20 PERMIT. THIS IS PRESENTED AS ATTACHMENT NO. 1 TO
21 AGENDA ITEM NO. 1 FOR THIS SPECIAL BUSINESS MEETING.
22 THIS CLOSURE PLAN WAS REJECTED BY THE CIWMB IN A
23 LETTER TO ROBERT RYAN OF OXFORD ON JULY 5TH, 1994,
24 WHICH IS PRESENTED AS ATTACHMENT NO. 2.

25 THE SECOND APPLICATION AND CLOSURE PLAN
26 WERE SUBMITTED TO THE CIWMB ON AUGUST 16TH, 1994,
27 WHICH IS PRESENTED IN ATTACHMENT 3. THIS APPLICATION

1 AND CLOSURE PLAN WERE NOT ACCEPTED BY STAFF AND WERE
2 REVISED BY OXFORD IN A LETTER DATED JANUARY 26TH,
3 1995, WHICH IS ATTACHMENT NO. 4.

4 AGAIN THE CLOSURE PLAN AND APPLICATION
5 WERE REJECTED IN A LETTER FROM THE CIWMB ON FEBRUARY
6 24TH, 1995. THIS IS ATTACHMENT NO. 5.

7 ADDITIONAL INFORMATION WAS THEN
8 SUBMITTED TO THE CIWMB BY OXFORD, HOWEVER, THE
9 INFORMATION WAS NOT CONSIDERED COMPLETE BY CIWMB STAFF
10 AND THE APPLICATION WAS REJECTED IN A LETTER FROM
11 CIWMB ON MARCH 24TH, 1995.

12 THE CIWMB ISSUED MAJOR WASTE TIRE
13 FACILITY PERMIT NO. 50-TI0010 TO OXFORD ON MAY 8TH,
14 1996. THE PERMIT IS ATTACHMENT NO. 12. PERMIT TERM
15 NUMBER 15 REQUIRED OXFORD TO SUBMIT A COMPLETE CLOSURE
16 PLAN TO THE CIWMB 180 DAYS PRIOR TO SEPTEMBER 1ST,
17 1997. IN ACCORDANCE WITH TERM NUMBER 15 OF OXFORD'S
18 PERMIT, OXFORD SUBMITTED A NEW CLOSURE PLAN ON MARCH
19 5TH, 1997. THIS IS ATTACHMENT NO. 7.

20 THIS CLOSURE PLAN WAS DISCUSSED AT THE
21 APRIL 24TH, 1997, BOARD MEETING. HOWEVER, IT WAS NOT
22 DEEMED COMPLETE. THE OXFORD AGENDA ITEM FOR THE APRIL
23 24TH BOARD MEETING IS PRESENTED AS ATTACHMENT NO. 8.

24 IN THE ABSENCE OF A COMPLETED CLOSURE
25 PLAN, THE CIWMB TOOK ENFORCEMENT ACTION AND ISSUED A
26 CLEANUP AND ABATEMENT ORDER ON APRIL 30TH, 1997. THIS
27 ORDER IS ATTACHMENT NO. 14. TWO ISSUES ADDRESSED IN

1 THE ORDER WERE THE FAILURE TO BOTH SUBMIT A COMPLETE
2 CLOSURE PLAN AND MAKE APPROPRIATE ADJUSTMENTS TO
3 ESTIMATES FOR CLOSURE COSTS.

4 IN JUNE AND JULY OF 1997, CIWMB STAFF
5 ENTERED INTO NEGOTIATIONS WITH OXFORD TO DEVELOP AND
6 IMPLEMENT A REMEDIATION PLAN THAT WOULD ALLOW OXFORD
7 TO RETAIN THEIR MAJOR WASTE TIRE FACILITY PERMIT. THE
8 AGREEMENT, AMONG OTHER THINGS, REQUIRED OXFORD TO
9 REMEDIATE THE EXISTING STOCKPILE.

10 UNDER THE OTR/CIWMB TIRE PILE
11 REMEDIATION AGREEMENT THAT WAS SIGNED ON JULY 28TH,
12 1997, THE BOARD RELIEVED OXFORD OF THE DISPOSAL OF
13 40,000 TONS OF WASTE TIRES FROM THE THEN-EXISTING
14 OXFORD STOCKPILE AND AGREED NOT TO REVOKE OXFORD'S
15 PERMIT. IN RETURN, OXFORD WAS TO REMEDIATE THE
16 BALANCE OF THE STOCKPILE WITHIN 14 MONTHS FROM THE
17 DATE OF THE COMPLETION OF THE REMOVAL OF THE 40,000
18 TONS OF WASTE TIRES.

19 REMOVAL OF THE 40,000 TONS WAS COMPLETED
20 IN MAY OF 1998. THEREFORE, REMOVAL OF THE BALANCE OF
21 THE WASTE TIRES BY OXFORD MUST BE COMPLETED NOT LATER
22 THAN JULY OF 1999.

23 ON APRIL 6TH, 1998, THE CIWMB ISSUED A
24 SECOND CLEANUP AND ABATEMENT ORDER TO OXFORD THAT,
25 AMONG OTHER THINGS, AGAIN SOUGHT A COMPLETE CLOSURE
26 PLAN AND A REVISION OF THE CLOSURE COST ESTIMATE BASED
27 ON THE CLOSURE PLAN. THIS IS ATTACHMENT NO. 16.

1 A CLOSURE PLAN WAS SUBSEQUENTLY
2 SUBMITTED BY OXFORD ON MAY 13TH, 1998, AND IS
3 PRESENTED AS ATTACHMENT NO. 9. THE CLOSURE PLAN WAS
4 DEEMED INCOMPLETE AS SUBMITTED BY A CIWMB LETTER DATED
5 JUNE 19TH, 1998. THIS IS ATTACHMENT NO. 10.

6 THEREAFTER, THE CLOSURE PLAN WAS DEEMED
7 INCOMPLETE BY THE BOARD AT ITS JULY 29TH, 1998,
8 MEETING. THE RESOLUTION FOR THIS DECISION IS
9 PRESENTED IN ATTACHMENT NO. 15.

10 TO DATE, OXFORD HAS NOT SUBMITTED A
11 COMPLETE CLOSURE PLAN FOR ITS FACILITY.

12 THIS CONCLUDES MY PRESENTATION. RICHARD
13 CASTLE WILL NOW DISCUSS FINANCIAL ASSURANCES.

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16 TESTIMONY OF MR. CASTLE

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18 MR. CASTLE: GOOD AFTERNOON. MY NAME IS
19 RICHARD CASTLE. I WORK IN THE BOARD'S FINANCIAL
20 ASSURANCES SECTION. THE ISSUE I'M HERE TO DISCUSS
21 TODAY IS OXFORD'S FAILURE TO MAINTAIN FINANCIAL
22 ASSURANCES FOR THE CLOSURE COSTS.

23 DEMONSTRATIONS OF FINANCIAL ASSURANCES
24 FOR THE COSTS OF CLOSURE FOR THE FACILITY MUST BE
25 MAINTAINED PURSUANT TO TITLE 14, CALIFORNIA CODE OF
26 REGULATIONS SECTION 18470. HISTORICALLY, OXFORD
27 PROVIDED A CERTIFICATE OF INSURANCE FOR THE CLOSURE

1 COSTS. THE CERTIFICATE OF INSURANCE FOR CLOSURE
2 COSTS WAS ISSUED FOR \$1 MILLION. THE INSURANCE WAS
3 LAST RENEWED FOR THIS SITE EFFECTIVE MARCH 27TH, 1998.

4 HOWEVER, THE BOARD RECEIVED NOTICE FROM THE INSURER,
5 RELIANCE INSURANCE COMPANY OF ILLINOIS, THAT THE
6 INSURANCE WILL BE CANCELED EFFECTIVE SEPTEMBER 27TH,
7 1998. THIS IS ATTACHMENT NO. 11. THE CANCELLATION IS
8 DUE TO OXFORD'S NONPAYMENT OF THE INSURANCE PREMIUM.

9 THE CERTIFICATE OF INSURANCE SUBMITTED
10 TO THE BOARD IDENTIFIES THAT CANCELLATION WILL NOT
11 OCCUR AND THE POLICY WILL REMAIN IN FULL FORCE AND
12 EFFECT IN THE EVENT THAT ON OR BEFORE THE DATE OF
13 EXPIRATION THE BOARD DEEMS THE FACILITY ABANDONED, OR
14 THE PERMIT IS TERMINATED OR REVOKED, OR CLOSURE IS
15 ORDERED BY THE BOARD, OR THE OPERATOR IS NAMED AS A
16 DEBTOR IN A PROCEEDING UNDER TITLE 11 BANKRUPTCY, OR
17 ALL DELINQUENT PREMIUM PAYMENTS HAVE BEEN BROUGHT
18 CURRENT.

19 STAFF HAVE NO REASON TO BELIEVE THAT THE
20 PREMIUM PAYMENT WILL BE MADE, AND NO COMMUNICATION
21 FROM OXFORD AS TO ANY SUCH INTENTION. I CONTACTED THE
22 INSURER PRIOR TO TODAY'S MEETING AND PAYMENT HAS STILL
23 NOT BEEN MADE.

24 ADDITIONAL INFORMATION RELEVANT TO THE
25 DISCUSSION OF OXFORD'S FINANCIAL DEMONSTRATIONS IS THE
26 STATUS OF THE LIABILITY INSURANCE COVERAGE FOR THE
27 FACILITY. THE LIABILITY INSURANCE HAS BEEN CANCELED

1 BY THE INSURER FOR NONPAYMENT OF PREMIUM ALSO.

2 THE CANCELLATION OF THE LIABILITY
3 INSURANCE WAS MAILED BY THE INSURER ON JULY 16TH. THE
4 BOARD RECEIVED THE CANCELLATION ON JULY 20TH, WHICH
5 BEGAN THE REQUIRED 10-DAY CLOCK BEFORE THE
6 CANCELLATION COULD BECOME EFFECTIVE. ON JULY 30TH THE
7 CANCELLATION OF THE LIABILITY COVERAGE BECAME
8 EFFECTIVE. THE LIABILITY COVERAGE IS FOR EVERYTHING
9 INCLUDING POLLUTION EXPOSURES FROM THE FACILITY, ALL
10 OCCURRENCES.

11 THE CANCELLATION OF THE LIABILITY
12 INSURANCE COVERAGE IS NOT A FORMAL PART OF TODAY'S
13 HEARING, BUT IS OFFERED AS ADDITIONAL BACKGROUND
14 INFORMATION FOR THE BOARD.

15 THIS CONCLUDES MY PRESENTATION. IF YOU
16 HAVE ANY QUESTIONS WE ARE PREPARED TO RESPOND.

17 CHAIRMAN PENNINGTON: QUESTIONS OF THE STAFF?

18 MEMBER FRAZEE: YES.

19 CHAIRMAN PENNINGTON: MR. FRAZEE?

20 MEMBER FRAZEE: MR. CASTLE, THE LAST ITEM
21 THAT YOU MENTIONED, THE LIABILITY INSURANCE POLICY,
22 THAT COVERS LIABILITY FOR ACTIONS THAT MAY OCCUR ON
23 SITE AS WELL AS ENVIRONMENTAL LIABILITY, ARE BOTH OF
24 THOSE ITEMS COVERED IN THAT POLICY?

25 MR. CASTLE: THE POLICY FOR THE LIABILITY
26 INSURANCE HAS BEEN CANCELED AND IS ALREADY EFFECTIVELY
27 CANCELED COVERED ALL THIRD-PARTY EXPOSURES TO ANY

1 OCCURRENCE THAT HAPPENED AT THE FACILITY, AND THAT
2 INCLUDES POLLUTION EXPOSURES. SO THAT IF A FIRE WERE
3 TO HAVE OCCURRED AT THE FACILITY, THE POLICY WOULD
4 HAVE COVERED UP TO A MILLION DOLLARS THE CLAIMS OF
5 THIRD-PARTIES AT THAT -- IT WOULD NOT COVER CORRECTIVE
6 ACTION OF THE SITE. IT WOULD COVER THE THIRD-PARTY
7 DAMAGES.

8 MEMBER FRAZEE: SO BOTH THAT OCCURRENCE AND
9 THE INCIDENTS OF SOMEONE BEING INJURED ON SITE, THE
10 LIABILITY THAT COULD ACCRUE THERE, WAS ALSO INCLUDED
11 IN THAT POLICY?

12 MR. CASTLE: YES. OTHER THAN WORKERS AT THE
13 SITE. IT'S NOT FOR EMPLOYEES OF OXFORD, BUT ANY THIRD
14 PARTY THAT WAS AT THE SITE THAT WOULD -- COULD BE
15 INJURED, YES.

16 MEMBER FRAZEE: OKAY. THANK YOU.

17 CHAIRMAN PENNINGTON: OKAY. NO FURTHER
18 QUESTIONS?

19 THEN, MR. KIRKLAND?

20 TESTIMONY OF MR. KIRKLAND

21 MR. KIRKLAND: GOOD AFTERNOON. FIRST OF ALL
22 LET ME SAY THAT --

23 CHAIRMAN PENNINGTON: EXCUSE ME. CAN YOU
24 STATE YOUR NAME AND -- FOR THE RECORD?

25 MR. KIRKLAND: MY NAME IS MARK KIRKLAND, THE
26 PRESIDENT OF OXFORD TIRE RECYCLING.

27 CHAIRMAN PENNINGTON: THANK YOU.

1 MR. KIRKLAND: AND FIRST OF ALL I'D LIKE TO
2 SAY THAT I WAS UNABLE TO ATTEND THE BURIAL OF MR.
3 CHUCK ROYSTER THIS AFTERNOON, BUT I DID ATTENDED THE
4 MEMORIAL SERVICE FOR HIM YESTERDAY. AND I WANTED TO
5 TAKE AN OPPORTUNITY WHILE THE MEDIA WAS HERE TO JUST
6 STATE THAT I DON'T THINK HIS SITUATION HAS BEEN
7 PORTRAYED IN THE MEDIA IN AN ENTIRELY FAIR MANNER.
8 AND I WOULD FEEL BAD IF A MAN WERE TO DIE HAVING --
9 UNDER THOSE CIRCUMSTANCES.

10 I'D LIKE TO SAY THAT, BRIEFLY, MR.
11 ROYSTER BOUGHT THIS TIRE PILE IN THE EARLY '80S,
12 BEFORE THE FORMATION OF ANY WASTE BOARD. THERE WERE
13 TIRES EXISTING ON THAT SITE, AND HE SPENT CONSIDERABLE
14 TIME AND MONEY LOOKING FOR WAYS TO REMEDIATE TIRES UP
15 UNTIL HIS DEATH. AND I THINK THAT SOME OF THE
16 PORTRAYALS IN THE MEDIA HAVE BEEN PARTICULARLY HARD ON
17 MR. ROYSTER AND A LITTLE BIT MORE INVESTIGATION WOULD
18 BE FAIR, MORE FAIR TO MR. ROYSTER. AND I DO HOPE THAT
19 THAT WILL OCCUR BECAUSE HE WAS NOT THE PERSON THAT HAS
20 BEEN PORTRAYED IN THE MEDIA.

21 JUST A LITTLE BIT OF BACKGROUND. I
22 BOUGHT OXFORD TIRE RECYCLING IN 1995. AND CONTRARY TO
23 SOME OF THE STATEMENTS, I DID DO DUE DILIGENCE WHEN I
24 PURCHASED THE COMPANY.

25 THE COMPANY THAT I PURCHASED OXFORD TIRE
26 RECYCLING FROM RECOMMENDED TO ME THAT I PURSUE AND
27 OBTAIN A MAJOR WASTE TIRE FACILITY PERMIT, WHICH I DID

1 DO AT CONSIDERABLE EXPENSE, AND RECEIVED THAT PERMIT
2 IN 1996. I RECEIVED IT RELUCTANTLY, AND IN
3 RETROSPECT, I PURSUED AND RECEIVED THIS PERMIT TO THE
4 DETRIMENT OF MY BUSINESS.

5 I DON'T KNOW IF YOU'RE FAMILIAR WITH THE
6 ATTORNEY GENERAL'S AGREEMENT THAT WAS IN PLACE WHEN I
7 PURCHASED THE COMPANY. I FEEL SOME OF YOU MAY NOT BE
8 AWARE OF THIS AGREEMENT. BUT, THIS AGREEMENT CALLED
9 FOR THE REDUCTION AND ELIMINATION OF THIS TIRE PILE
10 AND SET FORTH THE CIRCUMSTANCES UNDER WHICH THAT
11 SHOULD OCCUR.

12 THIS AGREEMENT WAS SIGNED BY THE
13 FOLLOWING PARTIES: MELP; OXFORD TIRE RECYCLING;
14 OXFORD ENERGY; THE COUNTY OF STANISLAUS; THE ECOLOGY
15 ACTION EDUCATIONAL INSTITUTE, INCORPORATED; THE
16 GRAYSON NEIGHBORHOOD COUNCIL-- IT'S KIND OF A LONG
17 LIST-- THE MERCED COUNTY CENTRAL DEMOCRATIC
18 COMMITTEE; THE MERCED INTERFACE CENTER FOR PEACE AND
19 JUSTICE -- I HAVE NO IDEA WHAT THAT ONE WAS ABOUT; THE
20 SAN JOAQUIN RAPTOR WILDLIFE RESCUE CENTER, THEY'RE
21 ACTUALLY AGREEMENT TO THIS -- OR, SIGNED ON THE
22 ATTORNEY GENERAL AGREEMENT; THE ATWATER BETTERMENT
23 COUNCIL; THE DOS PALOS COALITION FOR POSITIVE GROWTH;
24 THE WESTSIDE FARMER'S ALLIANCE; THE CALIFORNIA RURAL
25 LEGAL ASSISTANCE; AND THE PEOPLE OF THE STATE OF
26 CALIFORNIA, JOHN K. VAN DE CAMP, ATTORNEY GENERAL.
27 THIS AGREEMENT WAS SIGNED IN THE AUTUMN OF 1989.

1 THIS IS THE COMPANY THAT I BOUGHT. IT
2 HAD AN AGREEMENT THAT CALLED FOR THE ELIMINATION OF
3 THE -- THE REDUCTION OF THE TIRE PILE UNDER THE
4 FOLLOWING SCENARIO. THE PILE WAS TO BE REDUCED TO 12
5 MILLION TIRES BY THE END OF 1998. IT WAS TO BE
6 REDUCED TO FOUR MILLION TIRES BY THE YEAR 2008. ONCE
7 THE TIRE PILE WAS REDUCED BELOW 10 MILLION TIRES, IT
8 WAS TO BE REDUCED AT A RATE OF 250,000 TIRES A YEAR.
9 THAT WAS THE COMPANY THAT I BOUGHT.

10 AS I'VE SAID, IT WAS RECOMMENDED TO ME
11 THAT I PURSUE AND OBTAIN THE FIRST MAJOR WASTE TIRE
12 FACILITY PERMIT ISSUED TO A NON-MILITARY BASE IN THE
13 STATE OF CALIFORNIA. AND, AS I SAID, I WAS RELUCTANT
14 TO DO THAT, BUT I FELT COMPELLED AT THE TIME THAT I
15 NEEDED -- THAT THAT WAS THE RIGHT THING TO DO.

16 I WAS TOLD -- I DID NOT HAVE A COMPLETE
17 UNDERSTANDING OF WHAT THIS ATTORNEY GENERAL'S
18 AGREEMENT MEANT, WHAT MY RIGHTS UNDER IT WERE AND WHAT
19 THE RESTRICTIONS WERE TO OTHERS UNDER THIS ATTORNEY
20 GENERAL AGREEMENT.

21 SOMEBODY FROM THE WASTE BOARD LEGAL
22 OFFICE INDICATED TO ME THAT THEY KNEW WHAT MY LEGAL
23 FIRM, DOWNEY, BRAND, CHARGED ME PER HOUR AT THAT TIME
24 AND INDICATED THAT IF I WERE TO NOT SIGN THIS PERMIT,
25 I WOULD BE IN A FIGHT WITH THE WASTE BOARD. THE WASTE
26 BOARD COULD USE THE ATTORNEY GENERAL'S OFFICE AND
27 COULD BILL THE ATTORNEY GENERAL'S OFFICE FOR AN

1 UNLIMITED AMOUNT, WHEREAS I WOULD QUICKLY GO BROKE
2 TRYING TO DEFEND MY POSITION.

3 I, THEREFORE, ENDED UP SIGNING A PERMIT
4 WHICH WAS NOT IN REALITY A PERMIT, IT WAS A TIRE PILE
5 ELIMINATION SCHEDULE. A PERMIT IS THE RIGHT TO
6 OPERATE A TIRE PILE. I HAD AN ELIMINATION REQUIREMENT
7 ON MY -- ON THIS PERMIT THAT FORCED ME TO TRY AND GET
8 RID OF THIS PILE IN A PERIOD OF FOUR YEARS, WHERE THE
9 ATTORNEY GENERAL'S AGREEMENT ENDED UP ELIMINATING THE
10 PILE OVER A PERIOD OF 20 YEARS.

11 DUE TO THE SHORTENED TIME FRAME AND THE
12 PRESSURES THAT WERE BROUGHT BY THIS PERMIT, I ENDED UP
13 BEING PUT IN THE POSITION OF BEING UNABLE TO BOTH
14 COLLECT TIRES, DISPOSE OF THOSE TIRES, AND PAY THE
15 ADJOINING POWER PLANT TO BURN TIRES OFF THE TIRE PILE.

16 THERE WAS NOT ENOUGH MONEY TO COVER ALL OF THOSE
17 BASES.

18 I TRIED SEVERAL TIMES TO CONTACT THE
19 BOARD, MADE PROPOSALS OF WAYS TO ELIMINATE THE TIRE
20 PILE. I MADE ONE IN PARTICULAR IN JULY OF 1996. I
21 DID NOT RECEIVE A RESPONSE TO THIS PROPOSAL. IT WOULD
22 HAVE ELIMINATED THE PILE IN 18 MONTHS FOR LESS THAN \$2
23 MILLION. BUT, I DID NOT EVEN RECEIVE A RESPONSE TO
24 THIS PROPOSAL.

25 I HAVE SPENT OVER A MILLION DOLLARS IN
26 THE LAST TWO YEARS TRYING TO COMPLY WITH THE TERMS OF
27 THIS PERMIT. I HAVE SUFFERED ANOTHER MILLION DOLLARS

1 -- IN EXCESS OF A MILLION DOLLARS' WORTH OF BUSINESS
2 LOSSES TRYING TO LIVE UP TO THE TERMS OF THIS PERMIT.

3 AND FOR A COMPANY -- A SMALL COMPANY THAT I'VE BEEN
4 RUNNING, IT IS JUST NOT -- IT IS JUST NOT FEASIBLE TO
5 ABSORB THOSE KINDS OF LOSSES.

6 AND EVEN THOUGH I'VE SPENT THIS KIND OF
7 MONEY AND I'VE WORKED THIS HARD TO COMPLY WITH THIS
8 PERMIT, MY NAME HAS BECOME ABSOLUTE POISON AT THE
9 WASTE MANAGEMENT BOARD. IN FACT, I PROBABLY HAVE TO
10 LEAVE THIS BUSINESS, BECAUSE ANY TIME THE SUBJECT
11 COMES UP AND THE NAME OF OXFORD OR KIRKLAND ARE
12 BROUGHT UP, IT GETS BACK TO ME THAT THERE WILL BE
13 NOTHING HAPPENING AS LONG AS THOSE TWO NAMES ARE
14 INVOLVED.

15 AS A POINT OF FACT, JUST THIS LAST MONTH
16 I WAS TO DO A CLEANUP IN SAN BERNARDINO COUNTY. WE
17 HAD WORKED WITH THE COUNTY TO DELIVER TIRES TO A
18 CEMENT PLANT NEARBY AT A VERY GOOD RATE OF DISPOSAL.
19 THE LEGAL OFFICE OF THE WASTE BOARD TOLD THEM THAT IF
20 THEY USED OXFORD TIRE RECYCLING THEY WOULD NOT BE
21 REIMBURSED FOR THE SHARE OF THE CLEANUP THAT WOULD
22 COME FROM THE WASTE BOARD.

23 TO ME THAT'S BUSINESS INTERFERENCE. WE
24 WERE TRYING TO DO SOMETHING LEGAL. WE WERE NEVER --
25 THERE'S NO DUE PROCESS. WE WERE NEVER DEEMED
26 UNRELIABLE. THIS IS NOT RIGHT FOR THIS TO HAPPEN. WE
27 WERE TRYING TO PROVIDE A SERVICE.

1 ANOTHER QUESTION I HAVE IS, WHERE DID
2 THE FOUR MILLION TIRES GO LAST YEAR WHICH -- WHICH I
3 PAID MELP TO BURN? I PAID MELP TO BURN FOUR MILLION
4 TIRES OFF OF OUR TIRE PILE. WHERE DID THE FOUR
5 MILLION TIRES GO THAT OTHERWISE WOULD HAVE GONE INTO
6 THAT POWER PLANT? THEY WERE ALL RECYCLED. NOT ONE OF
7 THOSE TIRES ENDED UP IN SOME FARMER'S FIELD ON THE
8 SIDE OF THE ROAD. EVERY ONE OF THOSE TIRES WAS
9 LEGALLY RECYCLED IN AN APPROVED MANNER.

10 BUT, YOU KNOW, NEVERTHELESS, I RECEIVED
11 NO CREDIT FOR THIS. WE ABSOLUTELY HAVE BEEN UNABLE TO
12 WORK ANYTHING WITH THE BOARD. AND AS I STATED,
13 ANYTHING THAT WE GET INVOLVED IN, THE BOARD HAS
14 STEPPED IN AND PUT AN END TO.

15 I AM AN HONEST MAN. I'M RUNNING AN
16 HONEST BUSINESS. AND I HAVE TRIED TO LIVE UP TO EVERY
17 OBLIGATION, IN SPITE OF THE FACT THAT I COULD HAVE, IN
18 THE BEGINNING, SIDE-STEPPED THE PERMITTING PROCESS AND
19 JUST LIVED UNDER THE TERMS OF THE ATTORNEY GENERAL
20 AGREEMENT.

21 I STILL HAVE THE ATTORNEY GENERAL
22 AGREEMENT. IT HAS BEEN SIGNED TOO BY THE PARTIES THAT
23 I READ. I STILL FEEL THAT ATTORNEY GENERAL AGREEMENT
24 IS IN EFFECT, AND IT IS AN AGREEMENT THAT WE CAN LIVE
25 UP TO. IN FACT, DUE TO THE LAST COUPLE OF YEARS,
26 WE'RE WAY AHEAD OF OUR SCHEDULE ON THIS ATTORNEY
27 GENERAL'S AGREEMENT.

1 IF ANYBODY FROM THE PRESS WOULD LIKE A
2 COPY OF THIS ATTORNEY GENERAL AGREEMENT, THEY CAN
3 CONTACT ME. I'D BE HAPPY TO SHARE THAT WITH THEM.

4 I UNDERSTAND THE POSITION OF THIS BOARD.

5 I UNDERSTAND THAT TIRES CAN BE A PROBLEM THAT NEED TO
6 BE DEALT WITH. I ALSO WANT TO SAY, THOUGH, THAT DUE
7 TO THIS ATTORNEY GENERAL'S AGREEMENT THERE IS A MULTI-
8 MILLION DOLLAR FIRE SUPPRESSION SYSTEM IN PLACE. I
9 DON'T THINK THERE IS A BETTER-RUN, MORE STATE-OF-THE-
10 ART TIRE STORAGE FACILITY IN THE ENTIRE COUNTRY. I
11 DON'T KNOW OF ONE IN THE WORLD.

12 I THINK THAT THERE IS FIRE SUPPRESSION
13 THROUGHOUT THIS ENTIRE PILE. SEVERAL OF YOU HAVE
14 VISITED THE SITE AND KNOW THAT. THERE ARE FIRE LANES,
15 THERE ARE -- THE PILE HAS BEEN GREATLY REDUCED.

16 AND I WOULD ALSO LIKE TO POINT OUT THAT,
17 JUST AS MR. ROYSTER BOUGHT A FACILITY IN THE EARLY
18 '80S AND WORKED TO FIND WAYS TO ELIMINATE THOSE
19 TIRES.... HE DELIVERED TIRE CHIPS TO LOUISIANA
20 PACIFIC FOR QUITE A WHILE, UNTIL THEY SHUT THE PLANT
21 DOWN THAT HE DELIVERED TO.

22 THE FACILITY IN WESTLEY, THE MELP
23 FACILITY IS A DIRECT RESULT OF THE LANDOWNER HAVING
24 THOSE TIRES THERE AND WORKING HARD TO FIND THE
25 SOLUTION FOR THOSE TIRES. SINCE THAT FACILITY WAS
26 BUILT, OVER 80 MILLION TIRES HAVE BEEN RECYCLED THAT
27 OTHERWISE WOULD NOT HAVE BEEN RECYCLED. AND WITHOUT

1 MR. FILBIN, THE LANDOWNER, AND HIS WORK, THAT WOULD
2 NOT HAVE HAPPENED. BETWEEN MELP, OXFORD TIRE
3 RECYCLING, AND THE LANDOWNER, MR. FILBIN, OVER 80
4 MILLION TIRES HAVE BEEN RECYCLED IN THE LAST 10 YEARS.

5 AND THAT WAS WITHOUT, AT LEAST IN MY
6 CASE, ANY ASSISTANCE FROM ANY STATE BODY. I THINK --
7 I BELIEVE THAT'S TRUE FOR MR. FILBIN. I CAN'T SPEAK
8 TO HIS CASE.

9 WHAT I WOULD LIKE TO END MY OPENING
10 COMMENTS WITH, THEN, IS THAT, AS I SAID, I AM RUNNING
11 AN HONEST BUSINESS. WE'RE PROVIDING A GOOD SERVICE
12 FOR THIS STATE. WE HAVE AN ATTORNEY GENERAL'S
13 AGREEMENT. WE'VE SPENT OVER \$2 MILLION IN ONE WAY OR
14 ANOTHER TRYING TO COMPLY WITH THIS PERMIT.

15 THERE IS NO MONEY LEFT FOR ANY FURTHER
16 REMEDIATION UNDER THE CURRENT PERMIT. SO, THE PERMIT
17 DOES ME NO GOOD. UNDER THE ATTORNEY GENERAL
18 AGREEMENT, I CAN LIVE UP TO THAT AND INTEND TO LIVE UP
19 TO THE ATTORNEY GENERAL'S AGREEMENT. THANK YOU.

20 CHAIRMAN PENNINGTON: HAVE YOU PAID ON THE
21 INSURANCE POLICY?

22 MR. KIRKLAND: I'M SORRY?

23 CHAIRMAN PENNINGTON: HAVE YOU PAID THE
24 PREMIUM ON THE INSURANCE POLICY?

25 MR. KIRKLAND: NO, I HAVE NOT.

26 CHAIRMAN PENNINGTON: THAT'S THE QUESTION
27 HERE TODAY, ISN'T IT?

1 MR. KIRKLAND: I BELIEVE SO.

2 CHAIRMAN PENNINGTON: OKAY. YOU SAID THAT
3 THERE WERE FOUR MILLION TIRES BURNED IN THE LAST YEAR?

4 MR. KIRKLAND: ACTUALLY, IN THE LAST 18
5 MONTHS I BELIEVE IT'S OVER FIVE MILLION TIRES WERE
6 BURNED.

7 CHAIRMAN PENNINGTON: AND WHAT WAS THE COST -
8 -

9 MR. KIRKLAND: OFF OF THE PILE.

10 CHAIRMAN PENNINGTON: -- OF BURNING THOSE
11 TIRES?

12 MR. KIRKLAND: TO ME?

13 CHAIRMAN PENNINGTON: UH-HUH.

14 MR. KIRKLAND: \$16.00 A TON.

15 CHAIRMAN PENNINGTON: AND HOW MUCH OF THAT
16 DID YOU PAY?

17 MR. KIRKLAND: ALL OF IT.

18 CHAIRMAN PENNINGTON: AND HOW MUCH WAS THAT?

19 MR. KIRKLAND: WELL, THE \$4 MILLION PORTION
20 OF IT, I PAID \$640,000 IN CASH TO THIS WASTE BOARD.
21 PRIOR TO THAT IT WAS ABSORBED BY ME, AND IT WAS PAID
22 BY ME.

23 CHAIRMAN PENNINGTON: AND HOW MUCH DID THE
24 WASTE BOARD PAY?

25 MR. KIRKLAND: THE WASTE BOARD PAID OVER A
26 MILLION DOLLARS TO MELP TO BURN TIRES.

27 CHAIRMAN PENNINGTON: TO BURN YOUR LIABILITY.

1 CORRECT?

2 MR. KIRKLAND: I BELIEVE, SIR, THAT THAT
3 MILLION -- OVER A MILLION DOLLARS WOULD BE CONSIDERED
4 A GIFT OF PUBLIC FUNDS, IF I'M NOT MISTAKEN.

5 AND I HAVE NO PROBLEM WITH THAT. I
6 APPLAUD MELP FOR DOING WHAT WAS RIGHT FOR THEIR
7 BUSINESS. I APPLAUD THE STATE FOR TRYING TO REDUCE
8 THE TIRE PILE.

9 CHAIRMAN PENNINGTON: THAT'S NOT ANSWERING MY
10 QUESTION, THOUGH. MY QUESTION IS, DID THAT ONE-POINT-
11 TWO-TWO MILLION DOLLARS PAID TO MELP RELIEVE YOU OF
12 THE LIABILITY OF THOSE TIRES?

13 WASN'T THAT AN AGREEMENT THAT WE GOT
14 INTO?

15 MR. KIRKLAND: SIR, ALL I KNOW IS THAT I PAID
16 \$16.00 A TON, WHICH WAS MY PORTION OF THAT AGREEMENT,
17 AND I'M A SMALL COMPANY. I'M NOT THE STATE OF
18 CALIFORNIA.

19 CHAIRMAN PENNINGTON: I JUST WANT TO POINT
20 OUT THAT THE WASTE BOARD AND YOU HAD AN AGREEMENT, AND
21 WE SPENT ONE-POINT-TWO-TWO MILLION TO BURN YOUR
22 LIABILITY, AND SO I THINK IT'S NOT CORRECT TO SUGGEST
23 THAT IT WAS ALL YOUR BURDEN.

24 MR. KIRKLAND: I NEVER MEANT TO SUGGEST THAT
25 THE WASTE BOARD DID NOT DO SOMETHING.

26 CHAIRMAN PENNINGTON: ANY OTHER QUESTIONS OF
27 MR. KIRKLAND?

1 MEMBER EATON: NONE FROM ME.

2 CHAIRMAN PENNINGTON: MR. JONES? MR. FRAZEE?

3 MR. FRAZEE: JUST, I'D LIKE TO FOLLOW UP ON
4 THE CHAIRMAN'S QUESTION A LITTLE BIT ON -- I BELIEVE
5 YOUR ORIGINAL STATEMENT, MR. KIRKLAND, WAS THAT WE'RE
6 WAY AHEAD OF THE ATTORNEY GENERAL'S AGREEMENT, AND
7 THEN YOU RECITED HOW MANY TIRES HAVE BEEN BURNED IN
8 THAT FACILITY. AND I THINK THE CHAIRMAN INDICATED
9 THAT THE WASTE BOARD, WITH PUBLIC FUNDS, PAID FOR A
10 GOOD PORTION OF THOSE.

11 IT'S MY UNDERSTANDING THAT THE MELP
12 FACILITY HAS ABSORBED YOUR COST TO ALMOST A MILLION
13 DOLLARS OF UNPAID LIABILITY THAT YOU STILL OWE THEM.
14 IS THAT CORRECT?

15 MR. KIRKLAND: THE MELP FACILITY -- AS I
16 STATED, MR. FRAZEE, DUE TO THE SIGNING OF THIS PERMIT,
17 AND FINDING MYSELF IN A POSITION OF UNABLE TO DISPOSE
18 OF INCOMING TIRES AND TIRE PILE TIRES, I DO HAVE AN
19 ONGOING RELATIONSHIP WITH MELP. AND I DON'T FEEL THE
20 PUBLIC FORUM IS THE PLACE TO DISCUSS THAT, MY
21 LIABILITIES WITH MELP.

22 MEMBER FRAZEE: BUT I THINK YOU WERE THE ONE
23 THAT STATED THAT YOU PAID AND, IN FACT, IT'S MY
24 UNDERSTANDING THAT YOU HAVE NOT PAID THAT MONEY.

25 MR. KIRKLAND: I'M SORRY, I'M NOT -- I DON'T
26 UNDERSTAND WHAT YOU'RE ASKING.

27 MEMBER FRAZEE: WELL, YOUR BLANKET STATEMENT

1 WAS THAT YOU HAD PAID "X" MILLION DOLLARS TO REMEDIATE
2 THE TIRE PILE. AND, IN FACT, AS THE CHAIRMAN POINTED
3 OUT, A GOOD PORTION OF THAT MONEY WAS PAID BY -- WITH
4 PUBLIC FUNDS. AND THEN ANOTHER PORTION IS LEFT
5 UNPAID. AND SO I THINK YOUR STATEMENT WAS NOT
6 ENTIRELY CLEAR ON THAT.

7 MR. KIRKLAND: I'M NOT CLEAR ON WHAT YOUR
8 STATEMENT IS, SIR. I APOLOGIZE.

9 I THINK THAT ANYTHING THAT HAPPENED
10 PRIOR TO THE AGREEMENT WITH THE WASTE BOARD IS A
11 PRIVATE MATTER BETWEEN MELP AND OXFORD.

12 MEMBER FRAZEE: BUT YOU INTRODUCED IT INTO
13 EVIDENCE AND SAID THAT YOU HAD PAID --

14 MR. KIRKLAND: I PAID TO BURN 640,000 -- I
15 PAID \$640,000 TO BURN FOUR MILLION TIRES OFF THE PILE
16 IN -- FROM JUNE OF '97 TO JUNE OF '98.

17 MEMBER FRAZEE: OKAY. IT'S CLEAR YOU'RE --

18 MR. KIRKLAND: PRIOR TO THAT --

19 MEMBER FRAZEE: -- NOT GOING TO RESPOND, SO
20 THAT'S --

21 MR. KIRKLAND: WELL, PRIOR TO THAT I HAVE HAD
22 OTHER EXPENSES IN GETTING RID OF TIRES.

23 MEMBER JONES: MR. CHAIRMAN?

24 CHAIRMAN PENNINGTON: YES, MR. JONES?

25 MEMBER JONES: I DO HAVE -- MR. KIRKLAND HAS
26 PIQUED MY INTEREST HERE EVEN MORE THAN NORMAL.

27 WE HAD THIS SAME DANCE IN PASADENA,

1 WHERE WE WERE READY TO TAKE AN ACTION TO REVOKE THE
2 PERMIT FOR LACK OF PAYMENT. AND IT WAS THAT DAY THAT
3 WE WORKED ON TRYING TO REMEDIATE THE PILE. IS THAT
4 PRETTY ACCURATE?

5 MR. KIRKLAND: UM-HUM.

6 MEMBER JONES: AT THAT TIME IT WAS BROUGHT TO
7 OUR ATTENTION THAT TIRES HAD BEEN PUSHED INTO THE FIRE
8 LANES, THAT WE WERE HAVING A PROBLEM WITH ACCESS ONTO
9 THE SITE, THAT WE WERE NOT....

10 ONE OF THE ISSUES WITH THE ROYSTER TIRE
11 THAT YOU REFERRED TO, OR ROYSTER TIRE FIRE, I THINK IF
12 YOU REMEMBER THAT DAY, THERE WERE TIRES THAT HAD NO
13 FIRE LANES CUT INTO IT?

14 MR. KIRKLAND: RIGHT.

15 MEMBER JONES: WE HAD BEEN TRYING TO GET
16 ACCESS ON THAT SITE FOR OVER FIVE YEARS TO SEE IF WE
17 COULD AT LEAST PUT IN THE HEALTH AND SAFETY STANDARDS
18 THAT ALLOWS A TEAM OF FIRE FIGHTERS TO FIGHT A FIRE,
19 OR TO AT LEAST MANAGE THAT --

20 MR. KIRKLAND: RIGHT.

21 MEMBER JONES: -- ELIMINATE SOME OF THE FUEL
22 SOURCES?

23 IN PASADENA ONE OF THE THINGS WE HAD
24 TALKED ABOUT WAS THAT TIRES, IN FACT, HAD BEEN PUSHED
25 DOWN INTO FIRE LANES THAT WERE CREATED.

26 SO, WE NEED TO -- I THINK WE NEED TO
27 ACKNOWLEDGE THAT HAD THE WASTE BOARD NOT BEEN INVOLVED

1 IN THIS THING, WE WOULD NOT HAVE IN THAT OXFORD TIRE
2 PILE WHICH'S PROBABLY GOT SEVEN OR EIGHT MILLION TIRES
3 IN IT RIGHT NOW. BUT WE JUST HAVE A MASSIVE SOURCE OF
4 FUEL.

5 MR. KIRKLAND: MR. JONES, THAT'S PARTIALLY
6 CORRECT, THAT THERE WERE TIRES PUSHED DOWN FROM THE
7 HILL INTO FIRE LANES.

8 HOWEVER, I DON'T THINK IT'S COMPLETELY
9 UNDERSTOOD THAT TIRES WERE PUSHED INTO THE FIRE LANES
10 AND SIMULTANEOUSLY WERE REMOVED TO OTHER PORTIONS. SO
11 THE FIRE LANE ACTUALLY BECAME THE BOUNDARY OF THE TIRE
12 PILE, AND THE TIRES THAT WERE PUSHED INTO THAT FIRE
13 LANE WERE PUT INTO OTHER CELLS. SO, IT WAS NEVER A
14 CASE OF ONE MASSIVE LUMP OF TIRES.

15 SINCE I TOOK OVER THIS FACILITY -- IT
16 HAD PREEEXISTING FIRE LANES IN IT PRIOR TO MY -- AT THE
17 TIME OF THE PERMIT IT HAD TO HAVE FIRE LANES AND IT
18 DID. SO, THAT'S PARTIALLY CORRECT.

19 BUT, AS I SAID, THEY WEREN'T JUST PUSHED
20 INTO THE PILE BLOCKING FIRE LANES THAT WERE NOT THEN
21 IMMEDIATELY CLEARED OUT.

22 MEMBER JONES: RIGHT. I THINK IMMEDIATELY IS
23 PROBABLY PART OF THE -- YOU KNOW, PART OF THE
24 DISCUSSION. BECAUSE IT SEEMED TO ME WE DID HAVE TO
25 TAKE SOME ACTION TO TRY TO GET THOSE CLEANED UP SO
26 THAT WE HAD ACCESS.

27 BECAUSE THIS IS -- YOU KNOW, IT'S

1 CRITICAL. IT'S EASY TO COME OUT AND SAY, YOU KNOW, TO
2 USE YOUR OPENING STATEMENT, YOU HAVE A RIGHT TO USE IT
3 ANY WAY YOU WANT. BUT, IN FACT, THIS AGREEMENT WITH
4 THE ATTORNEY GENERAL IN 1989 PREDATES THE AB-939
5 LEGISLATION THAT MADE THIS A FULL-TIME BOARD. THIS
6 BOARD BECAME A FULL-TIME BOARD LATER IN 1989. THE
7 REGULATIONS, THE TIRE BILL, THOSE TYPES OF THINGS CAME
8 AFTER THIS AGREEMENT.

9 SO THE MANAGEMENT OF TIRES BECAME
10 LEGISLATION THAT WAS CARRIED IN 1990 -- 1989 AND 1990,
11 TO HELP MINIMIZE THE ENVIRONMENT -- THE POTENTIAL FOR
12 ENVIRONMENTAL DISASTER. IT TALKED ABOUT NOT LAND
13 FILLING WHOLE TIRES ANYMORE, IT TALKED ABOUT A WHOLE
14 LOT OF THINGS, BUT THAT CAME AFTER YOUR PREDATED --
15 OR, AFTER THE ATTORNEY GENERAL'S AGREEMENT THAT YOU, I
16 GUESS, ASSUMED AT THE SAME TIME THAT YOU ASSUMED OTR
17 AND ALL OF ITS LIABILITIES.

18 SO, I DON'T THINK IT'S A FAIR
19 CHARACTERIZATION THAT -- YOU KNOW, THAT WE TALK ABOUT
20 SOMETHING THAT -- AN AGREEMENT THAT HAPPENED IN 1989,
21 WHEN MOST OF OUR REGS CAME ABOUT IN 1990.

22 MR. KIRKLAND: AND HOPEFULLY THAT WON'T
23 BECOME AN ISSUE FOR US. I HOPE NOT.

24 MEMBER JONES: IT'S NOT AN ISSUE WITH ME. I
25 LOOK AT THE TIRE REGS. IT'S REAL SIMPLE. THE
26 CHAIRMAN ASKED IF YOU HAD MADE THE FINANCIAL
27 ASSURANCES WHOLE; THE ANSWER WAS NO. AND DID WE HAVE

1 A APPROVED CLOSURE PLAN; THE ANSWER WAS NO.

2 MR. KIRKLAND: THAT'S CORRECT.

3 MEMBER JONES: THOSE ARE THE TWO ISSUES THAT
4 WE'RE DEALING WITH TODAY.

5 CHAIRMAN PENNINGTON: OKAY. THANK YOU, MR.
6 KIRKLAND.

7 DOES LEGAL STAFF HAVE ANY REBUTTAL
8 TO...?

9 MS. SMALL: AT THIS POINT I DON'T BELIEVE
10 THAT EITHER MR. KIRKLAND OR THE BOARD HAVE RAISED ANY
11 ISSUE TO WHICH THE STAFF NEED TO RESPOND. HOWEVER, WE
12 WILL BE HAPPY TO RESPOND TO QUESTIONS IF THERE ARE
13 ANY.

14 CHAIRMAN PENNINGTON: OKAY. DO YOU HAVE ANY
15 OTHER QUESTIONS? IF NOT, I'LL ENTERTAIN A MOTION.

16 MEMBER JONES: MR. CHAIRMAN?

17 CHAIRMAN PENNINGTON: YES, MR. JONES?

18 MEMBER JONES: I'D LIKE TO MAKE A MOTION THAT
19 WE ACT ON RESOLUTION 98-290, CONSIDERATION OF THE
20 REVOCATION OF THE MAJOR WASTE TIRE FACILITY PERMIT TO
21 OXFORD TIRE RECYCLING OF NORTHERN CALIFORNIA, INC.

22 CHAIRMAN PENNINGTON: OKAY. IT'S BEEN MOVED.

23 MEMBER FRAZEE: I'LL SECOND.

24 CHAIRMAN PENNINGTON: AND SECONDED BY MR.
25 FRAZEE. WILL THE SECRETARY CALL THE ROLL?

26 THE SECRETARY: BOARD MEMBER EATON?

27 MEMBER EATON: AYE.

1 THE SECRETARY: FRAZEE?

2 MEMBER FRAZEE: AYE.

3 THE SECRETARY: JONES?

4 MEMBER JONES: AYE.

5 THE SECRETARY: CHAIRMAN PENNINGTON?

6 CHAIRMAN PENNINGTON: AYE.

7 THE MOTION CARRIES.

8 MEMBER FRAZEE: MR. CHAIRMAN?

9 CHAIRMAN PENNINGTON: MR. FRAZEE?

10 MEMBER FRAZEE: I WOULD HAVE TWO SUBSEQUENT
11 MOTIONS. THE FIRST OF WHICH IS TO INSTRUCT THE STAFF
12 TO PURSUE SITE ACCESS TO THE OXFORD TIRE PILE, TO
13 PURSUE CLAIMS UPON THE AFOREMENTIONED INSURANCE
14 POLICY, TO PURSUE THE NECESSARY PENALTIES IN THIS
15 MATTER, AND, FOURTH, TO PURSUE COST RECOVERY OF ANY
16 ACTION THAT THE BOARD FINDS NECESSARY TO REMEDIATE THE
17 OXFORD TIRE PILE.

18 CHAIRMAN PENNINGTON: VERY GOOD. I'LL SECOND
19 THAT MOTION.

20 I MIGHT CLEAR UP ONE OF THE PROBLEMS
21 HERE BY ASKING MR. KIRKLAND IF HE'LL ALLOW SITE ACCESS
22 TO THE PILE?

23 MR. KIRKLAND: SITE ACCESS IS NOT A PROBLEM.
24 AS I STATED, I'D BE WILLING TO WORK WITH THE BOARD IN
25 ANY WAY THAT IS AFFORDABLE WITH MY BUSINESS. AND
26 WHAT'S HAPPENED SO FAR HAS NOT BEEN AFFORDABLE. BUT,
27 SITE ACCESS IS NOT A PROBLEM.

1 CHAIRMAN PENNINGTON: OKAY. AND I DON'T
2 SUPPOSE THAT YOU CAN SPEAK FOR MR. FILBIN, BUT MAYBE
3 YOU COULD --

4 MR. KIRKLAND: I WOULD BE HAPPY TO RAISE THE
5 ISSUE WITH HIM.

6 CHAIRMAN PENNINGTON: OKAY. IT'S BEEN MOVED
7 AND SECONDED.

8 MR. JONES, DID YOU HAVE A --

9 MEMBER JONES: NO, I WANTED TO ASK A
10 QUESTION, BUT THAT -- YOU ASKED IT, WE'RE ON THE SAME
11 PAGE.

12 CHAIRMAN PENNINGTON: OKAY.

13 MEMBER JONES: SITE ACCESS IS CRITICAL.

14 CHAIRMAN PENNINGTON: IF THERE'S NO FURTHER
15 DISCUSSION, WILL THE SECRETARY CALL THE ROLL ON MR.
16 FRAZEE'S MOTION?

17 THE SECRETARY: BOARD MEMBER EATON?

18 MEMBER EATON: AYE.

19 THE SECRETARY: FRAZEE?

20 MEMBER FRAZEE: AYE.

21 THE SECRETARY: JONES?

22 MEMBER JONES: AYE.

23 THE SECRETARY: CHAIRMAN PENNINGTON?

24 CHAIRMAN PENNINGTON: AYE.

25 THE MOTION CARRIES.

26 MEMBER FRAZEE: AND THEN, MR. CHAIRMAN, I'D
27 LIKE TO MAKE AN ADDITIONAL MOTION. THAT THIS BOARD

1 INSTRUCT THE STAFF TO PROCEED WITH PLANNING TO
2 REMEDIATE THE OXFORD TIRE SITE.

3 CHAIRMAN PENNINGTON: OKAY.

4 MEMBER JONES: MR. CHAIRMAN, I'D BE PREPARED
5 TO SECOND THAT, BUT I HAVE A QUESTION.

6 CHAIRMAN PENNINGTON: YOU'LL SECOND IT AND
7 THEN ASK A QUESTION?

8 MEMBER JONES: IF THAT MAKES YOU HAPPY, YES,
9 SIR.

10 CHAIRMAN PENNINGTON: THANK YOU.

11 MEMBER JONES: IF WE'RE GOING TO LOOK AT
12 DIRECTING STAFF TO START LOOKING AT REMEDIATING THIS
13 PILE, I WANT THAT THING OPENED UP THAT -- I WANT TO
14 SEE THE BEST PRICES AND THE BEST AVAILABLE, YOU KNOW,
15 AVENUES THAT WE CAN DEAL WITH, IF THAT'S OKAY TO THE
16 MAKER OF THE MOTION?

17 MEMBER FRAZEE: IF I COULD JUST ADD TO MY
18 MOTION CONSIDERING ALL OPTIONS?

19 MEMBER JONES: THAT WORKS FOR ME.

20 CHAIRMAN PENNINGTON: OKAY. ANY DISCUSSION
21 ON THIS MOTION? IF NOT, WILL THE SECRETARY CALL THE
22 ROLL?

23 THE SECRETARY: BOARD MEMBER EATON?

24 MEMBER EATON: AYE.

25 THE SECRETARY: FRAZEE?

26 MEMBER FRAZEE: AYE.

27 THE SECRETARY: JONES?

1 MEMBER JONES: AYE.

2 THE SECRETARY: CHAIRMAN PENNINGTON?

3 CHAIRMAN PENNINGTON: AYE.

4 THE MOTION CARRIES.

5 THAT CONCLUDES THESE PROCEEDINGS. WE'LL

6 ADJOURN.

7 (WHEREUPON, THESE PROCEEDINGS WERE CONCLUDED

8 AT 2:50 O'CLOCK P.M.)

9 - - - -

10

11 B