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1 SACRAMENTO, CALIFORNIA, APRIL 4, 2000 - 9:30 A.M.

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3 CHAIRMAN EATON: Good morning, everyone, and
4 welcome to the April 4th meeting of the California
5 Integrated Waste Management Board.

6 Madam Secretary, please call the roll.

7 BOARD SECRETARY: Board Members Jones.

8 BOARD MEMBER JONES: Here.

9 BOARD SECRETARY: Moulton-Patterson.

10 BOARD MEMBER MOULTON-PATTERSON: Here.

11 BOARD SECRETARY: Roberti.

12 BOARD MEMBER ROBERTI: Here.

13 BOARD SECRETARY: Chairman Eaton.

14 CHAIRMAN EATON: Here. Before we begin, I'd
15 like to just congratulate Linda Moulton-Patterson who I
16 think unanimously received confirmation yesterday. So
17 congratulations on behalf of the entire Board, and I
18 guess we can officially say welcome to the Board with no
19 strings attached.

20 BOARD MEMBER ROBERTI: From the two of us who
21 don't have to go through this confirmation process.

22 CHAIRMAN EATON: Right, and we were with you all
23 the way. And one other thing before we get to the ex
24 partes, which I thought, although perhaps I am looking
25 into the audience I can understand why this was sparsely

4

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1 attended since this generally deals with enforcement, so
2 the people who would be subjected to the enforcement
3 probably didn't want to show up today.

4 Those of you who attend on a regular basis,
5 usual suspects and what have you, probably have from time
6 to time heard of Mr. Jones who, whenever one of us makes
7 a comment, is insistent that he's just a garbage man. So
8 I'd like to read you something from an article that
9 appeared in the L.A. Times a couple weeks ago.

10 "While Willie Folger waits to see whether
11 Roadway Express will give him the \$50,000 reward for
12 finding the 52 stolen Oscars, the pressure is on the
13 Academy of Motion Pictures Arts and Sciences to invite
14 the unlikely hero on Sunday. Folger says he received an
15 offer from a TV station 'to set me up with a tux and a
16 limo and pay a lot of money for exclusive rights to take
17 me to the show,' but he said he won't identify the
18 station because 'I've got to be cautious now. I've been
19 burned by the press. They're calling me a garbage man.
20 That's wrong. I work every day. I'm a recycler.'"

21 So Mr. Jones, take that lead.

22 (Laughter)

23 CHAIRMAN EATON: Members, any ex parte
24 communications? Mr. Jones.

25 BOARD MEMBER JONES: I've got a -- these were

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1 all on that waste paint and antifreeze study, David and
2 Phyllis Boudine and Christie Corpus, Don Dow, Sharon Dow,
3 Virginia Johnson, Frederick Kieu (phonetic), Gordon
4 McFale. Then from the County of San Bernardino on a
5 grant for the Cajon cleanup, their attorneys Al Marksem
6 (phonetic), Matt Marnell, and I've handed out to the
7 Board Members a -- the letter accepting the grant from
8 the County. We were successful and I want to thank
9 Michael Bledsoe and Scott Walker for their work on that.

10 And then an ex parte from Jerry Jamgotchian on
11 City of Hawthorne, Bob Nelson on Lionudakis and odor, and
12 Paul Ryan on reporting year disposal modification
13 requests.

14 CHAIRMAN EATON: Okay.

15 Ms. Moulton-Patterson.

16 BOARD MEMBER MOULTON-PATTERSON: I have Yvonne
17 Hunter, League of California Cities, regarding AB 1939;
18 Michael Gursic, e-mail on recycled food waste; Janna
19 Narn, Golden Byproducts, regarding Assembly tire hearing;
20 also Jill Boone, Save the Money and the Environment Too,
21 regarding a thank you for sponsorship.

22 CHAIRMAN EATON: Okay.

23 Senator Roberti.

24 BOARD MEMBER ROBERTI: I've reported,
25 Mr. Chairman, all my ex partes.

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1 CHAIRMAN EATON: And I, too, am up-to-date with
2 the addition of the letter that Mr. Jones handed out with
3 the County Council to all of us. So let the record
4 reflect that we did receive that letter from Mr. Jones
5 from County Council.

6 For those of you who are in the audience or may
7 be here for the first time and not familiar with our
8 process, if you desire to speak on any of the two items
9 on today's agenda or during the public comment period,
10 there are speaker slips in the back of the room. If you
11 would kindly fill out one with the agenda number and
12 bring it up to the front, to my left and most of you to
13 your right to Lisa Dominguez, she'll make sure that the
14 slip is forwarded and that you have an opportunity to
15 speak on that item at the appropriate time during the
16 discussion.

17 Having said that, are there any reports that
18 Board Members would like to report?

19 Mr. Jones.

20 BOARD MEMBER JONES: Real quickly, Mr. Chairman.

21 At your request I spoke at the Department of
22 General Services California procurement process with
23 Jerry Hart and sat on a panel about everything you wanted
24 to know about recycling, and the good part about it was
25 it was a full room of procurement officers talking about

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1 buy recycle and I think it was actually successful. It
2 was a pretty good event.

3 Today I've got to get out of here about 11:30.
4 I'm giving a key note speech at the CRRC executive
5 membership luncheon prior to their trash bash today, and
6 like I referred to earlier, a couple of weeks ago
7 negotiations on the Cajon cleanup were breaking down and
8 they asked us to modify our resolution.

9 We chose not to as a board, kept the pressure on
10 them, and low and behold they came up with a settlement
11 three days later that is going to clean up a \$3 million
12 cleanup of an illegal dump using \$750,000 of our 2136
13 money, and that may be the biggest cleanup that we've
14 done at this Board for this little participation on our
15 part.

16 And like I said before, I really do want to
17 thank Michael Bledsoe and Scott Walker because we had to
18 keep coming up with innovative ideas to try to bring this
19 thing together and we did have not a room full of willing
20 participants but we ended up with resolution. So I think
21 that is a good thing for this Board.

22 CHAIRMAN EATON: Ms. Moulton-Patterson.

23 BOARD MEMBER MOULTON-PATTERSON: Thank you,
24 Mr. Chair.

25 Just very briefly one thing that I forgot to

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1 report at our last meeting that I wanted to bring up. On
2 March 3rd, I attended the Gardens for Kids L.A. kickoff
3 at the Tom Bradley Charter School and it was really
4 exciting to see how -- the enthusiasm that the children
5 and everyone had. Mayor Riordan was there and they were
6 very, very appreciative of the money that we had given
7 them and they were using it for recycled wood in their
8 gardens, and it was just a really positive event and I
9 really enjoyed it very much.

10 Also, I, along with other Board Members, visited
11 the Santa Clarita recycling facility, also attended
12 America Recycles Day meeting in the City of Long Beach
13 along with Board Member Jones, and also that same day
14 attended a recycled art show in San Bernardino that was
15 very, very interesting, Sue Butani coordinated, along
16 with Tom Estes was a guest on a Brea cable TV talk show,
17 Talk of the Town, and we talked about recycling.

18 Thank you.

19 CHAIRMAN EATON: Senator.

20 BOARD MEMBER ROBERTI: Yes, Mr. Chairman.

21 Two weeks ago I attended a conference the Los
22 Angeles Times sponsored by Tree People in Los Angeles
23 County Waste Department among others on recycling
24 education for kids, and when I went to make my little
25 talk they said now, please make your address remembering

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1 that the students are 8th grade. Well, I learned that in
2 politics you talk generally to your colleagues on a 6th
3 grade level, so that was an advancement.

4 (Laughter)

5 BOARD MEMBER ROBERTI: But actually it was very
6 good. It was very good and it was good to see young
7 people with all the enthusiasm that sometimes we who get
8 wrapped up in the day-to-day operations of waste
9 prevention might lose once in a while.

10 And yesterday I went to Los Angeles
11 International Airport to see their waste facilities.
12 It's a veritable small city and they have excellent waste
13 and recycling programs and they are participating with
14 the hyperion sewage where Los Angeles waste goes in order
15 to create sludge and slurry for composting throughout the
16 state of California. So I want you to know where our
17 slurry goes.

18 CHAIRMAN EATON: I think Kern County.

19 (Laughter)

20 CHAIRMAN EATON: In Kings they say. I have
21 nothing. Mr. Chandler, just a point.

22 MR. CHANDLER: Thank you, Mr. Chairman, and let
23 me just let my opening remarks kind of transition us into
24 the two agenda items that we have today and I'll just be
25 brief.

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1 What I want to try to do is just mention and set
2 some context from the standpoint that what we're
3 attempting to do today with the first agenda item, and I
4 understand there may be a question that you'll take up in
5 a minute as to what order you want to take the items, but
6 I'm referring to the overview on our procedures in
7 enforcement matters and the like is to basically let the
8 Board know that I'm hoping I can do this on a quarterly
9 basis, and not this particular hearing but to bring to
10 the Board outside our regularly scheduled board meetings
11 subject areas that I think would help particularly new
12 members of the Board become more familiar with the
13 nuances, the regulations and requirements on how we deal
14 with certain aspects of our requirements.

15 A couple of other areas that I think we could
16 all benefit from is I've asked Pat Schiavo to begin look
17 at preparing an overview on just how jurisdictions'
18 diversion rates are calculated. You know, we're getting
19 a lot of attention on the diversion rate calculation now,
20 but I think it's important for the Board to get kind of a
21 primer course 1-A on how does the economic factors into
22 the diversion rate and population factors in the
23 diversion rate, and we're also seeing a lot now on source
24 reduction as a way to effect one jurisdiction's diversion
25 calculation.

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1 So we'll be coming in over the summer months on
2 how the diversion rate itself is actually calculated by
3 statute, by regulation in a somewhat complicated
4 methodology but one on which I think you need to be
5 grounded in so you understand that whole area.

6 Similarly, Julie Nauman has indicated that she'd
7 like to come in and provide kind of an overview of our
8 permitting procedures dealing with issues that we've
9 grappled with before on completeness of application,
10 long-term gas violators, the CEQA component of an
11 application. So we'll be coming in not on the backs of
12 an individual permit or individual decision but an
13 informational setting like we have today to cover subject
14 areas like this.

15 I would encourage you and your staffs to let me
16 know if you have other areas that have perplexed you over
17 your months or years here that you think would benefit
18 where we can take some time away from the two-day drill
19 that we do each month on the many agenda items that we
20 cover and get some isolated, dedicated time to get into a
21 little more depth subject areas that would help educate
22 all of us and perhaps review some of the Board decisions
23 that were made in the early '90s and mid-90s that set the
24 framework on how we're operating today.

25 So with that I'll turn it back over to you,

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1 Mr. Chairman, and let Kathryn give the overview on the
2 item that we intend to cover today and allow you to take
3 up your question procedurally of which item you want to
4 take up first, but that is what we have today and what
5 will be coming in the weeks ahead.

6 Let me also add a minor note but very important.
7 I'm pleased to announce that just yesterday our
8 representative for the Attorney General, Russell
9 Hildreth, who is here today to answer any questions that
10 you may have of the Attorney General's office as it
11 relates to their role in enforcement matters, did file in
12 Superior Court of Stanislaus County the complaint that we
13 have been discussing in closed session as it relates to
14 the cost recovery actions and the other civil complaints
15 that we have relative to the Filbin tire fire last year.
16 And your offices will receive a copy of this complaint,
17 but we're very pleased to see this go forward and look
18 forward to receiving periodic updates from Mr. Hildreth
19 again in closed session on how that complaint is
20 proceeding.

21 Thank you, Mr. Chairman.

22 CHAIRMAN EATON: All right. There's no
23 continued business items. Because of the nature of the
24 items on today's calendar there will not be consent items
25 which takes us to our first item of business which will

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1 be discussion.

2 BOARD MEMBER JONES: Mr. Chairman.

3 CHAIRMAN EATON: Mr. Jones.

4 BOARD MEMBER JONES: Because we have one item
5 that is a consideration item and one item that is a
6 discussion item and they are the tire item -- Item 2 is
7 the consideration item. I'd like if the Board would
8 allow that we flip those because I do have to get out of
9 here to deliver a speech and consider -- I mean, since
10 it's only a discussion item and I've asked for some
11 pieces in my briefing, I don't know that I've -- I
12 haven't seen them yet, so I'm hoping I see them today. I
13 wouldn't be able to give any direction on Number 1 until
14 I got those things anyway, so I would like to see Item 2
15 heard first.

16 CHAIRMAN EATON: Any objection to Mr. Jones's
17 request?

18 BOARD MEMBER MOULTON-PATTERSON: That's fine
19 with me.

20 CHAIRMAN EATON: All right. Then we'll take up
21 the Item Number 2, and it should be noted as staff is
22 coming forward, Members, that just because an item is
23 scheduled for consideration, if there are questions or if
24 we leave some doubts or whatever, to reiterate what
25 Mr. Chandler had talked about. Because it's for

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1 consideration, we do not necessarily have to take that up
2 as consideration, especially in light of the fact that
3 this is the more specific of the two items. The first
4 item is a much more general structural type of scheme and
5 it may behoove us to just think about those items in a
6 context after hearing Number 1 as well and see how the
7 whole scheme fits in.

8 With that, I'll turn it over to Mr. Leary, who I
9 believe is going to make the presentation on Special
10 Waste in his first new capacity as such, so let's ask the
11 hard questions of him.

12 MR. LEARY: Thank you, Mr. Chairman. I think.

13 CHAIRMAN EATON: First begin with what is your
14 name.

15 (Laughter)

16 MR. LEARY: My name is Mark Leary, Special Waste
17 Division. Good morning, Mr. Chairman, Members of the
18 Board. As a testament to your faith in me and my good
19 judgment, I'm going to defer and allow staff to make the
20 presentation since they know what they're talking about.

21 CHAIRMAN EATON: We eliminated that procedure
22 over the past several months before you got here, but you
23 get one mulligan so it's okay.

24 (Laughter)

25 MR. LEARY: Now you tell me. Agenda Item Number

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1 2, consideration of approval of enforcement procedures
2 involving waste tire facilities, will be presented by
3 Martha Gildart and Keith Cambridge of the Special Waste
4 staff.

5 MS. GILDART: Good morning, Chairman and
6 Members. Martha Gildart with the Special Waste Division.

7 This item deals with the enforcement of the
8 Board's waste tire facility permit requirements and
9 conditions. It does not address the waste tire hauler
10 requirements nor illegal tire pile remediation and cost
11 recovery. Today we are presenting the process staff
12 follows to enforce the Board's permit regulations as it
13 has been applied since the August 1999 creation of the
14 Special Waste Division.

15 The item describes the actions available to
16 staff and the Board and presents a table laying out
17 ranges of penalties for various transgressions. Staff is
18 seeking Board direction on the appropriate level of the
19 penalty. We will be open for discussion on those dollar
20 values that you see in the table. Keith Cambridge of the
21 Waste Tire Facility Permitting Section will present the
22 item.

23 MR. CAMBRIDGE: Good morning, Mr. Chairman and
24 Members of the Board. My name is Keith Cambridge of the
25 Waste Tire Management Branch. Today I'll be presenting

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1 for consideration the approval of enforcement procedures
2 involving waste tire facilities.

3 I would like to start first my presentation by
4 presenting the enforcement statistics for the calendar
5 year 1999 and additionally since the inception of the
6 program. First, in 1999 we issued 64 cleanup and
7 abatement orders. We referred 51 administrative
8 complaints to the Legal Office for administrative
9 hearings, and six criminal complaints were referred to
10 the local District Attorney offices for local prosecutors
11 to take action.

12 Since the inception of the program in 1994, over
13 286 cleanup and abatement orders have been issued, 127
14 administrative complaints have been referred to the Legal
15 Office for appropriate action, 33 criminal complaints
16 have been referred to local District Attorneys' offices
17 for appropriate action, one inspection warrant was served
18 and one injunction for property access for remediation
19 efforts by CIWMB was done.

20 Since also 1994, we have cleaned up 5.8 million
21 waste tires by direct enforcement actions alone. That's
22 to say that the Board spent no monies in remediating
23 those sites. Tires were removed by the property owner or
24 operators as a direct enforcement action. In 1999 alone,
25 1.9 million waste tires alone were removed by the

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1 property owners or the landlords.

2 Concurrently in the last three years the Board
3 has had a program where we have given local enforcement
4 to the Local Enforcement Agencies or the local
5 governments such as code enforcement or police
6 departments to conduct site surveys or inspections of the
7 facilities that deal with waste tires since the inception
8 of the program for the last three years, and that's not
9 including current statistics. This is up to January of
10 this year. 1,433 tire sites have been surveyed or have
11 had inspections conducted by these local governments.
12 Also, they have had removed 11,400 waste tires by the
13 direct enforcement actions, again like the Board, where
14 we have gone after the property owners or the operators.

15 To kind of give you a breakdown as far as our
16 enforcement tools, the first level of enforcement that we
17 utilize here is a letter of violation. When we go out to
18 a site, conduct an inspection and violations are
19 observed, we issue a letter of violation to the property
20 owner and operator of the site.

21 In that letter of violation we state that we
22 were out at the site on a certain date, we noted the
23 violations and request that a corrective actions plan be
24 or corrective action measures be taking place if it's a
25 permitted site, or if it's an non-permitted site we

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1 require that tires be removed from the site by a
2 specified time.

3 This kind of gives you an idea of typically what
4 type of site we look at. This particular site was
5 remediated by the property owner after receiving a letter
6 of violation. This is a farmer in the Fresno area that
7 had tires illegally dumped on his property behind an
8 abandoned house. He was not aware of this until it
9 reached probably capacity of about 3,000 tires. Again,
10 another shot of this. This site was remediated by the
11 property owner.

12 If for some reason the property owner or
13 operator does not comply with our letter of violation,
14 the next level of enforcement would be our cleanup and
15 abatement order. This is issued to the operator and/or
16 property owner. It cites the outstanding violations. It
17 establishes a waste tire removal schedule and lists the
18 punitive actions if that schedule is not met. Again,
19 this is a shot of an operator that abandoned
20 approximately 26,000 tires. This is a -- after receiving
21 our cleanup and abatement order, this site was remediated
22 and he did remove the tires from the site.

23 The next level from the cleanup and abatement
24 order would be our administrative complaints process. If
25 the cleanup and abatement order is not abided by, we then

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1 write up a report for administrative complaint and we
2 refer to the Legal Office. They review it and see if all
3 the information is appropriate and it's referred to the
4 Office of Administrative Hearings. At that time,
5 penalties can be requested against the responsible
6 operators or property owners and we can also at that time
7 also work out time extensions one more time to remediate
8 sites if it appears that there can be some sort of
9 remediation done.

10 This particular site we took all the way to the
11 administrative complaint process. It was an auto dealer
12 down in the Fresno area. Approximately 100,000 tires
13 were located on his property. We were unsuccessful with
14 the letter of violation and the cleanup and abatement
15 order. However, once we reached the level of
16 administrative complaint and sought \$70,000 in the
17 complaint, the operator felt that rather than pay the
18 penalty, it would be more appropriate to spend the
19 \$70,000 in removing the tires. He did this with an
20 agreement between the Board and the operator, and he then
21 paid a smaller fine of \$500 but we did remediate 100,000
22 tires from the site.

23 Again, more shots of that particular site. It
24 was quite a -- after dealing with the last few fires,
25 this would be a significant fire in the Fresno area.

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1 CHAIRMAN EATON: Keith, are these pictures
2 you're showing us, were these all that had a waste tire
3 facility permit or were some of these where there is no
4 permit?

5 MR. CAMBRIDGE: None of the pictures I showed
6 you had permits.

7 CHAIRMAN EATON: Okay.

8 MR. CAMBRIDGE: If for some reason staff and
9 Legal Office feel that criminal report of investigation
10 is appropriate, in many instances we may either choose
11 concurrently with an administrative hearing or do
12 separately a criminal report of investigation to be
13 referred to the local District Attorney's office for
14 appropriate action. The only difference between the two
15 is -- the main factor is the fact that with the criminal
16 there is penalties and also the imprisonment in the local
17 jails. Sometimes in some instances that does pose a
18 factor to remediate the site by the operator.

19 This particular site we actually brought forward
20 to the Board about a year and a half concerning a tire
21 hauler. In a five-month time period he collected over
22 250,000 tires on the property. We took administrative
23 action against this operator. We were successful in
24 obtaining a \$300,000 judgment against him as well as the
25 property owner of \$150,000 but concurrently we also

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1 referred this case to the District Attorney's office of
2 L.A. County and received a 30-day community sentence
3 against the operator.

4 The main -- one of the main reasons for that
5 particular site where we wanted also to do criminal was
6 the fact that fearing that he would -- in many instances
7 where they collect the tires and then run, we would have
8 some sort of legal ramifications against this person for
9 a bench warrant being issued if he had done that.

10 Okay. What I would like to do now is take you
11 into our actual procedures for waste tire facilities and
12 how we handle the enforcement actions.

13 CHAIRMAN EATON: Before we get into that, we'll
14 ask if the Board Members have any questions.

15 Mr. Jones.

16 BOARD MEMBER JONES: The 11,400 tires that were
17 removed, they were removed by the -- they weren't our
18 dollars, they were somebody else's.

19 MR. CAMBRIDGE: Those were basically done with
20 the efforts of the LEAs or the local governments where
21 they took the enforcement action at the letter of
22 violation stage and the owner or operator -- and had the
23 owner or operator remove those tires.

24 BOARD MEMBER JONES: Without an LEA grant.

25 MR. CAMBRIDGE: Correct.

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1 BOARD MEMBER JONES: And then on the one, the
2 \$70,000 fine or the \$70,000 civil penalty --

3 MR. CAMBRIDGE: Yes.

4 BOARD MEMBER JONES: That was through an ALJ?

5 MR. CAMBRIDGE: Correct.

6 BOARD MEMBER JONES: And then the responsible
7 party decided -- negotiated that he would clean it up and
8 then what was left was about a \$500 fine. Was that
9 negotiated through the ALJ or through staff?

10 MR. CAMBRIDGE: I believe that was through the
11 Legal Office and staff. We determined it would be more
12 appropriate to have the tires removed, and he was
13 planning on spending a lot of money on attorney fees and
14 engineering fees to represent him at the hearing. So
15 rather than having him spend all that money, we felt it
16 would be more appropriate to have the money spent for the
17 removal of the tires, which he did.

18 BOARD MEMBER JONES: So do I. I don't have a
19 problem with that. I just want to know if we did that or
20 did it go back to an ALJ.

21 MR. CAMBRIDGE: I believe it was a stipulated
22 agreement but then it was presented in front of the ALJ.

23 BOARD MEMBER JONES: As a settlement?

24 MR. CAMBRIDGE: As a settlement. Okay.

25 CHAIRMAN EATON: Any other questions?

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1 How many inspectors do we have for this type of
2 work and are they -- there's not a distinction made
3 between unpermitted versus permitted; correct?

4 MR. CAMBRIDGE: No.

5 CHAIRMAN EATON: How many do we have?

6 MR. CAMBRIDGE: I believe we have five
7 enforcement staff.

8 CHAIRMAN EATON: Thank you.

9 MR. CAMBRIDGE: And then that's also not
10 including the local jurisdictions that have their staff
11 out there, too. I believe we have nine counties
12 concurrently that are doing enforcement actions for us.

13 BOARD MEMBER JONES: But of those, I know we've
14 been funding that program for three years and have seen a
15 little more interest every year. I think we've allocated
16 \$50,000 the first year and only had about \$120,000 worth
17 of response or \$100,000 worth of response, and every year
18 it's gotten a little bit more.

19 Is -- are you seeing more and more LEAs or code
20 enforcement agencies within counties starting to get an
21 interest in that program? Because clearly five state
22 inspectors are not going to take care of the state of
23 California.

24 MS. GILDART: One of the things we've heard from
25 some of the LEAs is they have not been interested in

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1 applying for the Board's LEA grant because it's a
2 one-year time period. It's not long enough for them to
3 actually hire a staff, train them and keep them on the
4 books. So there's some discussions going on how we can
5 expand interest in that program. It's sort of been a
6 limiting factor.

7 CHAIRMAN EATON: How long did they recommend?

8 MS. GILDART: Perhaps sort of an ongoing
9 subvention program where the Board would have a regular
10 funding level set, maybe based on population or something
11 so that they would have some sense of continuity for the
12 program. You wouldn't want to hire a staff and then have
13 to let them go at the end of a year or two years because
14 the grant terminated. There's some discussion -- some of
15 the counties who have not applied have expressed concern
16 because of that short time period.

17 BOARD MEMBER JONES: Have we included that
18 discussion in any of the pending legislation?

19 MS. GILDART: In some of the requests for
20 funding --

21 BOARD MEMBER JONES: So that people understand
22 that if this goes away we don't even have the five?

23 MS. GILDART: If we get an increase in funding
24 one of the possibilities to augment that local
25 enforcement program would be some kind of more regular

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1 schedule of support at the Board's direction obviously at
2 how we would administer that and at what level, but
3 something that could be more reliable to the locals.

4 BOARD MEMBER JONES: Okay.

5 MR. CAMBRIDGE: What I would first like to do is
6 run you through what happens when Board staff visits an
7 unpermitted waste tire facility, that is to say there's
8 no permit been issued to this tire site.

9 The violations have been documented or noted by
10 Board staff. The first thing we do, as I mentioned
11 earlier, is we issue a letter of violation. What we
12 typically do is we give up to 90 days to have those tires
13 removed from that site. In the past we have had -- what
14 we've asked is a corrective action plan be submitted and
15 giving them a time frame and then that corrective action
16 could give a lengthy time period of how long it takes
17 them to remove the tires.

18 Staff has found that in many instances, if not
19 most instances, the tires were never removed. We
20 basically need to tell them what time frame to remove the
21 waste tires. So in this letter of violation now we
22 issue, it gives up to 90 days for removal of the tires.
23 If staff goes back out there, the tires are still there,
24 a cleanup and abatement order is issued and the letter of
25 violation of backup is issued by the staff member himself

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1 or herself.

2 The cleanup and abatement order is then issued
3 by the Deputy Director of the Special Waste Division, and
4 in that cleanup and abatement order we give up to 180
5 days for the unpermitted waste tire facility the first
6 time, and if it appears that Board staff feels that the
7 tires are being removed and that the operator or property
8 owner is in good faith trying to remove these tires, we
9 will give one extension of up to 180 days to remove the
10 tires.

11 If for some reason Board staff feels that this
12 is not being complied with and the cleanup and abatement
13 order dateline has been exceeded, we then have the option
14 of going into either administrative, criminal or Attorney
15 General referral type of complaint. At that point in
16 time if -- generally the tires aren't removed, if they
17 are not removed, staff will then go back, visit the site.
18 And if we still document tires out there, we will then
19 make referral to our Waste Tire Remediation Unit for the
20 Board to step in and then clean up the tires, and they
21 bring that forward to you for approval. And if the
22 monies are approved, they do remediate the site.

23 CHAIRMAN EATON: So in essence it could take
24 over a year and three months to complete the process from
25 the initial time of letter of violation. If you have 90

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1 days with the letter of violation, 180 with the cleanup
2 and abatement order, and then if you so desire another
3 180 days.

4 MR. CAMBRIDGE: In theory, yes, it could take
5 that long. However, again the second extension is
6 dependent upon Board staff's determination. If we feel
7 that the operator is not making a good faith effort, we
8 will then take the action at that point and refer for
9 administrative complaint.

10 CHAIRMAN EATON: Is there any other reason other
11 than due process and reasonableness and other kinds of
12 things since the whole thrust seems to be to bring them
13 more into compliance as opposed to the penalty phase,
14 that any of these need to be shortened or looked at or
15 reviewed?

16 MR. CAMBRIDGE: Occasionally we do shorten the
17 cleanup and abatement order depending on the severity of
18 the case. In a highly dense or populated area or in some
19 sort of environmental nature, environmentally sensitive
20 nature area we may take quicker action. Some of the --
21 we've had a few, for example, on the cleanup and
22 abatement order where there's been a death in the family.
23 In one particular case both the mother and the father
24 died within three months of each other. So the Board is
25 sympathetic to their concern but we still want to see the

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1 tire site get remediated.

2 CHAIRMAN EATON: The reason why I ask the
3 question is because some people would say if one of these
4 went up, why did you give them 90 days or why did you
5 give them six months. And that was just an issue
6 hopefully in the general context we can kind of look at
7 in terms of what we may be able to do. During that first
8 90 days, they have 90 days to respond; is that correct?
9 There's no other time frame within there that they have
10 to at least acknowledge.

11 MR. CAMBRIDGE: Basically, the letter of
12 violation, once it's issued to the responsible parties,
13 states that they have to have the tires removed by that
14 90 days.

15 MS. TOBIAS: They also -- I think it's important
16 to add that they also have to cease taking tires at that
17 time, as soon as they have the first order, so that
18 doesn't go on. With the idea that this is a compliance
19 program, we have to give them enough time it's
20 reasonable. So to a certain extent it does depend on the
21 size of the pile and also depends on the location of the
22 pile.

23 Obviously something that has the potential to be
24 cleaned up more quickly and has some health and safety
25 issues such as proximity to residents, location that

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1 might be with power lines, public rights-of-way,
2 highways, those kinds of things are going to heighten the
3 need to get that done faster than giving them enough time
4 to get it off, but you still have to give them that first
5 period to say are you going to get your tires off your
6 site.

7 CHAIRMAN EATON: And I think that's good and
8 that's one of the reasons why I asked the questions
9 because as we saw I think in previous presentations as we
10 prepared for the tire legislation and others, that we're
11 finding more and more of these sites in urban areas,
12 close to the proximity, in some cases right in
13 individuals' neighborhoods and stuff.

14 So I ask the question not so much in the context
15 of is it right or wrong, but do we have to look at that
16 and is there alternatives that we can look at when we
17 come up with a situation that presents a much more threat
18 to the public health and safety, and that could also be
19 in a rural area. That could be next to groundwater,
20 stream or any of those kinds of things. So I think in
21 that context if we can kind of look and explore those,
22 some of those things as well.

23 MR. CAMBRIDGE: Okay. The next round is
24 basically if we go out to the same site or a different
25 site but the same operator, what we call basically a

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1 second offense. As you can see here violations are
2 documented or noted, we bypass the letter of violation at
3 this time and go directly to a cleanup and abatement
4 order. The cleanup and abatement order is shortened by
5 90 days and is only given up to 90 days to remove the
6 waste tires from the site.

7 If the site has not been cleaned up, again we
8 then decide whether administrative, criminal or Attorney
9 General referral would be appropriate at that time.
10 Also, upon the discretion of the Deputy Director of the
11 Special Waste Division, we then may also decide whether
12 or not we want to issue that administrative complaint or
13 criminal complaint concurrently with the cleanup and
14 abatement order. Again, it depends on the attitude or
15 what had happened on the previous offense of the
16 individual. If it's both and basically he or she is not
17 paying attention to what the Board directives are, both
18 actions may be sought at the same time versus negligence.

19 Again, if we go out there after that process has
20 gone, we still find the tires there, we make referral to
21 the Waste Tire Remediation Unit, and again if Board
22 approval sees fits and then the tires are cleaned up.

23 Again, these are penalties or what the
24 enforcement action has done is not to say we're not going
25 to take any cost recovery actions on these sites

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1 afterwards.

2 Again, same site or different site, same
3 operator, third offense, the violations are documented,
4 letter of violation again is bypassed, cleanup and
5 abatement order is issued. Now we only give 60 days, but
6 we also state that we have to do an administrative,
7 criminal or Attorney General referral at the same time,
8 where before it was an option by the Deputy Director.

9 And then again if after that point in time we
10 still note the violations there, again, as what you'll
11 see through the whole slide presentation, we make
12 referral to the Tire Remediation Unit for appropriate
13 cleanup if we can't be successful in having the property
14 owner or operator clean up the tires.

15 BOARD MEMBER JONES: I have one question.

16 CHAIRMAN EATON: Mr. Jones.

17 BOARD MEMBER JONES: I don't know if I didn't
18 hear it right. Same operator, different location or same
19 operator, same location?

20 MR. CAMBRIDGE: Same operator -- it could be
21 same operator, same location or same operator, different
22 locations because basically we feel that once we tell
23 that individual what to do and how to comply with the
24 law, if he does it in a different location which we have
25 had in the past he should know better.

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1 BOARD MEMBER JONES: All right.

2 CHAIRMAN EATON: Are they -- how many have we
3 had in the third category where they've been in the third
4 offense so to speak?

5 MR. CAMBRIDGE: To the best of my knowledge, I
6 believe it's been less than five, but we have had a few
7 occasions where operators have done the same action,
8 different locations.

9 CHAIRMAN EATON: Is there -- at the initial
10 stage, if there is for any reason a way to get them into
11 a permitted mode, their facility, assuming that obviously
12 they just were ignorant that they couldn't operate that
13 in that manner, are there those occasions as well and
14 does that take place during both concurrent with the
15 letter of violation, say, if it's a first offense? A
16 permitted piece of property. At what point do we try and
17 get them into the concurrent mode of licensing and some
18 of those things as well?

19 MR. CAMBRIDGE: It's staff's feeling not to put
20 anybody out of business. If it's a legitimate operation,
21 they want to operate as a waste tire facility, we
22 strongly recommend and strongly try to work with them to
23 get permitted at that particular site. However, most of
24 these instances, these are people who are some sort of an
25 illegal operation where they don't want to either bother

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1 with that and just made a quick dollar and moved on, or
2 in some respects they can't afford the financial
3 assurances if they're a major waste tire facility. Staff
4 again tries to work with them, but if they can't, they
5 need to either look elsewhere as far as whether it needs
6 to be a minor permitted facility or just not operate it
7 at that site.

8 CHAIRMAN EATON: Thank you.

9 BOARD MEMBER JONES: The number of violators you
10 have now that were -- had originally been operating
11 legally through the exclusions and then we removed the
12 exclusions, and I know it's taken some time to get these
13 guys and ladies legal, how many of these one, two and
14 three offenses are from that category? Or not one, but
15 let's say two and three.

16 MR. CAMBRIDGE: I'm not aware --

17 BOARD MEMBER JONES: Are those people in
18 compliance or they've gone out of business or one or the
19 other?

20 MR. BEGLEY: We have -- out of the list of
21 excluded facilities, I believe we've issued permits to
22 everyone except one or two that we're just about ready to
23 issue now, and I don't know of any multiple violators in
24 that category of those folks we sent the exclusions to.
25 Cody Begley, Waste Tire Branch.

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1 BOARD MEMBER JONES: All right. Thank you.

2 MR. CAMBRIDGE: The next round I would like to
3 take you through is for a permitted waste tire facility.

4 What you're going to see is we have separated
5 into what we call a minor violation and a serious
6 violation, not to get confused with a minor waste tire
7 facility and the major, but basically minor violations
8 are any violation other than storage capacity, fire
9 standards or waste tire standards. Those three
10 individual, we consider those to be a serious violation
11 for the permitted facility.

12 So again, other than those three, if it's a
13 minor violation that we document during normal routine
14 inspection of the facility or through a complaint, we
15 would go out to the site, write a letter of violation to
16 the operator, give them up 60 days to comply with that,
17 and the reason for the shorter time frame is basically
18 they're already familiar with our regulations and
19 standards and then work with them trying to get into
20 compliance.

21 If for some reason we go back out there after
22 the 60 days, observe the violation still, we then issue a
23 cleanup and abatement order, give them again a lesser
24 time period up to 60 days to comply with that violation.
25 Again as in the other, we can ask for them to submit for

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1 an extension to ask for an additional 60 days and that's
2 determined by the Deputy Director of the Special Waste
3 Division to decide if it's appropriate or not.

4 CHAIRMAN EATON: And does the same, shall we
5 say, principal apply in that situation that during that
6 time they're no longer able to take in tires?

7 MR. CAMBRIDGE: I believe we've looked at it
8 both ways. If it's a minor violation, they're allowed to
9 continue to take tires because a minor violation we're
10 talking about a facility's site security or reporting
11 requirements or something of that nature.

12 If it's a major or serious violation such as
13 storage capacity, then we usually tell them to cease
14 operation of the acceptance of tires until they can bring
15 that level down to the acceptable level or the permitted
16 level.

17 BOARD MEMBER JONES: Do we -- and I don't know
18 that we do, but are we going to have a standard that we
19 can give operators so that they know what is not so much
20 required but what is expected? Because through the eyes
21 of different people, things are looked at differently,
22 and we've had the discussion on one of the tire
23 facilities that was a problem that I had to go down or
24 that I went by and looked at and I agreed with the staff
25 on all except one issue and -- without getting into that

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1 issue right now because we all know about it -- is there
2 going to be a standard so that it's not arbitrary as to
3 what is a violation of health and safety and fire lanes
4 and what isn't?

5 You know, is that going to be something that is
6 valuable to give an operator so that when they think that
7 they're doing everything right because it makes sense and
8 an inspector comes in and doesn't see the same way, are
9 we going to have a standard or is the standard going to
10 change on a case-by-case basis?

11 MS. GILDART: Any standard of operation that we
12 enforce is going to be incorporated into regulation or it
13 becomes like an underground regulation and that's a
14 pretty big no-no by Office of Administrative Law. That
15 is what the permit regulations are intended to achieve,
16 is to set up a standard, a clear standard that operators
17 will understand they have to comply with.

18 If there is confusion, if there is debate over
19 the same issue, then that's where the Board may need to
20 open up the regulations and make modifications there. We
21 have a regulations package now that is intended to clean
22 up some of the problems that we have encountered over the
23 last several years of carrying out this program, and as
24 we learn more about how people operate we've tried to
25 incorporate some refinements in that new package.

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1 BOARD MEMBER JONES: The -- I think the words
2 that need to be in the regulations are probably in the
3 regulations, but I think that they may be broad enough
4 and interpreted in such a way that without a matrix or
5 without a schematic that would identify for operators and
6 at least one Board Member who aren't as smart as those
7 writers of legislation and regulation so that when
8 something is viewed as being normal and clearly not a
9 health and safety issue, it isn't interpreted by an
10 inspector because you can't walk to each one of those
11 tires they're in violation.

12 And I think that that is critical as somebody
13 that has been inspected for years that you know what the
14 playing field is because nobody is opposed -- not very
15 many people are opposed to complying, they just have to
16 know what the standard is, and I'm still not sure what
17 the standard is on that one issue.

18 If it's written in regulations in such a way
19 that it's still confusing, then you're right, we do need
20 to change the regulations.

21 CHAIRMAN EATON: Please continue.

22 MR. CAMBRIDGE: As I mentioned, cleanup and
23 abatement order would be issued to the -- for the minor
24 violations documented at a permitted site. Again, they
25 can ask for extension if it appears that the operator is

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1 trying to comply and just needs a little bit more time.

2 Again in the typical scenario, we would look at
3 administrative or criminal or Attorney General referral,
4 and if for some reason the problem can be corrected
5 through -- if that's not succeeded, if we can get action
6 taken by the Remediation Unit to either correct the
7 problem, we might look that way as in site security
8 offense and then bill later, but again basically it would
9 probably be resolved at the administrative or criminal
10 complaint level.

11 For those permitted sites with serious
12 violations, as I stated, basically we're looking at
13 permit capacity violations, fire standards or waste tire
14 storage standards, and basically what I mean by that is
15 some sort of a serious threat that should a fire or
16 something occur it would be difficult to put out. We
17 would go directly from the violations being documented to
18 a cleanup and abatement order, bypassing a letter of
19 violation and giving them the 60-day time frame to get
20 those tires or that problem corrected.

21 Again, as in anything else, if it appears that
22 they are trying to meet that deadline but just need a
23 little more time or something else, then we can give an
24 extension up to 60 days, and again that's done by the
25 Deputy Director level. If for some reason it's not being

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1 complied with, then we would go to the administrative,
2 criminal or Attorney General sanctions. And if that
3 doesn't appear to be helpful, then we would then take it
4 to the Remediation Unit and at that point in time the
5 Board may step in and decide to clean up the problem at
6 that site.

7 Again, if this is a permitted site then they are
8 also -- well, any site, they are required to cease
9 acceptance of tires at that particular time and not
10 create more of a problem.

11 CHAIRMAN EATON: So that would be whether it
12 would be the first offense and or the third offense or
13 second or whatever it might be.

14 MR. CAMBRIDGE: Correct.

15 CHAIRMAN EATON: In the administrative remedy in
16 this situation we'll go over in your item, Ms. Tobias,
17 generally which switch we go in.

18 MR. CAMBRIDGE: If it's a second offense at a
19 permitted site, whether it's a major violation or a minor
20 violation, the letter of violation is bypassed and it
21 goes automatically to a cleanup and abatement order.
22 Basically since the operator has already been warned once
23 before in a minor, it should go to that C and A order.
24 If it's a major, it automatically goes that way anyhow.

25 Again, 60 days is given to remediate the

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1 problem, and if the problem is still there then we take
2 those sanctions. At that particular time, again, the
3 Deputy Director may decide that we may want to do
4 criminal, administrative or Attorney General referral at
5 the same time the cleanup and abatement order has been
6 issued if this is a second offense. And again, if that's
7 not -- if the tires are not removed or the problem is not
8 corrected, then we make referral to the Remediation Unit
9 and it follows the same protocol.

10 And the last one is if we go to the permitted
11 site, third offense, et cetera -- hopefully we would
12 never reach that point with a permitted site, but if we
13 did, third offense, violations would be documented, we
14 bypass the letter of violation, a cleanup and abatement
15 order would be issued, 30 days to remediate, and it would
16 be an automatic referral for administrative, criminal or
17 Attorney General. And the other thing we would add in
18 here is bring it forward to the Board to hear if the
19 permit should be revoked or not. And again, if that site
20 is not remediated, we then send it to the Remediation
21 Unit for appropriate action.

22 Any questions at that point?

23 CHAIRMAN EATON: We -- with regard to the
24 permitted facilities, do we provide any training for
25 operators at all?

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1 MR. CAMBRIDGE: Not other than staff going out
2 there and initial inspection and -- I take that back.
3 During the initial permit phase when they are going out
4 for pre-permit inspection, staff generally goes over all
5 the applicable standards and laws and requirements
6 required by the operator such as reporting requirements
7 on the permit, as far as site security, how the tires
8 should be stored in compliance with their operation plan
9 and such.

10 When we do, if it is a major facility, an annual
11 inspection or a minor facility 30-month inspection,
12 typically staff will go over those issues again with the
13 operator.

14 CHAIRMAN EATON: Do you think -- and I'll tell
15 you where I'm going. I'm not trying to hide the ball or
16 anything. I'm trying to determine in my own mind whether
17 or not, as a result of the kinds of things we're going to
18 be asking in the legislature, do we need to establish a
19 training program and in your best, you know, opinion do
20 you think it would help if we were to have a training
21 program for operators, that we would have less of what we
22 have from '94 through '99 with a training program that's
23 established by us, and the obvious question is is it
24 mandatory or voluntary.

25 I'm trying to get this out as we go through

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1 this. If you have people who are operating, kind of
2 following up on what Mr. Jones says, if we have the money
3 and say once a year we have provided training just in
4 terms of standards or something as we do for LEAs, quite
5 frankly, would that help or hurt? I know it takes money,
6 but putting aside the question of money, which always
7 will be the second question that we always get, but I'm
8 kind of trying to figure out a scheme if the whole thrust
9 is compliance. Is that something that we should be doing
10 or considering? I'll throw it open to anyone.

11 MS. GILDART: We might be able to conduct some
12 workshops that people can voluntarily attend. The
13 problem is the people we have the most difficulty with
14 are not likely to attend such workshops.

15 CHAIRMAN EATON: If you made it mandatory, then,
16 that's what you're arguing.

17 BOARD MEMBER JONES: Or if you went to their
18 site or within their region and, you know, invited them
19 to come because I think I like the Chairman's idea. I
20 think that was one of my concerns with come up with a
21 matrix. We live with the rules every day, so they are
22 second nature to us and sometimes we can't understand why
23 people don't understand what it is we're trying to
24 achieve. And a lot of times that's just a lack of
25 knowing what the standard is.

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1 And these are not all our friend in Oroville.
2 They're really not. I mean these are people that are
3 trying to make a living and in a lot of cases have done
4 it for years under an exclusion and now they need to know
5 that the rules have changed and this is how the rules
6 apply to them and here's how you can operate legally.

7 I think if we can't be educators about this
8 stuff, then I don't know how we can be regulators about
9 it because people have to know the playing field so they
10 can operate and make a living instead of operating and
11 being in our dog house all the time. But yeah, I like
12 the idea. I would say do it regionally.

13 MS. TOBIAS: Mr. Chair, the Legal Office can
14 certainly look into whether we can require that as a
15 mandatory training as well, so we will look into that.

16 MR. LEARY: Mr. Chairman and Board Member Jones,
17 I think you're probably both familiar with a number of
18 other Cal/EPA agencies that have regulatory assistance
19 programs. I know CAL-OSHA has a complete separate side
20 of the house that does regulatory assistance that is
21 separate and independent of the enforcement programs.
22 Staff are available to go out and assist businesses,
23 assist them into compliance if requested.

24 I'm not familiar with the mandatory suggestion,
25 but there's no reason the tire program couldn't have

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1 something like that and might be a good use of resources.

2 BOARD MEMBER JONES: And it might be the first
3 thing in the first part of the penalty phase, that when
4 they've been identified as in violation, then part of the
5 fix of that violation is to attend a training.

6 CHAIRMAN EATON: As long as it's not comedy
7 driving school.

8 (Laughter)

9 MR. CAMBRIDGE: If I could also interject on
10 that same note, that's one of the purposes of the Local
11 Assistance, the environmental programs or the code
12 enforcement. One of the main factors that they are doing
13 is that they're now applying hauler brochures as well as
14 waste tire facilities standards as well as the local tire
15 dealers and such. So that's more of an educational
16 program that we're seeing and it's been very successful
17 at the local level.

18 CHAIRMAN EATON: Because if you go to a local
19 base kind of enforcement scheme of some sort, we have to
20 train whatever local personnel there would be; correct?
21 So --

22 MR. CAMBRIDGE: Exactly.

23 CHAIRMAN EATON: -- it might blend in there.

24 MR. CAMBRIDGE: Basically what I would like to
25 do is -- I apologize. It should actually read

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1 administrative complaint penalty schedule instead of fee
2 schedule. I made the changes on the other table, I just
3 didn't make it on this particular one.

4 We would like to go to the last stage of this is
5 to come up with a penalty schedule. Typically what we
6 have done --

7 CHAIRMAN EATON: Before we go into that and I
8 had mentioned this in my briefing. What about
9 crossovers? By crossovers I think Ms. Gildart
10 understands what I'm talking about. We've had situations
11 where there's a facility that is licensed or has a
12 permit, and that facility is either building a new
13 facility in a different location or a second facility in
14 some other part of the region or state, as the case may
15 be, or in the neighborhood, and a violation occurs at
16 that. Where do they fall? Do they fall into the
17 unpermitted side? Do they fall into the permitted side
18 with having knowledge of that in terms of being able to
19 keep people -- in terms of the scheme as we get there?

20 MS. GILDART: That would fall into the permitted
21 category based on that assumption that they should have
22 known the rules.

23 CHAIRMAN EATON: Ms. Moulton-Patterson.

24 BOARD MEMBER MOULTON-PATTERSON: Mr. Chairman,
25 I'm not sure of the terminology here. What is the cutoff

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1 like a major tire permit or whatever, numbers-wise?

2 MR. CAMBRIDGE: A minor facility permit is
3 between 500 tires and 4,999 tires, and then a major
4 facility permit would be 5,000 or more tires. The
5 difference between the two, the main difference is after
6 5,000 we refer to it as a major facility. We require
7 some sort of financial assurance in case the facility
8 closes up or there's some problems there, they have money
9 to back up the tire removal.

10 BOARD MEMBER MOULTON-PATTERSON: It just seems
11 to me when you're talking about major ones, anyway, with
12 the health and safety issue and what we've seen in the
13 past that if it were legal, some sort of mandatory
14 training or something would certainly be in order.

15 CHAIRMAN EATON: Mr. Jones.

16 BOARD MEMBER JONES: Keith, it's tires or tire
17 equivalents; right?

18 MR. CAMBRIDGE: Correct.

19 BOARD MEMBER JONES: And I think that because we
20 have some new Board Members, would you explain what a
21 tire equivalent is?

22 MR. CAMBRIDGE: Basically we say 5,000 or more
23 tires. An example would be 5,000 whole tires or tire
24 equivalents. Basically the current standard is 25 pounds
25 for a passenger tire equivalent.

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1 BOARD MEMBER JONES: 20.

2 MR. CAMBRIDGE: I believe it's in regulations
3 right now. We're changing it to 20. And basically a
4 typical passenger tire weighs approximately 20 pounds.

5 BOARD MEMBER JONES: The matrix, the standard.
6 The matrix. We don't even know what they weigh.

7 (Laughter)

8 CHAIRMAN EATON: You're going to training.

9 (Laughter)

10 MR. CAMBRIDGE: So basically if we had a ton of
11 tires, it's basically 100 passenger tire equivalency. So
12 therefore, if somebody shreds up the tires, we regulate
13 apparently down to one-quarter inch before we -- they
14 fall out of our regulations. So if somebody chips tires
15 or they're tires or tire treads or tire bails or
16 whatever, they all are considered tire equivalency.

17 CHAIRMAN EATON: And currently just for our
18 own -- sort of for the record, what are the exclusions
19 from having these types of permits? What kinds of
20 facilities would be excluded?

21 MS. GILDART: You mean like a tire dealer can
22 have up to --

23 CHAIRMAN EATON: Right. That will help us as we
24 look at the violations, and again just as a kind of
25 general background and context.

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1 MR. CAMBRIDGE: Okay.

2 CHAIRMAN EATON: And are those changing in the
3 regulations, I guess I should say.

4 MR. CAMBRIDGE: I'll try to do my best here.

5 CHAIRMAN EATON: Sure.

6 MR. CAMBRIDGE: The way the law is, tire dealers
7 and tire -- auto dismantlers can store up to 150 tires if
8 they can turn those tires over in a nine-day period. The
9 proposed regulations for tire dealers is allowing them --
10 if they are considered a good used tire, they're either
11 stacked or racked where we can visually inspect each
12 tire. We are allowing them to store those tires and not
13 be included as far as a waste tire. They're considered a
14 good used tire. If it's a -- I believe that's
15 basically -- if it's a -- we are --

16 BOARD MEMBER JONES: Tread removal.

17 MR. CAMBRIDGE: Retreaders can store up to 3,000
18 tires without obtaining a permit as long as they apply to
19 us and get a letter stating that they are a tire
20 retreader, as well as I believe we are still giving out
21 tire exclusions for enclosed movable containers.

22 CHAIRMAN EATON: Ms. Gildart.

23 MS. GILDART: There is a little confusion in
24 that the regulation package the Board approved back in
25 October has not yet worked its way through the full

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1 administrative law procedure. The staff have been trying
2 to enforce those terms and conditions as much as possible
3 under the proposed regulations. So, for instance, the 20
4 versus 25 pounds, that shows up in there. So if some of
5 these definitions, for instance, with the used tire
6 dealer and stacked and racked, we're trying to educate
7 the regulated public on that issue and bring them into
8 compliance with those proposed standards.

9 CHAIRMAN EATON: Do we have any kind of
10 information with regard to retreaders at all? Do they
11 have to notify us? You say they have an exclusion, but
12 is there some way we keep informed of what they're doing?
13 In some of the other areas we have a notification tier or
14 something along those lines. Not that I want to move in
15 there, but how do we know?

16 MR. CAMBRIDGE: It's my understanding they
17 submit an application as a retreader. We then send a
18 letter back saying we acknowledge that. At the same
19 time, when time permits, if it's a retreader or a tire
20 dealer, we still put them on a 30-month inspection basis,
21 or if it's a major site that has a lot of tires, over
22 5,000, we will try to still drop by and inspect them
23 annually to make sure that they are still complying with
24 the proposed regulations.

25 CHAIRMAN EATON: Are most retreaders in our

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1 state dealing with large sized tires as opposed to
2 passenger type?

3 MR. CAMBRIDGE: Basically what I have seen is
4 truck tires, tire casings.

5 CHAIRMAN EATON: Thank you.

6 MR. CAMBRIDGE: The last part which we would be
7 presenting here is the administrative complaint penalty
8 schedule. Typically what we have done in the past is we
9 have sought \$2 per passenger tire, \$5 per truck tire. If
10 we go out to a facility and they have not cleaned up the
11 tires after an order has been issued, we would then take
12 administrative action and it would be dependent on that
13 number of tires. So as to say if you had a 5,000-tire
14 site, there would be a \$10,000 fine we would go after.

15 CHAIRMAN EATON: I forgot to ask one question.
16 What are the bonding requirements for a major and a
17 minor, if any, or what is our financial assurances?

18 MS. GILDART: It's based on the total number of
19 tires, the maximum number of tires expected to have at
20 the site, but you're asking do we do a \$2 per tire bond
21 requirement?

22 CHAIRMAN EATON: I remember we've had a certain
23 number of things that have come through where individuals
24 have asked that they not have to pay the full amount up
25 front even though they may eventually get to \$40,000 or

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1 what have you, but what is the financial assurance scheme
2 that we have in place and are there other things that we
3 should be considering? And by that I mean exactly that,
4 as I look at the whole comprehensive scheme of
5 enforcement and compliance and what have you.

6 In a situation where we had -- what was it,
7 Windmark?

8 MR. CAMBRIDGE: Windberry?

9 CHAIRMAN EATON: Windberry, you know, what did
10 they have? If we would have been stuck with this site
11 and I understand the insurance paid for that.

12 MR. BEGLEY: Unfortunately Windberry didn't have
13 a permit. The insurance company wasn't something that we
14 required.

15 CHAIRMAN EATON: If they were a permitted
16 facility.

17 MR. BEGLEY: Then the closure plan would be
18 based on the number of tires stored there, then they
19 would have to come up with some sort of financial
20 mechanism that would clean up the site if they failed or
21 left the site, so a bond --

22 CHAIRMAN EATON: So what do we ask of them now?

23 MR. BEGLEY: What we do when they send a permit
24 application is we send that part over to our financial
25 assurance people and they work with them to determine

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1 which is the best financial mechanism for their
2 particular operation, whether they want to go with a bond
3 or some sort of insurance.

4 CHAIRMAN EATON: Mr. Jones.

5 BOARD MEMBER JONES: Is -- if I were to open a
6 major tire dealership or a major tire facility and it --
7 wouldn't my closure requirement be what would it cost to
8 remove the permitted capacity and take it to the most --
9 or the closest or most reasonable end use so if -- it
10 would be how much to shred it, put it in a trailer, for
11 the sake of -- not to make anybody nervous but for the
12 sake of argument -- leave here and take it to Kiefer or
13 L&D as my two options. Wouldn't it be the -- what that
14 weight would be, what the cost of processing would be and
15 then what the dump fees would be, and that is how in the
16 past it's been calculated?

17 MS. GILDART: We're going to ask Garth Adams of
18 the Financial Assurance Section to give you some more
19 particulars.

20 MR. ADAMS: Good morning, Board Members. Garth
21 Adams for the record.

22 As I'm hearing discussion, basically the
23 financial assurances is based on a closure plan that the
24 operator submits as part of the package, and the cost can
25 vary based on distance to a disposal facility, end use,

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1 loading costs, method of disposal, shred, bail or off to
2 what was Oxford. So a plan is submitted as part of that.
3 It can vary on price per tire or ton depending on what's
4 in the facility. If they have some larger tires, they're
5 a little bit harder to handle and the costs are usually a
6 little bit more per tire or ton to deal with the large
7 sized tires. A lot of it has to do with haul distance to
8 a facility that may be permitted to take tires either in
9 another major waste tire facility or a landfill that's
10 going to accept tires.

11 CHAIRMAN EATON: Just as long as we're here and
12 in this category, is -- does the option, once we have
13 financial assurances, do we have any ability if our costs
14 for cleaning up or closure of that site is different from
15 the day that the deal was made, so to speak, financial
16 assurances? Is there an automatic escalator clause? It
17 is based on today's current prices? So for instance, if
18 we have a facility and you determine it needed \$20,000 of
19 closure assurances are needed, in five years is it still
20 \$20,000 where it may cost us \$30,000 and is that
21 something we need to look at?

22 I'm just trying to figure out a way to keep the
23 state and the taxpayers of the state whole and it's not
24 based upon our past practices or anything was done wrong,
25 just kind of looking at the whole scheme of things. And

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1 then my second question will be, and if not I think
2 Senator Roberti will probably ask this question having
3 come back in, what then if we do come up with financial
4 assurances is our first option? Always the cheapest
5 option which is i.e. bury it in the ground or move it
6 into a reuse or productive beneficial use and do we have
7 any authority to do that?

8 BOARD MEMBER ROBERTI: You've asked the question
9 so good.

10 MR. ADAMS: I think I can handle that first one
11 pretty easily. There is a built-in escalator for
12 financial assurances. If an operator were to say my
13 closure plan for these tires is \$20,000, annually they're
14 required to inflate the cost estimates with a price
15 inflator for inflation; and if it was a bond, it's
16 adjusted annually or insurance or letter of credit,
17 basically come in annually to up that.

18 If the cost of the tires to be removed and
19 disposed of was not estimated to be the proper amount,
20 the financial assurance is letter, credit or bond does
21 not go above the face amount. So if for some reason it
22 kicks in a lot higher than the inflation factor, we're
23 basically stuck with the amount of the mechanism itself.

24 MS. TOBIAS: Mr. Chairman, I might also add that
25 some permits, sometimes we know an operator is going to

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1 increase over time. So they may start with one amount
2 and come up, so they would be coming in to get those
3 changes made in their permit in which case their
4 financial assurances would move up each time. Also, if
5 an inspector goes out and sees a larger pile, that's when
6 you come back through the process, financial assurances
7 and such, would be told that they were over that so they
8 would also be getting some kind of enforcement or notice
9 that they needed to change their financial assurance as
10 well. So there are a couple different ways to come in on
11 it. Would the Board want --

12 CHAIRMAN EATON: We're pretty tight in terms of
13 the financial assurances then.

14 MS. TOBIAS: I think so. I think it's always
15 possible to slip through the cracks. Would the Board
16 want to hear what the different mechanisms are for
17 financial assurance or is that something -- yes.

18 Mr. Adams, if you could just talk about a couple of the
19 different mechanisms.

20 MR. ADAMS: Sure. We have an option for a
21 letter of credit, surety bond, insurance, trust fund, and
22 I believe the proposed regulations that are out there for
23 major waste tire facilities has altered the trust fund
24 build-up formula that was in there. Basically we've
25 addressed that situation of an operator trying to build

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1 up over time when they already had the tires there.
2 That's basically being dealt with in the proposed package
3 and is not going to be looked at very favorably any
4 longer.

5 I kind of think I forgot what Mr. Roberti's
6 question was that you asked for him.

7 BOARD MEMBER ROBERTI: I've got another
8 question. Which is the methodology that we are more apt
9 to use, percentages or -- what I'm also concerned about
10 is that to the extent that it's possible, we treat -- I
11 don't know. The word is probably not offenders,
12 offenders or people that are having enforcement action
13 against roughly the same to the extent possible? So what
14 I'd like to know roughly what is the financial assurance
15 that we generally in most cases would require.

16 MR. ADAMS: It's up to an operator to basically
17 for their own business practices, their decision is to
18 submit one of the options available to them.

19 BOARD MEMBER ROBERTI: Don't we reject on the
20 trust funds? I believe we have rejected. Haven't we
21 rejected some?

22 MR. ADAMS: On the trust fund --

23 CHAIRMAN EATON: Remember there was that one
24 about a year and a half ago they wanted to come in at
25 \$20,000.

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1 BOARD MEMBER ROBERTI: Almost my first meeting I
2 remember that we rejected a proposal.

3 MR. ADAMS: Correct. I recall the conversation
4 and I know which site you're talking about. Back when we
5 first started doing regulations and tire facilities five
6 years ago, we were anticipating a lot of folks coming in
7 and starting piles, but as we found out through the
8 program a lot of people already had them. So a lot of
9 them picked a trust fund as an option with a five-year
10 build-up. The facility that you're talking about came in
11 for a new permit, wanted to start out with 20 percent
12 down basically the first year, and the Board had some
13 discussions and then basically asked the operator to put
14 up 40, basically 40 percent and then fund the rest.

15 Now the regulations that are being proposed to
16 have a -- use a trust fund, it's all up front.

17 BOARD MEMBER JONES: But we limited.

18 MR. ADAMS: You --

19 BOARD MEMBER JONES: We got 40 percent of the
20 money but we limited the amount -- he was permitted for
21 65,000 tires or whatever the number was, but he could
22 only have tires on site that equated to the funding level
23 of the trust fund. Remember, it was as he paid in, then
24 it was allowed to go up. Rather than come back every
25 year for a permit revision, the condition of the permit

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1 was you can't have 60,000 or whatever the number was
2 until it's fully funded. So we did it in increments.

3 MR. ADAMS: Correct. You had a ramping up, and
4 when he hit a certain threshold another kick-in of
5 payment of the trust fund payment was there until he
6 reached his total permit capacity. We had a permit
7 condition crafted to address that build-up so he wouldn't
8 ever be behind on the financial assurances to cover the
9 number of tires that were on the ground.

10 CHAIRMAN EATON: With regard to the second
11 question, and there are kind of three components so I
12 don't expect you to be able to answer all three
13 components because there is a component that deals with
14 or would affect the potential legislation that's now
15 before the legislature. There is also a potential
16 component that affects the monofill regulations, and
17 there is another component that affects kind of what
18 we're doing here between the different divisions, and
19 that being that if in the financial assurances the issue
20 is the financial assurances could be based on the
21 cheapest disposal option available, and that might be
22 landfilling of those tires.

23 Under the monofill regulations it very well
24 could be, if it was played out and there was not a
25 monofill close by and under the regulations, which was a

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1 debate that took place here, are they banned from
2 landfills or not, our financial assurances then would --
3 may not be adequate given the fact that if you have an
4 option that says they can go to a landfill, they really
5 can't because our other regulations have basically cut
6 that option off.

7 So I'm trying to get some consistency, not here
8 because no one has done anything that's wrong or
9 anything. I'm just trying to get kind of a discussion
10 going, and more importantly the public policy issue as
11 whether or not this Board ought to be creating a
12 situation of financial assurances where the cheapest
13 option is a non-beneficial use of putting it in the
14 landfill, irrespective of the mining operation but
15 options of trying to get to a more beneficial use and
16 that's just a general discussion so you can comment on
17 it.

18 I don't expect you to have an answer, but it's
19 something I wanted to bring up because there are
20 conflicts there that could take place, that need to be at
21 least worked out so that we're consistent with the
22 monofill regulations versus the financial assurances
23 versus whatever public policy we as a Board ultimately
24 decide to go with, and based on the report I thought most
25 of it was to try and push it in a productive or

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1 beneficial or whatever term you want to use other than
2 putting them in the ground. I think that was a kind of
3 way that if we ban them in the monofills, at least some
4 of the argument is that we really -- we have financial
5 assurances. So are we exposing ourselves to an
6 inconsistent regulation?

7 MR. ADAMS: Actually, I can touch on that issue
8 briefly. It may help you with your discussions on this
9 whole issue later on. A closure plan is submitted as
10 part of the major waste tire facility. If the plan
11 addresses a disposal at a landfill very near the site, we
12 would have an amount of money, say \$20,000 as you
13 indicated, and now the regulations change, the
14 transportation costs of hauling off to a farther facility
15 would change, and that would require a change in the
16 closure plan to address the change of the cost estimate
17 and that would trigger an additional requirement of
18 having financial assurances to cover it.

19 So the closure plan basically triggers the
20 change and the funding level and whatever the next
21 alternative is, whether it be to a monofill or to a
22 recycler or to a crumb rubber facility, whatever it may
23 be.

24 CHAIRMAN EATON: That's what I'm saying.

25 MR. ADAMS: And obviously that would take into

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1 consideration not only transportation costs but any fees
2 associated with disposal or accepting at that facility.

3 MR. CHANDLER: Garth, to use your example or
4 Mr. Eaton's example, if a closure plan came in and
5 identified that should the site need to be cleaned up,
6 their proposed solution would be to send the tires to
7 let's say Oxford -- you used that as an earlier
8 example -- and Oxford goes out of business, you have a
9 mechanism in place to trigger resubmittal of a new
10 closure plan with new financial estimates inasmuch as the
11 original closure plan is no longer in effect to be
12 executed?

13 MR. ADAMS: Yes. The regulations basically
14 require at any time if your disposal option is no longer
15 available to you or the costs increase, you have so many
16 days to resubmit a plan and basically adjust it to your
17 new destination facility. So that's basically all in
18 place to accommodate that, and that certainly could
19 address the monofill issue.

20 CHAIRMAN EATON: I'm not trying to -- I'm just
21 trying to get a consistent position. As a Board we've
22 always tried to push to get these tires during any kind
23 of cleanup to a more productive use than obviously
24 putting them in the ground and that was the reason for
25 the exploration or the dialogue.

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1 BOARD MEMBER JONES: Mr. Chairman.

2 CHAIRMAN EATON: Mr. Jones.

3 BOARD MEMBER JONES: The -- I think one thing,
4 since we ended up here, the tires that normally come out
5 of cleanup like this are normally not suitable for end
6 use, positive end use because they've been sitting in a
7 pile for a long time. That's why the disposal option to
8 a landfill was always the cheapest and most readily
9 available. But in fact, if we are -- I can understand if
10 we have to be consistent with our closure. If they've
11 identified Oxford as the closure, we need to do that, but
12 if the discussion is going that through our monofill regs
13 we have banned landfills from accepting tires, then I
14 have a real problem with that because that did not go
15 through the Administrative Procedures Act.

16 We had a workshop here last week where people
17 voiced their opinions about the fact that that many tires
18 were going, you know -- I think I promote positive use on
19 tires as much as anybody in this building, but when you
20 don't have -- when you have 32 million tires in the flow
21 and you've got 10 million tires in use in positive
22 uses --

23 MS. GILDART: 19.

24 BOARD MEMBER JONES: How much? Was that
25 including Oxford?

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1 MS. GILDART: Take away four.

2 BOARD MEMBER JONES: Take away six. Well, it's
3 the same numbers game we play every time we see tires
4 with numbers. So somewhere between 19 and 14 tires of
5 positive use and that leaves us 12 million tires -- or 12
6 or 20 -- that need to be land -- need to be taken care of
7 and disposed of other than piles, and if we use the mono
8 regs to create a landfill ban because I've got a serious
9 problem with that because I don't think that goes to the
10 heart of the Administrative Procedures Act. And for a
11 board that is that critical about our role in CEQA, our
12 role in the people's right to know, to ban tires through
13 monofill regs to help produce markets is not something I
14 voted for or would vote for.

15 CHAIRMAN EATON: Well, my questions weren't
16 directed then to those specifics. Mine was a much more
17 general policy of what can we do as a board that if we
18 are somehow saddled with these kinds of tires, how do we
19 get them into a position where we can put them into a
20 much more beneficial use. If the issue is that these are
21 much like the old time legacy piles by which -- by
22 everyone's account across the board, with the exception
23 of a few hold-outs, seem to think that these can somehow
24 be moved to more productive uses, and I'll just use that
25 as a very general term, then they would fall into the

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1 category of the legacies and so on and so forth.

2 And that was what I was trying to get at in the
3 situation with regard to a situation where I would hate
4 to have someone come up to the Board and say you've got
5 all these wonderful things for productive uses but all of
6 a sudden in your own financial assurances you're burying
7 them. As long as there's reason in that, what we should
8 do is try to encourage, not discourage, those kinds of
9 things. So it was really that exploration and not
10 getting into the monofill discussion at all.

11 That seems like a good note sort of to take a
12 break on, if you ask me, and I know we didn't get to the
13 fee but I know that I'm getting some looks from the staff
14 and the court reporter for a break. So we'll take a
15 short break, and I think Mr. Jones will probably have to
16 leave us at that time so we'll resume at 11:30. How is
17 that? Thank you.

18 (Brief recess taken)

19 CHAIRMAN EATON: All right. Mr. Cambridge, I
20 think you've got one last bit of business; right?

21 MR. CAMBRIDGE: Correct. Okay. If I can start
22 off by basically going back to the administrative penalty
23 schedule, this is for the administrative complaints that
24 we refer staff when we go out there and determine that
25 the violations have not been corrected.

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1 Staff will draft up the administrative complaint
2 and refer it to the Legal Office for appropriate action.
3 At that point in time staff makes a recommendation on the
4 amount or the fine and Legal Office looks at that, and
5 between the staff and the Legal Office we determine the
6 appropriate fine to be sought.

7 Typically what we have done in the past is we
8 have looked at the amount of tires at the site after the
9 cleanup and abatement order has not been complied with,
10 and if the tires remaining still, as like mentioned
11 earlier, 5,000 tires were still at the site and they were
12 passenger tires, we would typically go after a \$10,000
13 penalty.

14 We were a little concerned with the fact that
15 this may appear as a cost recovery type of case, so what
16 staff and Legal Office is proposing is that we set a
17 penalty schedule and basically this is dependent upon the
18 severity of the site, what location, how many times the
19 offense has been, and basically a lot of other factors
20 are involved. Therefore, there's kind of a, if you will,
21 bottom to high figure that the rates of the fine may vary
22 significantly but it gives the staff and Legal Office the
23 flexibility of determining the appropriate fine and
24 schedule there.

25 What I would like to do is run you through.

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1 Basically this first slide here shows unpermitted waste
2 tire facilities and is broken down into minor sites and
3 major sites, the first two being unpermitted minor sites
4 and the bottom one being the second offense, et cetera.
5 And basically what we're saying on the top line, it says
6 that 0 to 30 days delinquent, 30 to 60 days delinquent,
7 60 plus days delinquent. That is after the deadline of
8 the cleanup and abatement order has been bypassed.

9 So if we issue a cleanup and abatement order and
10 give a deadline of March 31st, staff goes out there
11 within the first month and determines that there are
12 tires still at the site. We would then prepare an
13 administrative complaint and seek that defined schedule
14 between 500 and 2,000 if it's an unpermitted minor waste
15 tire facility at the first offense.

16 CHAIRMAN EATON: And that would be after nine
17 months?

18 MR. CAMBRIDGE: Correct, but after the deadline.

19 CHAIRMAN EATON: But it wouldn't be for nine
20 months.

21 MR. CAMBRIDGE: Right. And then we would then
22 follow the schedule all the way through. I could read
23 it. Basically, 30, 60 is \$1,000 to \$5,000; 60 days plus
24 the deadline of the cleanup and abatement order would be
25 \$5,000 to \$10,000. That amount then increases for the

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1 second offense significantly from \$2,000 to \$5,000,
2 \$5,000 to \$10,000 and so on.

3 And then for unpermitted major facilities, we
4 then upped the ante a little bit to \$5,000 to \$10,000,
5 \$8,000 to \$20,000, \$20,000 to \$200,000. And the second
6 offense is substantially more. Again, like I said, this
7 is a proposed -- what staff and Legal have felt. We have
8 all put our heads together and felt this might be the
9 appropriate level of fine for this type of penalty.

10 Following that, the next slide shows for
11 permitted waste tire facilities, and again the same time
12 frame, 0 to 30 days, 30 to 60 days, 60 days plus
13 delinquent after the cleanup and abatement order has been
14 issued and the deadline has been bypassed, and it's for
15 permitted minor sites.

16 And it's broken down there as far as the top
17 above the dotted line is reflected by italicized "S"
18 which is the serious violations. Those are more
19 significant violations, as I mentioned earlier, such as
20 permit capacity, storage standard or fire prevention
21 measures. Those fines are more significant than the
22 fines below the dotted line, which are the minor
23 violations that have not been corrected by the permitted
24 site. And then it goes on as far as the second offense
25 of a minor facility and then the first offense and second

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1 offense for major facilities.

2 Then lastly -- I'm sorry. That was for the
3 minor offenses and then this is for the major sites. And
4 again, the most significant would be the major waste tire
5 facility that's a permitted site, second offense. After
6 the 60 days of cleanup and abatement order you would be
7 looking somewhere between \$100,000 to potential \$500,000
8 penalty that we would be seeking.

9 Basically that concludes my presentation. We're
10 open for questions.

11 CHAIRMAN EATON: Senator Roberti.

12 BOARD MEMBER ROBERTI: I guess let's take the
13 maximum on a permitted major site. \$100,000 to \$500,000
14 after 60 days delinquent just strikes me as a very wide
15 range. I think -- myself, I think there's a benefit
16 going in for someone before they become an offender to
17 know what the penalty is roughly, and \$100,000 to
18 \$500,000 is just a very big range. And I'm not so
19 concerned about the how much or how little as I am about
20 uniformity of it.

21 I don't know if I want to give an Administrative
22 Law Judge that kind of discretion. Well, mainly because
23 people then don't know ahead of time what the penalty is
24 and I think that's a deterrent. And secondly, there's
25 just too much opportunity for too great digression from

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1 one offense to another depending on who your judge
2 happens to be.

3 MS. TOBIAS: Mr. Chair.

4 BOARD MEMBER ROBERTI: Now -- yeah.

5 MS. TOBIAS: I think what that tends to reflect
6 is also the number of tires on the site.

7 BOARD MEMBER ROBERTI: Oh, okay.

8 MS. TOBIAS: So that's one of the reasons that

9 you see that is not so much because there would be a lot
10 of discretion there, but it would more reflect the number
11 of tires on the site as to whether you were at the lesser
12 or the greater level.

13 BOARD MEMBER ROBERTI: Do we have guidelines on
14 that, as to what point \$500,000 kicks in and at what
15 point \$100,000?

16 MR. CAMBRIDGE: If I could interject one thing,
17 I believe, and if Legal could correct me if I'm wrong.
18 This is a table set for staff and the Legal Office to set
19 the guidelines. This is not to refer to the
20 Administrative Law Judge for the appropriate --

21 BOARD MEMBER ROBERTI: Okay.

22 MR. CAMBRIDGE: -- table.

23 BOARD MEMBER ROBERTI: So we're still going to
24 have one more step --

25 MR. CAMBRIDGE: Correct.

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1 BOARD MEMBER ROBERTI: -- for guidelines for the
2 Administrative Law Judge.

3 MR. CAMBRIDGE: What this would be is basically
4 when we draft up the administrative complaint, staff and
5 Legal Office would then determine between those two
6 guidelines, between \$100,000 and \$500,000 depending on
7 the severity of the problem, the number of tires, how
8 many times this has happened with this individual what
9 the appropriate fine might be in that realm between
10 \$100,000 and \$500,000, and then that administrative
11 complaint would then list that particular fine and be
12 sent to the Administrative Law Judge or administrative
13 hearing.

14 BOARD MEMBER ROBERTI: Do we have those
15 guidelines drafted yet or that's the next step?

16 MR. CAMBRIDGE: That would probably be the next
17 step. We don't have anything in particular as far as the
18 exact particulars on each site.

19 MS. TOBIAS: These would be regulations
20 eventually. So if the Board agrees with the concept, we
21 would still put them in regulations which would still
22 come back to the Board. I should also point out that as
23 Mr. Cambridge said, these are what we're going to use as
24 charging guidelines. The judge can still basically apply
25 anything that he or she feels is appropriate under the

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1 statutes. So for instance, we could basically recommend
2 \$100,000 because that's based on the number of tires, the
3 third offense, all of that. And if the judge decides
4 they could go to the statute and do \$10,000 a day or
5 \$5,000 a day, whatever is appropriate under that,
6 multiply it out the number of days and that's the judge's
7 prerogative.

8 BOARD MEMBER ROBERTI: But I would tend to think
9 on issues such as this if we have guidelines that are set
10 by our past experiences that most judges -- I know
11 they're free, but most of them --

12 MS. TOBIAS: We would hope so.

13 BOARD MEMBER ROBERTI: Most will follow the
14 guideline because naturally they don't want to be out of
15 kilter either.

16 BOARD MEMBER JONES: Mr. Chairman.

17 CHAIRMAN EATON: Mr. Jones.

18 BOARD MEMBER JONES: I think that the Senator is
19 right when we should have the guidelines. If we're going
20 to approve this thing as the range, we should see what's
21 going to trigger those things. I would feel more
22 comfortable -- even though I do have to leave the room
23 here about 20 minutes ago -- I would feel more
24 comfortable coming back to this issue, seeing the written
25 guidelines and then seeing some kind of guidelines for

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1 the things we had talked about as far as standards, how
2 the regulations when it says "piles" and this and that is
3 interpreted so that there is some leeway.

4 Because I think that in setting those standards,
5 especially on the truck tires that I keep talking about
6 that were all the same size stacked against a wall,
7 there's some OSHA considerations to be aware of and some
8 human health and safety issues that need to be considered
9 as to why you stack tires upright against a wall as
10 opposed to laying down on the ground. And while that may
11 seem sort of stupid, if you've never lifted those tires,
12 you can appreciate what 150 pounds of dead weight weighs
13 to try to lift up and that's why they stack them against
14 the wall.

15 So I would like to see some guidelines on that
16 and I have a question on the resolution because the fact
17 that we do need to see some guidelines tells me we don't
18 have to vote on this. We can get them and we can hear
19 the item again. But I have a question on the last
20 whereas that says, "The Board may issue a complaint to
21 any person to whom civil liability may be imposed
22 pursuant to this article. If the party has waived the
23 right to a hearing or if the Board and the party have
24 entered into a settlement agreement, the order shall not
25 be subject to review by any court or agency." What's

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1 that mean? I know how I read it, but I'm hoping I don't
2 read it as it means.

3 MS. WILLIAMS: Linda Williams. And actually
4 that's a reference to a specific PRC section, more of a
5 summary actually under PRC 42852. Essentially this is
6 saying that the judge's decision is final and the proper
7 review for a final decision from the Administrative Law
8 Judge is in the Superior Court. So the -- any settlement
9 that also proceeds as a matter of this situation, as a
10 result of this particular situation, also is viewed as
11 final and binding. So it would be similar.

12 I think the best analogy I can come up with is a
13 binding arbitration. I have no knowledge of the
14 legislative history on this particular section, but if
15 you would like, I can just read you this particular
16 section.

17 BOARD MEMBER JONES: Well, actually, that would
18 go to my issues of wondering what the sections are and
19 what our options are. So maybe when we get the analysis
20 that the Senator needs and I need on these fines, maybe
21 you can include that because it seems contradictory in my
22 way of thinking that if you are starting down the path of
23 talking to the ALJ and, in fact, don't go there and have
24 your own settlement between staff and a proponent or
25 somebody, the way I read this is that this settlement is

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1 between staff and that person and we don't have any way
2 to look at it and that's how I read it. Because it says
3 that it would be entered into a settlement agreement
4 tells me that we're the ones who are settling and I don't
5 know why the Board wouldn't be involved in that
6 settlement other than, you know, staff, but that's how I
7 read it. That's problematic for me.

8 MS. TOBIAS: We can bring that back in the rest
9 of this item and address that.

10 BOARD MEMBER JONES: Mr. Chairman, since we're
11 not going to vote on this thing today, I would ask you to
12 excuse me. No matter what, I'll be back by 2:00. I
13 promise I'll be back by 2:00.

14 CHAIRMAN EATON: Mr. Cambridge, is there any --

15 MR. CAMBRIDGE: That's the end of the
16 presentation.

17 CHAIRMAN EATON: I just -- sorry.

18 (Interruption in the proceedings)

19 CHAIRMAN EATON: Excuse us. We're experiencing
20 technical difficulties. All right. Experienced some
21 technical difficulties, and we will rewind back.

22 I was just asking if you had finished with --

23 MR. CAMBRIDGE: I finished my presentation, but
24 for clarity can I ask the Board exactly what they're
25 asking staff to do as far as the future?

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1 CHAIRMAN EATON: I think that there were -- and
2 I'll try to paraphrase what I think Mr. Jones's concern
3 was, and Senator Roberti can -- since he's here. I'll
4 try and do the best I can.

5 It was basically an issue as to whether or not
6 there's some additional work in terms of guidance,
7 documents that need to be promulgated or worked up, and
8 is it better for the Board to then have those before them
9 at the same time that they actually vote on that fine. I
10 think that's what Mr. Jones was saying. I'm not sure if
11 that's consistent with what Senator Roberti was saying
12 and I'll let him kind of speak. So I don't think there
13 was anything good or bad, that they wanted to see the
14 whole picture.

15 And also there's going to be some other
16 presentation this afternoon in Item 1, which kind of
17 gives us another overview of some of the switches that
18 could take place and that was one of the reasons why in
19 working up the agenda Item Number 1 was to go first. So
20 due to a courtesy that was extended, we took up Item
21 Number 2.

22 You should not feel at all that anything that we
23 as a board stated was any reflection poorly upon the work
24 or the work product. I think they want to kind of look
25 at it kind of as a whole. Is that clear?

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1 MR. CAMBRIDGE: That's understood. This
2 actually, as I mentioned, the latter part was proposed.

3 MR. CHANDLER: I think I can expand on this.

4 CHAIRMAN EATON: Sure.

5 MR. CHANDLER: From my perspective, I think we
6 have the need to provide more clarity here specific to
7 the criteria that you were looking for. So Keith, let me
8 make be -- let me make an attempt to try to on the record
9 provide the kind of direction that I would hope the staff
10 would go back and provide.

11 You've laid a proposed -- Kathryn used the term
12 "bailment schedule" for violations. To use the example
13 that was used earlier, if you're a permitted major waste
14 tire facility on your second offense and you're over 60
15 days delinquent, there's a range here that could be
16 considered anywhere from \$100,000 to \$500,000.

17 What the Board is looking for is what is the
18 criteria that you use when you and Suzanne Small used to
19 sit down and say this is quite a bit over the amount of
20 waste tires that ought to be permitted here. We're kind
21 of leaning to the high side, so we're going to propose
22 \$500,000.

23 You have in your experiences, in your own mind,
24 admittedly not yet written down, at least I haven't seen
25 it, criteria that you use to fall within these ranges.

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1 And what the Board is saying is that they would like to
2 better understand and see just exactly how that staff and
3 the Legal Office come to a recommended point within this
4 range and what criteria you utilized to reach that
5 conclusion.

6 MR. CAMBRIDGE: Okay.

7 MR. CHANDLER: When you come back with that, you
8 will give this proposed bailment schedule and the
9 underlying criteria for these ranges, and that's what is
10 yet to be provided here; is that correct? Did I
11 capture that accurately as I understood the dialogue?

12 CHAIRMAN EATON: I believe that's --

13 MR. LEARY: Mr. Chairman, wasn't there also a
14 second direction, though, from Board Member Jones
15 concerning the interpretation of the standards and some
16 sort of guidelines for -- as it relates to this tire
17 stacking issue as the one example where there's a
18 variability interpretation of what the standards really
19 are and that we need to develop as part of this follow-up
20 further guidelines on how to interpret those standards?
21 And I think we have some ideas on how we might approach
22 that.

23 CHAIRMAN EATON: He'll be back at 2:00, so we
24 can get some clarification on that when he gets back on
25 that. That may have very well been the second component.

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1 MR. LEARY: I wasn't the only one that heard
2 that? Thank you.

3 CHAIRMAN EATON: Sometimes even though we sit
4 next to one another we don't hear one another up here.

5 I just have one other thing that I would like
6 to -- and I don't know if you want to go as far as saying
7 giving direction or what have you, but I know that this
8 bailment schedule goes to the judge or where does it go?

9 MS. TOBIAS: This is going to be used by the
10 staff.

11 CHAIRMAN EATON: Okay.

12 MS. TOBIAS: And then they will know that we
13 have this. It will go up to -- our complaint or our
14 order will go then to the Administrative Law Judge.

15 As I understand from staff, this would also be
16 used where a complaint goes straight to a municipal court
17 and they're also the ones who have asked for this. So it
18 would be used in-house by staff, then the ALJ or the
19 Administrative Law Judge would have the ability to
20 basically change the fine if he or she so decides.

21 This will also go to the municipal court where
22 they may be setting a fine, particularly where the CHP
23 has cited someone and they are looking for guidance for
24 what those fines might be.

25 CHAIRMAN EATON: One issue -- it's not an issue,

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1 that's not right. One of the things I would like to have
2 checked into is that is this schedule here consistent
3 with the enforcement provisions of the legislation that
4 we approved in the tire report? Do we know that?

5 MS. TOBIAS: Yes.

6 CHAIRMAN EATON: I'm not sure that that was --

7 MS. TOBIAS: We will check that and get back to
8 you.

9 CHAIRMAN EATON: We surely wouldn't want a
10 bailment schedule that doesn't reflect that.

11 MS. TOBIAS: That doesn't reflect that.

12 CHAIRMAN EATON: It's just sort of tying the
13 loose ends. It has nothing to do with the presentation
14 or anything. I just want to make sure we all have that
15 as we move through.

16 MS. TOBIAS: I'm hoping or assuming that's the
17 case, but we will definitely check into it.

18 CHAIRMAN EATON: Sure. But you don't want to do
19 that, as you well know. Okay. You're closing up your
20 books so that closes your presentation. It's like you're
21 going home like Mr. Jones, and we thank you very much for
22 showing up today, Mr. Leary. Thank you very much, Martha
23 and Mark and Keith, and then also Cody for standing by
24 and doing the computer work.

25 We will -- and I don't have any slips; is that

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1 correct? Okay. And hearing none, then we will close out
2 this item and the Board's action will be to have staff
3 bring back the items per the direction indicated in the
4 discussion and we will break for lunch and come back at
5 1:45 to take up Item 1.

6 (Lunch recess taken)

7 CHAIRMAN EATON: Welcome back, everyone.
8 Hopefully you had an enjoyable lunch. I notice the
9 quorum is present, so I'll start with my left.

10 Mr. Jones, any ex parte communications to report
11 over the lunch hour?

12 BOARD MEMBER JONES: Actually Paul Relis, Steve
13 South, Evan Edgar, all about AB 939 and then spoke to
14 about 90 of them about AB 939, SB 1066, and how smart it
15 is to go with numbers verifying programs as opposed to
16 the quality of programs.

17 CHAIRMAN EATON: Ms. Moulton-Patterson.

18 BOARD MEMBER MOULTON-PATTERSON: None.

19 CHAIRMAN EATON: Senator Roberti.

20 BOARD MEMBER ROBERTI: None.

21 CHAIRMAN EATON: And I just had a little
22 bantering with John Cupps, all in jest, of course.

23 Item Number 1.

24 MS. TOBIAS: Good afternoon, Chairman Eaton and
25 Board Members. I'm Kathryn Tobias, Chief Counsel to the

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1 Board.

2 The Legal Office is here today to provide an
3 overview of the Board's numerous enforcement activities,
4 and first before I start, I'd like to acknowledge Steve
5 Levine in my office to my immediate left for pulling this
6 agenda item together along with the rest of the Legal
7 Office. It's been a very beneficial process for us, and
8 I hope it will be for the Board as well, to be able to
9 step back and be able to look at the enforcement process
10 overall. So I think we've been appreciative of this
11 opportunity.

12 I'd like to start by discussing the adjudicative
13 hearing process and then -- which was part two in your
14 agenda item on page 19, so that's where we'll be
15 starting. And then we will all then present the various
16 enforcement programs at the Board. We reversed the order
17 because in doing some run-throughs on this agenda item it
18 became somewhat clear to us that there were a lot of
19 questions about how the adjudicative hearing process
20 worked, and since a lot of the enforcement programs that
21 we have involve that adjudicative hearing process it
22 seemed like it might be worthwhile to explain that first
23 and then go through the different enforcement programs.
24 So that is where we will begin.

25 The agenda item itself examined the four main

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1 types of actions which may be taken by the Board and we
2 will show on the next overhead in just a second and the
3 laws which govern these actions, including the
4 Bagley-Keene Open Meeting Act and the rulemaking
5 procedures of the Administrative Procedures Act.

6 I'm going to spend the majority of my time today
7 on the Administrative Procedure Act's formal and informal
8 hearing rules for adjudicative actions. This section in
9 your agenda item also addresses the main adjudicative
10 actions taken by the Board in each category and
11 identifies the due process requirements for each of those
12 actions.

13 On the overhead at this time are the four
14 different actions which basically the Board can be using
15 at any given time, what are called legislative actions
16 where the Board is formulating general rules to be
17 applied to future individual cases, and the easiest
18 example I think which will immediately show you how this
19 works is the promulgation of regulations, so when the
20 Board is adopting regulations they're acting in a
21 legislative capacity.

22 The second one is non-adjudicatory
23 administrative actions, and these are ones that do not
24 rise to such a level of significance that a judicial
25 style of hearing is required, and the example for those

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1 is the approval of loans and grants. So if we're talking
2 about those types of administrative actions, you might
3 pass back to an example of when the Board is approving
4 loans and grants.

5 Adjudicative actions, which I'm going to be
6 discussing in a moment, is where the Board applies those
7 general rules to a specific or particular case, weighs
8 the evidence put before the Board and makes a decision
9 which affects the legal interest of an individual. This
10 requires an evidentiary hearing, and the examples that
11 we've been through recently are the imposition of
12 penalties for permit violations and the denial or
13 revocation of a permit.

14 Then there's ministerial actions where the Board
15 has no discretion and it must take a particular action as
16 described by a statute or regulation. Normally these
17 types of actions are delegated to the Executive Director.
18 An example includes in a permit arena, for example, the
19 approval of non-significant permit modifications. So
20 those generally do not come to the Board because they're
21 ministerial actions as delegated to the Executive
22 Director and that in turn delegated to the Deputy.

23 Another example is in the area of procurement of
24 goods and services. That includes the awarding and
25 executing of contracts, inter-agency agreements and

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1 change orders of \$50,000 or less for
2 consultant-professional services. So again, those are
3 considered at a lower level of not necessarily needing
4 the Board to approve every single one of those, so that's
5 delegated to the Executive Director.

6 I think it might be easiest at this point if you
7 turn to attachment two. That's the chart that has the
8 green across the top, and I think there were copies of
9 this in the back and it might help if you're referring to
10 that chart as we go along. As you see on the left-hand
11 side of that chart, the Administrative Procedures Act
12 contains two types of hearing procedures, formal and
13 informal. I'm going to basically describe the
14 difference.

15 The determination as to whether a hearing is
16 formal or informal is made in the statute, so that is not
17 anything that the Legal Office or the Board decides.
18 It's set out in the statute itself. It depends on the
19 particular wording of the statute calling for that
20 hearing, and I'll come back to that as we go through
21 this.

22 The adjudicative due process requirements for
23 informal hearings is contained in the Administrative Bill
24 of Rights, again up on your next overhead, which also
25 applies to formal hearings. So let me run through some

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1 of these requirements. Again, this is an informal
2 hearing so you would be on the bottom part of that chart
3 with the green, and these would be the requirements for
4 that type of hearing.

5 There has to be notice and an opportunity to be
6 heard including the opportunity to present and rebut
7 evidence. The Board has to make available a copy of the
8 governing procedure including a statement as to whether
9 the formal hearing requirements applicable, so that makes
10 sure the respondent or person in front of the Board
11 understands what their rights are. The hearing must be
12 open to the public. No decision maker may have
13 previously acted as an investigator, prosecutor or
14 advocate in that situation, and decision makers are
15 subject to disqualification for bias, prejudice or
16 personal interest.

17 Once a decision is made, the decision must be
18 made in writing. It must be based upon the
19 administrative record and it must include a statement of
20 the decision's factual and legal basis, and the Board's
21 decision may not be relied upon as a precedent unless the
22 Board so designates, but if they do designate it as a
23 precedent they have to index the decision for public
24 review.

25 So these informal hearings are meant to be a

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1 little bit more simple, if you will, and more expeditious
2 than formal hearings and do not require the presence of
3 an ALJ or an Administrative Law Judge.

4 When you look at the formal hearings, that's the
5 top part of the chart, those formal hearings include all
6 the rights that were -- that I just called out in that
7 Administrative Bill of Rights, but the difference is that
8 with the formal hearings there is an ALJ, an
9 Administrative Law Judge, who is going to preside at the
10 hearing. These formal hearing procedures are only
11 mandated where the legislature has expressly referenced
12 the formal hearing chapter of the Administrative
13 Procedures Act or certain sections. So again, it's not a
14 choice that's to be made -- or there is a choice to be
15 made but it's the legislature who makes that choice.
16 It's not the Board or it's not Board staff.

17 The Administrative Law Judge that's presiding,
18 the Board does have a choice here and there are two
19 choices. The Board can either decide to hear the case
20 with an Administrative Law Judge or the Board can decide
21 that the Administrative Law Judge would hear the case
22 alone.

23 Where the Board hears the case with an ALJ, the
24 ALJ presides over the hearing, rules on evidence and the
25 admission of evidence, and advises on matters of law.

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1 And let me give you an example of where that occurred in
2 the RPPC hearing that we did. I think it was in January.
3 So this will give you an example of why there's an ALJ at
4 these hearings.

5 When the Board held the RPPC penalty hearing in
6 the Chemlite case, the respondent claimed that the
7 insignia on the bottom of the bottle was the industry
8 standard for determining the manufacturer of the bottle.
9 So our counsel objected to the admission of those bottles
10 as evidence for demonstrating industry standard because
11 the respondent did not lay a proper foundation for that
12 claim and for putting that evidence into review. So the
13 ALJ, after that discussion, basically ruled that the
14 bottles were not admissible for that purpose.

15 I offer that as an example to show that these
16 issues of whether evidence can come before the Board to
17 be taken into account for their decision making is fairly
18 complex. It's something that is based on some very basic
19 rules of evidence. The Board would retain all their
20 other powers. So when the Board hears the item with the
21 ALJ, the ALJ is going to rule -- going to deal with
22 evidence advising on matters of law, but otherwise the
23 Board will be functioning as it normally does, listening
24 to the information that comes forward to them as put in
25 the record and then the Board still makes the final

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1 decision.

2 Where the ALJ hears the case alone, all the
3 powers that you have are then given over to the ALJ. The
4 Board may elect to have the ALJ either issue a formal --
5 a final or proposed decision, and if the ALJ issues a
6 proposed decision, the Board may either adopt or reject
7 that decision, reduce or mitigate the penalty, or make
8 minor clarifications and adopt as modified.

9 Questions on this?

10 BOARD MEMBER JONES: I have a question.

11 In my briefing we talked about the fact that
12 some of these -- some of our existing programs have been
13 grandfathered in prior to the Administrative Procedures
14 Bill of Rights and that they would be treated
15 differently, but I don't see a -- I don't see where those
16 have been identified as to -- because we always gave
17 permits out, we always had the power to revoke permits.
18 There are a whole lot of other programs that we had in
19 place prior to the Administrative Procedures Act, and I'm
20 wondering -- this sort of looks to me like this is from
21 the Procedures Act forward.

22 MS. TOBIAS: I guess the way I would like to
23 answer that, and let me see if this answers your question
24 or your comment. I think what we were talking about in
25 the briefings is that we talked about -- and this is what

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1 I was going to end this section with. There is a
2 legislative trend with respect to these hearings, and the
3 trend is that there is more and more compliance with the
4 formal hearing procedures for all adjudicatory
5 proceedings. So the direction that things are going to
6 is to require an ALJ on more and more decisions that are
7 being made.

8 The APA expressly provides that the formal
9 hearing chapter of the Act applies to all adjudicative
10 proceedings conducted by agencies created on or after
11 July 1st, 1997, unless the statutes relating to the
12 proceeding provide otherwise. So again, there's a trend
13 the legislature is carrying out that requires more and
14 more formal proceedings, but you still have to look back
15 to the statute each time to see what the statute itself
16 requires.

17 BOARD MEMBER JONES: And I don't want to keep
18 interrupting your program, but that was -- and I'm
19 thinking that you're going to deliver this to me, if not
20 today at some other point. My question was I wanted
21 to -- because I'm not an attorney I wanted to see the
22 statute and what our options were as a board because I am
23 a firm believer that this is a franchise I am not
24 inclined to give away any of our authority. So I'm not
25 sure that -- how that's going to be answered, but I'm --

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1 but if the deadline was 1997, that was the day that that
2 Administrative Procedures Act went through?

3 MR. LEVINE: The Administrative Procedures Act
4 was revised in 1997 and in those revisions they made
5 clear that for all boards constituted after that date, if
6 the statute was silent as to which procedures to follow,
7 they would automatically have to follow the formal.

8 BOARD MEMBER JONES: Right. But we're not in
9 that because --

10 MR. LEVINE: Since we are not, the only time we
11 have to follow the formal is if our Public Resources Code
12 statute --

13 BOARD MEMBER JONES: Says it.

14 MR. LEVINE: -- specifically says, and if you
15 look in your attachment two in the formal sections, we do
16 have listed the specific PRC sections for each hearing.
17 And if you go to those specific sections, you'll see one
18 of two references. One reference would be to Section
19 44310 of our Waste Management Act, which is a solid waste
20 facility section that does talk about the APA formal
21 hearing being required. The other thing you may see in
22 each of those sections is a direct reference to either
23 chapter five of the APA itself or 11057 to 517 of the
24 Government Code which is the core of the formal APA
25 requirements. And that's why we have those listed

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1 separately under formal.

2 MS. TOBIAS: Let me also add I think, just again
3 referring back to the -- perhaps the broad overview that
4 we got, is I think -- as many of you know, I come from a
5 more local government type of background and one of my
6 questions to the staff from the beginning of this item
7 was why are local governments, you know, not having to
8 have these ALJs with them. Local governments revoke
9 permits, they do a lot of the same kinds of things, and
10 the best answer we had with this is that the State has
11 upped the due process requirements and that there is just
12 a continuing trend that when these types of issues where
13 the individual has a vested right in front of the Board
14 to have more protections, more due process protections
15 that make sure that they get to have the evidence
16 introduced that they want before the Board, how they
17 handle the witnesses and all those requirements that are
18 in the adjudicative bill of rights.

19 So I think one of the things that you will see
20 or will learn as this item proceeds is that there's
21 really a different level of due process requirement
22 that's taking place at the state level than there is
23 really at the local government level at this point. So
24 although I don't think that necessarily helps explain it,
25 it does explain there is a difference and you really just

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1 have these two going in two different tracks.

2 At the bottom of the slide I think --

3 CHAIRMAN EATON: Let me ask one question. Have
4 we had any situation or has it even been relevant here
5 where the second of the Administrative Law Judge options
6 is where the ALJ hears it alone and then we subsequently
7 adopt or reject? Has that ever been the situation?
8 We've never had that situation that I can remember in my
9 short tenure here.

10 MS. TOBIAS: The Board has not chosen to
11 delegate or basically say the ALJ, you hear this. I will
12 in a moment come back to the third line on that -- on
13 this chart where you see at the bottom there's a third
14 line that says "formal with independent hearing officer,"
15 and I will come back to that because I think that might
16 explain a little bit of what the Board probably thinks of
17 when there's an ALJ acting by themselves.

18 One of the other requirements, just to finish up
19 this overhead under the formal hearings, as I mentioned
20 there's a right to compel, be it production of witnesses
21 and documents, and there is -- other rights that are
22 included are the rights to prehearing discovery,
23 conferences and motions. So for example, under discovery
24 includes written discovery, questions referred to as
25 interrogatories, depositions, document productions. So

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1 you'll see an element of the judicial aspect in here that
2 really formalizes this ability to bring your evidence and
3 to bring the respondent before the Board.

4 So when you see the times where the staff is
5 sitting up there and going through asking other staff the
6 questions and establishing it for the Board, that's
7 really what's happening there is that we're setting out a
8 case. The -- often the other side is going to be able to
9 ask to do that as well.

10 Also includes as I mentioned prehearing
11 conferences, if that's requested by either party, or a
12 prehearing conference with the ALJ to work out different
13 questions about what may come before the ALJ and the
14 Board, which is used to address procedural or other
15 issues prior to the hearing. Also can include a
16 settlement conference which is -- the purpose of which is
17 to attempt to settle the matter without hearing.

18 MR. CHANDLER: Kathryn.

19 MS. TOBIAS: Yes.

20 MR. CHANDLER: Under these formal hearings
21 you've indicated the Board's limited options or two
22 options are either to hear the matter with the ALJ or
23 have the matter deferred to an ALJ to hear it alone.
24 Where's the option, if it applies here, of having a
25 matter referred to the Attorney General's office?

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1 Because you referenced that earlier but it appears that
2 the Board has only two options.

3 MS. TOBIAS: Let me talk about this first
4 because that's actually -- that would be once the -- let
5 me explain it a different way if I could, Ralph, and come
6 back to it. If you'll make sure again you're on the page
7 with the green top on it. Let me talk about this third
8 line that's on the bottom here.

9 I've talked about so far formal and informal
10 hearings. The last line, the formal with an independent
11 hearing officer, is where our administrative civil
12 penalties for waste tire reside, if you will, and so they
13 are really a separate animal or a separate process that
14 takes place. They are not in the formal or informal
15 requirements for the APA. They are a different kind of
16 process.

17 What's required in the statute for this and
18 these -- this is a tool that several other state agencies
19 have to pursue administrative civil penalties, and what
20 it requires is that rather than the Board sitting as the
21 decision maker, it requires an independent hearing
22 officer. So in the case of administrative civil
23 penalties, the hearing, if you will, with the respondent,
24 with the alleged offender, does not come to the Board
25 where you're hearing it with or without an ALJ or the ALJ

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1 is hearing it without you. It is going to an ALJ because
2 the statute requires an independent hearing officer.

3 So it is neither of those options that I said to
4 the Board that under a formal hearing either the Board
5 can hear it with an ALJ or they can send it to an ALJ.
6 That is not why the waste tires with the administrative
7 civil penalties are in front of an ALJ. They are in
8 front of an ALJ because the statute requires an
9 independent hearing officer, and I think this is really
10 the first time that we're laying this out to you in this
11 way to show you how it differs from these, and I can
12 understand and, in fact, it's caused quite a few
13 discussions in the Legal Office as to how we show this
14 and why this occurs.

15 CHAIRMAN EATON: Was that part of the original
16 statute or was that a subsequent change or that was part
17 of the original? It's --

18 MS. TOBIAS: It was part of the original
19 statute.

20 CHAIRMAN EATON: And that was like if we looked
21 at the schedule, irrespective of what we -- what was in
22 that schedule, that schedule was going to be pertaining
23 to this particular action?

24 MS. TOBIAS: Right.

25 CHAIRMAN EATON: I mean eventually it works its

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1 way through that, what you called a bailment or fee
2 schedule. That was for this category right here?

3 MS. TOBIAS: Right.

4 CHAIRMAN EATON: Okay.

5 MS. TOBIAS: Let me add something here.

6 CHAIRMAN EATON: Mr. Jones had a question as
7 well.

8 BOARD MEMBER JONES: Did it end up in statute,
9 which I'm assuming are our regs?

10 MR. LEVINE: I'm not sure if there were regs on
11 this particular issue.

12 BOARD MEMBER JONES: That's what I would like to
13 know, if the legislation actually said we don't want the
14 Waste Board to hear this, we want the ALJ to hear it, or
15 if through the promulgation of regulations here it became
16 the option of choice for a sitting board. And that is
17 critical -- fundamental to my issues here. It is
18 absolutely fundamental to my issue.

19 MR. LEVINE: If I may, Board Member Jones.
20 Steven Levine of the Legal Office. The Public Resources
21 Code section we cite, 42852, is from the legislature
22 Public Resources Code and it begins similar to other
23 sections we have in our Waste Management Act talking
24 about there being a hearing presided over. Instead of
25 saying an ALJ it says an independent hearing officer and

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1 then lists the formal sections of the APA. It then goes
2 on to say something that does not exist really in any
3 other section of the Waste Management Act but there is
4 similar language in other agencies such as the Department
5 of Fish and Game.

6 It goes on to say in making the determination,
7 which would be the factual determination, the hearing
8 officer, referencing the independent hearing officer,
9 shall take into consideration a number of factors. It
10 then goes on in subsection B to say after conducting the
11 hearing, the hearing officer, again the independent
12 officer, shall issue the decision, which again would be a
13 dramatic departure from the formal requirements where the
14 Board is acting as the fact finder and the Board is
15 issuing the decision and the ALJ is only ruling on issues
16 of law. So it is explicit in the Public Resources Code.

17 BOARD MEMBER JONES: And I don't have a problem
18 with that if that was a negotiated legislation. What
19 goes to the heart of my issue and concern is we get reg
20 packages in front of us all the time that say a whole
21 lot of things and sometimes we don't pick up certain
22 things, and I'm not prepared to give up Board authority
23 through a reg package because I didn't pick something up,
24 and that's my only concern. I think this is a good
25 document. I'm still -- I still need some more stuff that

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1 we had talked about so that I can break it out. I don't
2 need it for today because this isn't a consideration
3 item, but I need it because it goes to the heart of the
4 integrity of this Board and it's critical for me.

5 MS. TOBIAS: I understand that and I do think
6 this is part of the benefit of hearing this type of item
7 which I think Ralph has said -- or Mr. Chandler has said
8 that we will be bringing back. This really helps to do
9 this in the context of the whole enforcement program as
10 opposed to explaining to you before one item or another
11 comes in. It enables you to look at the whole program
12 itself.

13 Let me just -- not to take away from your
14 concern because I think I do understand, but let me read
15 to you something that I think helps perhaps a little bit.
16 This is a report of the Senate Interim Committee on
17 Administrative Regulations and Adjudications, and
18 interestingly enough this is from 1955. It basically
19 addresses the use of an independent hearing officer, and
20 I offer this as just some background that number one,
21 this is not necessarily a new concept but number two, I
22 think that it helps explain some of the underlying
23 concern that the legislature or its consultancies,
24 whoever is working on the legislation itself, might be
25 looking at as they try to decide how these various

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1 programs either come before the Board or go to somebody
2 else.

3 It basically says in the section of the
4 Administrative Procedures Act dealing with hearings there
5 are two fundamental purposes. The first and more
6 apparent is that the assurance is that all hearings will
7 provide due process of law and will be conducted in
8 orderly fashion, and I think all of you are used to that
9 requirement. The second and more difficult to achieve is
10 the separation of the prosecuting and adjudicating
11 functions within the agency.

12 Remember this is old, too, so we probably don't
13 see a lot of this at this point, but what they were
14 dealing with years ago was to say that the practice of
15 most of these agencies is to delegate to the Executive
16 Director, if you will -- or to the -- I guess to the
17 Board Chair -- excuse me there -- to delegate to the
18 Board Chair the duty of conducting the hearing, passing
19 on motions and ruling on the admissibility of evidence.

20 The presiding members of most of the
21 professional boards are not familiar enough with the
22 rules of trial procedure to resolve legal questions of
23 any complexity. Desiring to reach a correct result, the
24 presiding member of the Board is forced to seek legal
25 advice and the natural person to whom he turns is the

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1 prosecutor or the agency's attorney. The prosecutor thus
2 seems to share in the fact-finding process. This is
3 extremely undesirable both because of the potential
4 danger to the respondent and because of the appearance of
5 unfairness even though there be no actual unfairness.

6 So again, I don't think we see this very much
7 these days but that's the kind of thing you're dealing
8 with when the legislature decides to recommend or require
9 in a statute an independent hearing officer.

10 So as I've mentioned I think to some of you
11 individually before as we've talked about this tire
12 program, the administrative civil penalties program is a
13 different kind of program.

14 It is recommended, I think, over the last 15
15 years by a number of different entities that have looked
16 at streamlining the penalty process, and I believe that
17 the idea behind the -- this one in particular was a
18 streamlined approach, was an approach that would possibly
19 be shorter than taking these alleged offenders to court,
20 to the superior court, and basically pursuing them there.
21 So there's always a lot of discussion on how do we make
22 our enforcement process work better, work faster, how do
23 we get people their day in court sooner than later, how
24 fast can we get sites cleaned up, and this administrative
25 civil penalties process is an attempt to do that. So it

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1 is a different kind of procedure, if you will, than we
2 have in most of the other situations.

3 Now, Mr. Chandler asked when does the AG come
4 into that. As we talked about that penalty schedule and
5 in the previous item, when items go to the administrative
6 civil penalties process, to an ALJ or to the AG,
7 generally a majority -- and we'll get into this as
8 Ms. Williams talks about her program. Generally a
9 majority of the sites that are being taken up for
10 enforcement are going to the administrative civil
11 penalties program but we also have the choice of
12 referring that to the AG.

13 So if I could defer any more on that until we
14 get to Ms. Williams's presentation of that, I think it
15 might be helpful to hear that all in the context of the
16 administrative civil penalties.

17 Any other questions, though, on the chart or the
18 fact that this is really a different type of procedure or
19 technique and really isn't necessarily included in either
20 the formal or informal types of hearings that the Board
21 is going to see?

22 One of the last things that I wanted to say
23 about this chart is that number one, I think it's
24 important to understand, as we've already stressed, that
25 it is the statute that requires it. It's not a

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1 determination made by the Legal Office or anyone else.

2 It's required in the statute.

3 Second of all, as you will see from that chart,
4 the statutes that govern the suspension or revocation of
5 a permit or registration call for a formal hearing
6 because they are directly affecting the vested rights of
7 an individual to practice his or her trade. So it's
8 important again to understand that those formal hearings
9 offer the most or the supreme amount of due process that
10 can be availed at the state level, and those are the
11 types of actions that fall into those types of
12 requirements.

13 The statutes are less consistent, however, in
14 addressing other adjudicative matters such as denials of
15 permits and registrations or the imposition of penalties
16 for violations of statutes and regulations. So for
17 example, while informal hearing procedures are
18 permissible for solid waste facility and recycled content
19 newsprint violations, compliance with the formal hearing
20 requirements is required for RPPC violators.

21 So what I'm saying there is that there's not
22 always a good rhyme or reason or standard reason that a
23 type of hearing falls into formal or informal hearings.

24 BOARD MEMBER JONES: Question.

25 MS. TOBIAS: Question?

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1 BOARD MEMBER JONES: You had referred to solid
2 waste facility permits, that denials of those things
3 would be formal. Was that before the RPPC thing?

4 MS. TOBIAS: Right.

5 BOARD MEMBER JONES: That statement? But we
6 have an existing board policy here that has actually set
7 up a panel and identifies the number of members on the
8 panel to deal with a revocation of a permit, didn't call
9 for an ALJ. It has been on the books prior to 1997. I
10 don't happen to agree with it because it limits that
11 panel to three people and I figure if you need four to
12 get a permit you sure as heck need four to take it away,
13 but irregardless we've got an existing policy. But the
14 way I read this is that policy is now defunct because we
15 have to use an ALJ or refer it to an ALJ. Is that an
16 accurate read of this?

17 MS. TOBIAS: What I would like to do is I would
18 rather discuss that section on the requirement of the
19 panel for three in closed session because it has to do
20 with some enforcement information, but I can address, I
21 think, the question about handling those -- why that
22 particular hearing that I think you're referring to was
23 handled without --

24 BOARD MEMBER JONES: I don't care about that. I
25 don't care about that. This was a policy that the Board

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1 has for any denials that would come forward, irregardless
2 if we've never heard a denial. That was something that
3 had been put in place because that's what was told to me
4 in that Santa Barbara meeting. So I'm wondering how -- I
5 think it was Santa Barbara. It wasn't Santa Barbara. It
6 was Pasadena.

7 So that's where my concern is. That's why I had
8 asked the grandfather issue. That's why I had asked
9 about the statute and what the Board options are because
10 if the grandfathering of certain programs that we have
11 allows the Board to make a decision that it could hear
12 the item, put it to an ALJ or have an ALJ sit on the
13 Board, I want to know what those options are, and this
14 one kind of flies in the face of that existing policy and
15 that's why I brought it up in my briefing because it
16 doesn't make sense to me that we can have a policy that
17 would be contrary to this.

18 So I guess that's why I needed that -- those
19 options because it -- you know. I understand the need to
20 protect somebody's due process and would demand it,
21 irregardless of who it is, as would anybody in this room,
22 but I'm just wondering on the selections if we had an
23 existing policy prior to '97, what made that a defunct
24 policy.

25 MS. TOBIAS: If I understand your question, your

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1 question is how the Board in a revocation hearing did not
2 follow that the section in the code that -- no. Okay.
3 Can you just state the question again then? I understood
4 the rest, but I'm trying to be responsive to you without
5 creating a problem.

6 BOARD MEMBER JONES: Right. If I, as a landfill
7 operator, today were to be notified by staff that they
8 were going to revoke my permit then came here, asked here
9 for a hearing on that, there was an existing policy that
10 would have stated that I would have been in front of
11 three members of this Board, a committee that had already
12 been predestined as to who they were going to be to deal
13 with that hearing, and now I'm hearing that we have to
14 have an ALJ or an ALJ has to sit with us. So I'm
15 wondering exactly when that changed and what prompted
16 that change.

17 MS. TOBIAS: Mr. Bledsoe is going to answer
18 that.

19 MR. BLEDSOE: Thank you. Mr. Jones, if I can
20 jump in. I think there's a little bit of mixing apples
21 and oranges, and I don't have the specific precise answer
22 to your question about a previous board policy, but when
23 a decision is made to revoke, suspend or deny a permit,
24 that is done at the Local Enforcement Agency level,
25 except in those rare instances when the Board itself is

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1 acting as the enforcement agency within a jurisdiction.

2 So consequently that's why our chart shows that
3 formal hearings are required for denials, suspensions and
4 revocations of permits where the Board is acting as the
5 enforcement agency. So where the Local Enforcement
6 Agency is doing that job, odds are that that too requires
7 a formal hearing.

8 I believe that you're thinking of the situation
9 where there is an appeal that has come to the Board like
10 under the AB 59 process, a hearing panel appeal where the
11 Board is acting as the hearing body and there is a
12 procedure for setting up a three-member hearing panel
13 made up of Board Members for those situations when the
14 Board is acting as the enforcement agency.

15 So we may just have a difference in talking
16 about actions that the Board takes versus actions that
17 the hearing panels take, most of which take place at the
18 local level.

19 BOARD MEMBER JONES: Okay. But if in 1994
20 you -- San Francisco County -- or that would be an AB 59
21 appeal. If somebody was going to come in front of this
22 Board where we were the EA in 1994, would we have had a
23 procedure set up to have dealt with that other than the
24 ALJ?

25 MR. BLEDSOE: I can't answer that.

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1 MS. TOBIAS: We can't answer that. I think --
2 you know, that's -- I can't answer that because it didn't
3 happen and I'm not -- I don't know what we would have
4 done at that point. I will say AB 59 was passed in 1995,
5 so that's what we've been dealing with for the last five
6 years. So you know, I think at this point it's hard to
7 project what we would have done at a previous time.
8 Those appeals of the LEA decisions that do come up from
9 the LEAs are under the informal requirement and you see
10 in there it's the first column that says solid waste
11 facility permits. It's the very last one that's called
12 out there. So as those do come out that would be under
13 informal hearing requirement and not the formal.

14 MR. CHANDLER: Not to belabor the point, but I
15 think the example you're using is when we were the agency
16 issuing the permit. This was not issued by an LEA. This
17 was a permit issued by the Board.

18 MS. TOBIAS: Tires or solid waste?

19 MR. CHANDLER: Tires. So the question is, it
20 seems to me, did we have or do we have a procedure where
21 the Board is going to revoke a tire storage permit, that
22 that process would require an appeal of that before a
23 three member or four member or full board panel or does
24 this process play itself out? Is that clear?

25 MS. WILLIAMS: I'll try to answer that question.

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1 The process for the revocation of a waste tire facility
2 permit is a separate process and it's in a separate area
3 of -- under the tire statutes in Chapter 16. It gives
4 the Board the authority to suspend, deny or revoke a
5 waste tire facility permit, and under Section 42843 the
6 proceedings for the permit -- and this is just the
7 proceedings -- shall be conducted in accordance with
8 Chapter 4.

9 We have interpreted that to mean that under
10 44300 et seq., most of that statute was created -- AB
11 59 -- was created for the solid waste facility statutes
12 and that what this statute is referring to is just 44310,
13 and we've even presented this issue in argument before an
14 Administrative Law Judge who did agree with us regarding
15 that interpretation.

16 44310, just for the purposes of the revocation
17 of a waste tire facility permit, clarifies the procedures
18 for the complaint response by the respondent and requires
19 also that we follow Chapter 5 of the APA, which includes
20 an Administrative Law Judge sitting with the Board.

21 BOARD MEMBER JONES: The -- I don't want to
22 belabor this thing, but I think that when you say you
23 read Chapter 4 and interpreted it, that's key to my
24 concerns. And I don't have concerns with you attorneys.
25 You have to understand that. I don't. I think you guys

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1 are all damn good at what you do, but when we interpret
2 something that means it's one person's opinion against
3 another, usually, and all I want is the information in a
4 way that that interpretation is supported and driven by
5 this Board, not on every legal issue but we're setting up
6 now -- or by having this item we are basically -- you're
7 informing this Board but you're also asking this Board to
8 accept these processes as the way we're going to do
9 business.

10 I don't have a problem with that, but I don't
11 know which ones have been interpreted and which ones
12 haven't, and I figure that they're paying me enough money
13 to sit up here to interpret whether I'm dressed nice or
14 not, whether it's formal or informal, which I guess we
15 have a different dress code for the days that they're
16 informal, to at least have input into how this Board goes
17 forward with these, with this structure.

18 That's all. That's all my issue is. When it's
19 laid out and there are no choices, then that's fine. But
20 when there's choices, I want to make sure that we're the
21 ones who made it based on your recommendations, and it
22 seems to me like that's pretty simple good government.

23 MR. LEVINE: If I may, just one more addition
24 to what Ms. Williams's remark was in response on this
25 issue. As Ms. Williams pointed out, the entire

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1 revocation and suspension statutes refer to us the
2 Section 44300 which was the solid waste process, and in
3 the solid waste revocation process there is a specific
4 provision that's one sentence long and I would like to
5 read it into the record. It's Section 44309, "All
6 hearings conducted by the Board pursuant to this chapter
7 acting as or on behalf of the enforcement agency," which
8 is defined in the Code as the Local Enforcement Agency,
9 "Shall be conducted by a hearing panel of three Board
10 Members," and that is where the determination was made
11 that while there was a generic reference to the solid
12 waste procedures in the tire code, it could not encompass
13 a provision talking about where the Board is acting as or
14 on behalf of a local enforcement agency because we don't
15 do that with tires. We are the enforcement agency for
16 tires as opposed to in solid waste where it's usually the
17 LEAs unless we're acting on or on behalf of.

18 I believe you're correct that with these
19 references to other statutes it makes things more
20 difficult to see things in black and white and you have
21 to look very carefully at the wording of each statute to
22 see which would be applicable and which is not.

23 BOARD MEMBER JONES: All right.

24 MS. TOBIAS: All right. Next -- at this point
25 then we'd like to shift back into section one of the

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1 agenda item. This is the enforcement strategy overview.
2 We -- the agenda item reviews the strategies that have
3 been developed carrying out the goals of the Board's many
4 enforcement programs, and that item will summarize the
5 procedures that were in place for implementing these
6 strategies, and we also provided information on recent
7 enforcement activity for each of the programs.

8 We also in the item discussed what we thought
9 was the underlying philosophy, if you will, or the
10 primary goal of the program for solid waste. Because a
11 violation constitutes a direct and immediate threat to
12 the environment, the primary goal for solid waste
13 facilities is to promptly bring the facility into
14 compliance. For planning -- the diversion requirements
15 and markets, again there's an effect on the environment
16 more indirect at that point but nevertheless an effect,
17 so it's important to begin as soon as possible to
18 minimize delay in implementation and there the primary
19 goal is the proper implementation of the programs.

20 With waste tires, again we have an inherent
21 safety issue which is presented by waste tire piles and
22 the primary goal there is remediation of the site in a
23 timely fashion and at the responsible party's expense.

24 First Michael Bledsoe will discuss the solid
25 waste facility enforcement program.

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1 MR. BLEDSOE: Thank you.

2 As Kathryn noted, violations of the requirements
3 for solid waste facilities constitute a direct threat to
4 the health, safety and the environment. Consequently,
5 the overall strategy that the legislature has described
6 for us and which we have tried to carry out is to achieve
7 compliance with those requirements as quickly as
8 possible. The legislature has noted, for example, in
9 connection with the imposition of penalties that no
10 penalty shall be imposed on a solid waste facility
11 operator until all feasible efforts have been exhausted
12 to try and correct the problem short of imposing
13 penalties.

14 We think that this strategy or this philosophy
15 evidenced in our statutes arises from several factors.
16 First, solid waste facilities serve a critical need.
17 They're basically a public service that's necessary for
18 all of us to enjoy working and living in this state.
19 Solid waste facilities are physically fixed. They can't
20 be readily moved. They can't be -- if they are closed or
21 their operations are impeded in some manner, they can't
22 serve the communities where they're located, and they
23 represent a massive capital investment. So any decisions
24 that affect them have to be taken pretty carefully.

25 These factors tend to push operators and

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1 regulators both in the direction of the quick resolution
2 of problems rather than protracted litigation, the
3 fighting over who's right. The regulators, government
4 agencies, want compliance with the statutes and want the
5 facilities to operate, to carry out their public service
6 functions, primarily for the public policy reasons of
7 protecting health, safety and the environment.

8 Operators want to be in compliance so they can
9 continue to operate their facilities, so that they don't
10 have to pay any penalties, and so that they can continue
11 generating hopefully profits from their operation.
12 Consequently, most violations of solid waste facility
13 requirements are corrected fairly quickly.

14 As noted a few minutes ago, solid waste facility
15 permits are issued by enforcement agencies. In most
16 cases those are Local Enforcement Agencies after the
17 Board has concurred in a solid waste facility permit.
18 Consequently, most of the enforcement of solid waste
19 facility statutes and regulations occurs at the local
20 level. Board involvement in direct enforcement
21 activities is more the exception than the rule.
22 Nonetheless, the Board has a great interest in the effect
23 of enforcement of solid waste facility statutes and has
24 quite a bit of influence that it can bring to bear on the
25 topic of compliance.

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1 For example, the Board does have the authority
2 to take independent enforcement actions under Section
3 45012 of the Public Resources Code after giving notice to
4 the Local Enforcement Agency that they intend to take an
5 enforcement action, after notifying the violator and
6 providing a public hearing -- giving an opportunity for
7 the violator to correct the problem and holding a public
8 hearing prior to taking any enforcement action on its
9 own, and of course the Board also has the power to
10 decertify a Local Enforcement Agency which is not
11 carrying out its duties under the Integrated Waste
12 Management Act, but these tend to be rare instances.
13 Among the staff people that I've been able to talk with,
14 none of them can remember situations where our Board has
15 actually decertified an LEA or taken an independent
16 action by the Board on their own. Now, it's entirely
17 possible that in a number of years ago one or both of
18 those things happened, but no one can recall it at the
19 moment.

20 LEAs have a number of tools that they can employ
21 to enforce solid waste facility statutes and regulations.
22 They can issue notices and orders directing that
23 facilities take corrective actions to correct problems,
24 and they can attempt cost recovery actions for any
25 corrective actions the LEA takes pursuant to such notice

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1 and order. They may issue cease and desist orders
2 prohibiting various illegal activities. They can issue
3 orders which establish schedules for compliance and which
4 also impose administrative civil penalties. By means of
5 a civil action they can go to court and get an
6 injunction, and by means of a civil action they can go to
7 court and get civil penalties imposed on facilities that
8 are in violation.

9 There's an additional category of action that
10 the LEAs can and do take which is not listed in the
11 statutes but turns out to be certainly the most common
12 approach. That's what we call a stipulated notice and
13 order. Essentially a stipulated notice and order is
14 simply a notice and order that's negotiated with an
15 operator so that the operator is aware of what the
16 violations he or she is alleged to have committed and has
17 committed himself or herself to complying with the order
18 within a given time.

19 The -- in fact, even in those situations where a
20 notice and order is issued that's not technically
21 stipulated to by the facility operator, LEAs have
22 typically discussed the problems with the operator so
23 that there's a pretty solid handle on what the problem
24 is and how it can be corrected, how long it's going to
25 take to correct it, how much it's going to cost the

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1 operator to accomplish that. In other words, it appears
2 that the most common situation is for the parties to
3 negotiate to settle problems rather than to litigate over
4 them and that, of course, leads to compliance which is
5 what our overall strategy is.

6 Now, there are exceptional situations. As I
7 mentioned, the situation with the Board potentially
8 taking enforcement action on its own. The Board also
9 serves as the enforcement agency for five jurisdictions,
10 for Stanislaus County, Santa Cruz County and the cities
11 of Berkeley, Paso Robles and Stockton. The Board
12 actually serves as the enforcement agency in those
13 situations and does take enforcement actions as
14 necessary. We have taken apparently 12 to 15 enforcement
15 actions since 1990, and more recently we're running at
16 about one or two per year.

17 The Board also plays, and Board staff in
18 particular plays, a very important role in solid waste
19 enforcement on an informal level. Just as there's great
20 communication between Local Enforcement Agencies and the
21 operators within those jurisdictions, our Board staff has
22 a lot of communication with LEAs and operators, and when
23 violations are occurring, our staff frequently hears
24 about it, frequently has an opportunity to discuss
25 appropriate corrective actions with the operator and with

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1 the LEAs. Our staff also receives copies of proposed
2 enforcement actions before they take effect. And then
3 finally, our Board does publish notice of chronic
4 violators every six months so there's public notice as to
5 those folks who remain in the status of non-compliance.

6 Then finally the Board's direct role in local
7 enforcement comes primarily as a result of AB 59 through
8 the hearing process that you're familiar with. Under
9 Section 45030, any aggrieved person can appeal to the
10 Board from a decision that a hearing panel has made, from
11 a hearing panel's -- the local hearing panel -- from the
12 local hearing panel's failure to decide a matter, and
13 from the governing body's refusal to convene a hearing
14 panel.

15 The kinds of issues that may be appealed are any
16 Local Enforcement Agency enforcement action that the
17 operator finds objectionable, which could include
18 violations of state minimum standards, violations of
19 permit conditions and so forth; a proposed permit
20 condition to which the operator objects; an enforcement
21 agency's decision to suspend, revoke or deny a permit;
22 and a very broad category under 44307, any citizen's
23 demand for a hearing to discuss the LEA's alleged failure
24 to act as required by law. So all of those matters can
25 end up in having appeals brought to our Board under AB

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1 59.

2 The Board has the ability to accept or to reject
3 an appeal and may reject the appeal if the appellant does
4 not raise substantial issues in the appeal itself or the
5 appellant did not appear before the local hearing panel.
6 The Board can overturn a local enforcement action if it
7 finds that the local action is not consistent with the
8 Integrated Waste Management Act.

9 Although there are numerous grounds for appeal
10 and certainly many opportunities for operators to be
11 dissatisfied with something that an LEA has done, the
12 Board only receives about one appeal each year in the
13 five years that AB 59 has been in effect. We have
14 received five appeals, most recently being the
15 Safety-Kleen appeal which arose because the governing
16 body in Imperial County refused to hold a hearing panel
17 for Safety-Kleen.

18 Thank you.

19 BOARD MEMBER JONES: Mr. Chairman.

20 CHAIRMAN EATON: Mr. Jones.

21 BOARD MEMBER JONES: I know Linda
22 Moulton-Patterson has an appointment, but I have to ask a
23 question real quickly. About three slides back when we
24 talk about notice and order, cease and desist, those
25 types of things -- and this may go to the heart of the AB

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1 59 debate but we might as well talk about it -- when an
2 inspector goes out and inspects a facility to see if
3 they've met state minimum standards, they fill out an
4 inspection form that either says that area is okay, there
5 is an area of concern or there is a violation.

6 It's my -- I'd like to get your view. I've kind
7 of heard it before, but I think that that violation is a
8 very serious matter. That's really when the majority of
9 the work gets done because it has either been notified as
10 an area of concern or later taken to the level of
11 violation, but it is critical in my view that we have the
12 discussion of -- I understand how AB 59 was laid out,
13 that it says what triggers the appeal process is an
14 enforcement action, is noticing a violation of state
15 minimum standards on the inspection reports which are the
16 documents used to publish chronic violators. So if you
17 take that logic out, it kind of makes sense that that is
18 a violation.

19 Do operators have the ability to appeal a
20 violation on an inspection report?

21 MR. BLEDSOE: No. I believe that as a matter of
22 board policy at least, and certainly practice, that the
23 enforcement action which is appealable is a notice and
24 order, a cease and desist order, and order establishing a
25 compliance schedule. It is not the decision of an

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1 inspector to put -- to notice a violation on the
2 inspection form. It's only the subsequent --

3 BOARD MEMBER JONES: We've had two cases where
4 this was the vehicle that had elicited a request for an
5 AB 59 hearing, one of them because a lot of good work
6 done by staff and the operator it got fixed so it didn't
7 have to go to an appeal, another one that because they
8 did not write the complaint in the form that is
9 traditionally used for a cease and desist order but it
10 had the same effect was issued and that appeal did come
11 forward and it was heard.

12 I think that it's -- I think this is fundamental
13 to what we do here because I don't want to see every
14 violation be appealed because there's some people that
15 just, you know, don't ever want a violation but don't
16 necessarily operate without violations and they deserve
17 them, but this is a -- we have empowered LEAs to be our
18 eyes and ears and yet we have no standard because these
19 are interpretive laws or interpretive standards, and what
20 is the outlet that somebody has to remedy what they feel
21 could be an unfair treatment of the law?

22 So not -- maybe in our next go-round when we go
23 through this again, but I think we need to have the
24 discussion because it may be board practice but I'm not
25 sure that it was board policy. So that may be one of the

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1 issues that I've been talking about today.

2 CHAIRMAN EATON: I notice that we need to take a
3 short break in order to give some time to the reporter,
4 so we'll take a short ten-minute break and come right
5 back in ten minutes.

6 (Brief recess taken)

7 CHAIRMAN EATON: Welcome back, everyone.

8 Mr. Jones, any ex parte communications?

9 BOARD MEMBER JONES: Nope.

10 CHAIRMAN EATON: Neither do I.

11 (Laughter)

12 CHAIRMAN EATON: Next up, let's have some
13 assurances.

14 MS. TOBIAS: Deborah Borzelleri is going to
15 discuss financial assurances.

16 CHAIRMAN EATON: I was wondering when we got to
17 Ms. Borzelleri.

18 MS. BORZELLERI: Just what you've been waiting
19 for.

20 CHAIRMAN EATON: We know that you command a
21 great presence here, you know, so --

22 MS. BORZELLERI: Okay.

23 (Laughter)

24 MS. BORZELLERI: We'll just move right along.

25 CHAIRMAN EATON: I'm waiting.

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1 MS. BORZELLERI: Financial assurances -- I do
2 want to talk about --

3 CHAIRMAN EATON: I do this every time to a
4 couple of you, and Ms. Fish is not here. When she moves
5 to the new position, she doesn't get to present but I
6 think we're going to bring her back for her annual
7 embarrassment. You're the not only one that's picked on.

8 MS. BORZELLERI: Thank you. I do feel better
9 now. I am going to talk about the financial assurances
10 enforcement program, and I think what you need to keep in
11 mind, Michael basically talked about solid waste facility
12 enforcement, and the financial assurances enforcement
13 program is a specific type of solid waste facility
14 enforcement except it's done by the Board, and I'll get
15 into that more in a minute, but from a philosophical
16 perspective financial assurances are required to assure
17 the state that landfills will be closed and maintained in
18 such a way that public health and safety is protected.

19 We have four basic types of financial assurance
20 requirements. First is for closure, second for
21 post-closure maintenance, third is operating liability,
22 and fourth is corrective action. Corrective action is
23 dealt more with the Water Board, they deal with those
24 issues, and operating liability we haven't gotten too
25 involved in, but closure and post-closure is the bigger

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1 issue for us.

2 The state requirements that we have are
3 consistent with the Subtitle D requirements as is needed,
4 but to keep our Subtitle D authority alive -- and just
5 keep in mind, I think everybody knows that it's a big
6 capital expenditure to have a landfill but also closure
7 and post-closure is expensive as well and they need to
8 plan for this and the state needs to be assured that
9 they're planning for it, so they do a closure
10 post-closure maintenance plan, and the statute requires
11 these mechanisms that are approved by our staff to be in
12 place prior to obtaining a permit to operate.

13 The Title 27 regulations that were recently
14 adopted by the Board allow the Board to take enforcement
15 action for inadequate financial assurances, and that is
16 when staff becomes aware of such a violation where the
17 financial assurances have become inadequate or they're
18 non-existent and they need to be put in place. Usually
19 staff becomes aware of this when a trust fund or an
20 enterprise fund is not funded at the appropriate level
21 for the life -- for the stage in the landfill's life or
22 when mechanisms are checked on an annual basis or by
23 other means when violations come to staff's attention.

24 As I mentioned, the financial assurance program
25 is implemented by the Board rather than the LEAs. It was

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1 determined when the Board adopted the regulations back in
2 the mid-90s that the Board staff are the ones who have
3 the expertise in this area. The LEAs were not making
4 sure of that, but in recognition of their lack of
5 expertise the Board went ahead and adopted regulations
6 that are implemented by our staff and the Board.

7 The regulations set out a matrix for
8 establishing penalties. The Board has approved this.
9 It's established based on the degree of non-compliance
10 and the potential for harm. Penalties can be assessed up
11 to \$10,000 per day, and the process for assessing the
12 penalties is pursuant to Public Resources Code Section
13 45011 which is a process similar to what Michael
14 discussed, what the LEA would go through for assessing
15 penalties within a solid waste facility violation.

16 And again similar to other solid waste facility
17 enforcement, compliance is the ultimate goal. We have
18 several options prior to assessment of penalties
19 including informal discussions, stipulated notices and
20 orders, restrictions on current mechanisms and so forth.
21 The penalties are in place as a deterrent, and for this
22 program in particular it may seem a bit of a conflict
23 that we're assessing penalties when what we're usually
24 trying to get is more money from the operator, but the
25 penalties nevertheless should be used when they're

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1 necessary because financial assurances is a real cost of
2 operating a landfill and we need to have a level playing
3 field.

4 The procedures are set out in the regulations.
5 There are informal discussions then a notice of violation
6 may be issued. If the operator responds within ten days
7 with acceptable compliance measures, a stipulated notice
8 and order may be entered into. If there is no response,
9 staff will prepare and issue a notice and order, and if
10 there's no response to the notice and order or there's
11 non-compliance with the stipulated notice and order,
12 there may be further action.

13 To date we have issued 22 notices of violation,
14 two stipulated notices and orders, six notices and orders
15 where the operator was not responsive, and it's worked
16 pretty well. We have 12 sites now in compliance that
17 were a problem before. We have several pending notices
18 of violations and no penalties have yet been assessed
19 under this program.

20 Any questions about that?

21 CHAIRMAN EATON: Yeah. Is there a breakdown in
22 the sense that there tends to be more public entities
23 that have the notice and orders or private or is it a
24 little of each?

25 MS. BORZELLERI: Well, it is some of each but

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1 the breakdown of operators is between 70 and 80 percent
2 public operators, and it's my understanding that our
3 enforcement actions have been broken down in a similar
4 ratio.

5 CHAIRMAN EATON: Right.

6 BOARD MEMBER JONES: The 80 percent public and
7 20 percent private that aren't funding to the right
8 levels, if your notice and orders in those things don't
9 work, when do they come in front of the Board or do they?

10 MS. BORZELLERI: Well, you know --

11 BOARD MEMBER JONES: At some point there needs
12 to be something for non-compliant facilities.

13 MS. BORZELLERI: Right. If penalties were
14 issued then staff would issue a notice and order
15 recommending -- demanding penalties, and then as I said
16 before, the process under AB 59 where there's a hearing
17 panel and all that sort of thing, we'll still need to
18 work out the details as to how the Board becomes involved
19 in that because that particular statute is set out for
20 the Local Enforcement Agencies and it may not fit
21 perfectly for this situation because the Board is acting
22 as the enforcement agency in this situation. So it's
23 very likely that the Board would actually hold the
24 hearing if it was required or actually if it was
25 requested.

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1 BOARD MEMBER JONES: Okay. But if the LEA
2 were -- I know it's our action because it's not fully
3 funded, but it's still a responsibility of the LEA
4 because it would be a violation, wouldn't it, after the
5 LEA has been notified that this facility is not in
6 compliance with closure post-closure? Doesn't that then
7 become an enforcement action for the LEA?

8 MS. BORZELLERI: Actually, not. The regulations
9 are in place and say the Board takes the action.

10 BOARD MEMBER JONES: Okay. Not a problem.

11 MS. BORZELLERI: Okay.

12 BOARD MEMBER JONES: What about those
13 jurisdictions that use a pledge of revenue, those
14 government entities that use a pledge of revenue to
15 guarantee post-closure? They historically have to have a
16 resolution; correct?

17 MS. BORZELLERI: Correct.

18 BOARD MEMBER JONES: And any action by
19 subsequent city councils or boards of supervisors would
20 have to have another resolution if they were -- you know,
21 if they were -- if they were going to impact funding,
22 their funding mechanism, would they -- how would we deal
23 with that? Or is it the fact that they entered into the
24 resolution they're locked into it forever?

25 MS. BORZELLERI: Dianna is coming up to address

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1 that issue.

2 MS. THOMAS: Dianna Thomas with Financial
3 Assurances Section.

4 Any time there is a change in funding or if an
5 operator, for example, loses their authority to provide a
6 pledge of revenue to the Board, they have to provide us
7 with an alternative mechanism to cover that. That is in
8 the resolution itself and in the regulations.

9 BOARD MEMBER JONES: So if City Council "A"
10 entered into the agreement to do a pledge of revenue and
11 they sent a resolution, in that resolution it basically
12 says that all future city councils will honor that pledge
13 of revenue?

14 MS. THOMAS: Right. There's a statement in the
15 pledge of revenue at the very end of it that indicates
16 the boards of supervisors or city council members who
17 voted on that action and it stays in place unless
18 something changes with respect to the funding or their
19 ability to fund. You don't have to reestablish your
20 pledge of revenue if the city council members change or
21 the board of supervisors changes, but if their ability to
22 fund those monies becomes an issue, then they are by law
23 required to provide an alternative mechanism.

24 BOARD MEMBER JONES: Okay. An obscure question.
25 If a JPA is going to be the agency, is every city that

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1 participates in the JPA required to bring forward the
2 resolution?

3 MS. THOMAS: No.

4 BOARD MEMBER JONES: What's the governing
5 authority of the JPA?

6 MS. THOMAS: The JPA is actually the governing
7 body that brings that resolution forward. They are
8 actually the ones who provide the resolution and sign the
9 contract with the Board when there's a pledge of revenue
10 agreement.

11 BOARD MEMBER JONES: Okay. We'll deal with that
12 later. But if cities participate and yet it's the cities
13 that have to agree to the rate.

14 MS. THOMAS: Correct. And the JPA as a whole
15 has the rate setting authority and that's their --

16 BOARD MEMBER JONES: They have the rate setting
17 authority for the entity that they have, whether it be a
18 transfer station or a landfill.

19 MS. THOMAS: Right.

20 BOARD MEMBER JONES: They don't have the rate
21 setting authority for collection that takes -- that
22 occurs in the cities where those rates -- part of that
23 rate is the rate at that facility. So I would just like
24 to hear at some point, not today, the discussion of that
25 JPA, which is one member from a city council, who

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1 establishes a rate as a hauler if the -- if Western
2 Regional raised the rate, they had a hearing and raised
3 the rate, I'd still have to go in front of seven cities
4 to get the rate increase, and the one city that did not
5 participate in the JPA, if they were to say, "We don't
6 care. We're not going to deal with that," then you have
7 a funding shortfall to the hauler who basically has to
8 bring the material then.

9 I would just ask you to think about that, and if
10 it's not in statute or law but a policy, then maybe we
11 need to talk about the supporting resolutions to enhance
12 that protective device because it is a protective device
13 that saves people an awful lot of money.

14 MS. TOBIAS: I'm aware, Board Member Jones, of
15 your concern in that area and I think that is something
16 we anticipate bringing back to the Board on that
17 particular issue. What we would like to do is take you
18 through how the whole structure is set up and address
19 your issue of whether those underlying cities need to
20 have resolutions that cover the kinds of issues that we
21 talked about.

22 BOARD MEMBER JONES: I had no facility
23 specifically in mind. I just think it would be a good
24 project to go through.

25 CHAIRMAN EATON: And then your question wasn't

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1 obscure, it was obtuse.

2 (Laughter)

3 MS. TOBIAS: We will discuss the issue
4 generally.

5 BOARD MEMBER JONES: I told you, I'm a garbage
6 man.

7 CHAIRMAN EATON: Recycler.

8 (Laughter)

9 BOARD MEMBER JONES: That's what garbage men
10 are.

11 (Laughter)

12 MS. TOBIAS: All right. If there aren't any
13 other questions on financial assurances, Elliott Block
14 will discuss the diversion planning program.

15 MR. BLOCK: Good afternoon, Chairman Eaton and
16 Board Members. I'm going to be talking about the
17 diversion planning compliance issues. For the brief time
18 that I'm speaking this afternoon, I'm going to
19 specifically be talking about Source Reduction and
20 Recycling Elements, SRREs, but the same procedures that
21 apply to those would apply to the other planning elements
22 that the Board deals with and there are details about
23 those particular elements in the item itself.

24 Very briefly because you're all obviously very
25 familiar with this, we start with the statute that lays

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1 out the framework of the basic elements of compliance in
2 this area. Jurisdictions are required by statute to
3 prepare and implement Source Reduction and Recycling
4 Elements. The SRREs show how they divert 25 percent by
5 1995 and 50 percent by 2000, and failures to comply can
6 result in fines up to \$10,000 a day.

7 As the program has progressed, we found a number
8 of interesting issues that we've had to deal with. In
9 the planned preparation phase we had numerous late plan
10 submittals. In the implementation phase we've come
11 across a number of diversion calculation problems for
12 jurisdictions and some implementation problems regarding
13 programs.

14 Since the effects of these programs on the
15 environment, as was mentioned earlier in the
16 presentation, are less direct than those that might
17 relate to solid waste facility sites, the Board has
18 wanted local resources focused on SRRE submittal and
19 implementation rather than on fighting and paying
20 penalties.

21 As you know, most of the Source Reduction and
22 Recycling Elements are detailed compilations of programs.
23 They require significant changes in behavior by
24 jurisdictions and their residents. So the Board has
25 adopted in dealing with the plan submittal phase what was

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1 dubbed the step-wise approach for compliance of
2 submittals through the use of increasingly severe steps
3 of action such as warning letters and compliance
4 schedules, and that's coupled with offers of local
5 assistance on the part of the staff of the Office of
6 Local Assistance, the perverbial carrot-and-stick kind of
7 approach.

8 The Board was able to obtain submittals by -- of
9 all Source Reduction and Recycling Elements by the end of
10 1997 with the exception of four, and that was out of a
11 total of 531 jurisdictions. We did have four hearings in
12 January of 1998 that resulted in penalties and then also,
13 of course, the plan submittals from those four
14 jurisdictions in order to avoid additional penalties as
15 well. I wasn't going to go through the names and amounts
16 of those particular jurisdictions, but they are listed on
17 page 1-8 of the item.

18 With regard to implementation, statute actually,
19 essentially establishes what might be done with the
20 step-wise approach toward compliance. The Board in doing
21 a biennial review makes a finding potentially of
22 inadequate implementation which would lead then to the
23 issuance of a compliance order, and that compliance order
24 has a schedule of tasks the Board believes is necessary
25 for adequate implementation. The penalty hearing would

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1 only result if the jurisdiction fails to fulfill that
2 compliance order.

3 The compliance orders typically require some
4 level of working with the Office of Local Assistance
5 staff to determine an effective and achievable
6 performance plan which then becomes a part of that
7 compliance order. So far to date the Board has issued 64
8 compliance orders out of 466 jurisdictions. That number,
9 466, is lower than 531 because in the intervening time
10 period a number of jurisdictions have joined regional
11 agencies, so those are all treated as one jurisdiction
12 for the purposes of compliance. Five of those compliance
13 orders have been completed to date. There have been
14 approximately -- I didn't actually write this number
15 down. I believe there have been approximately a dozen of
16 those that we've granted some form of extension to for a
17 certain number of months for various issues. We brought
18 those before the Board in the last few months and they're
19 all at this point scheduled for completion sometime in
20 the year 2000.

21 So then the chart that's up on the screen again
22 is one that's in the item. It's very small up there. It
23 basically just lists the details of the various different
24 compliance issues. As you'll note for Household
25 Hazardous Waste Elements, we did not have any penalty

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1 hearings regarding those. We did have a number of those
2 on compliance schedules but those were submitted during
3 1997. At this point we have not had any hearings on
4 siting elements or summary plans, and actually since the
5 time this item was written in the last -- within the last
6 month, with one unusual exception which we'll be
7 discussing in an upcoming board meeting, all of the
8 siting elements and summary plans have been submitted now
9 for jurisdictions.

10 The only other interesting thing to note, I
11 think, on this chart that I hadn't mentioned before is we
12 did have one compliance order for a Household Hazardous
13 Waste Element.

14 If you have any questions, I'd be glad to answer
15 them.

16 MS. TOBIAS: Thank you, Elliott. Deborah
17 Borzelleri will discuss RPPC and the newsprint program.

18 MS. BORZELLERI: With the RPPC program -- you
19 all have been involved in most of this but I'll just run
20 through it briefly. The goal with this program is to
21 spur markets for plastic materials collected by requiring
22 use of recycled plastic in rigid plastic packaging
23 containers and to discourage the use of virgin plastic
24 and to encourage source reduction. Those are the major
25 goals of the program.

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1 It's set up so that the product manufacturer is
2 the regulated entity and that is the entity that's
3 required to comply in one of several ways. The Board
4 annually adopts the all-container recycling rate which,
5 if it does not meet the set 25 percent, which is the

6 goal, then every one of the product manufacturers that's
7 regulated could be required at the discretion of the
8 Board to prove their compliance using one of the other
9 methods, either source reduction or post-consumer
10 content, 25 percent post-consumer content of the bottles,
11 and various other items which are not as often used.

12 The statute and regulations for this program
13 establishes self-certification process for product
14 manufacturers. The Board has authority to assess
15 administrative penalties of up to \$50,000 per violation
16 or refer violations to the Attorney General. We haven't
17 done that yet, but we have assessed penalties under the
18 program. Any fines assessed must be pursuant to notice
19 and hearing, and as you are well aware the statute does
20 require that an Administrative Law Judge preside over the
21 hearing, although we have proposed legislation to change
22 that requirement so that it would just be the Board
23 holding that hearing.

24 For the 1996 certification process, which is the
25 only one we have history on at this time -- we're getting

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1 ready to go into 1997 -- but for 1996 the Board took 500
2 randomly selected companies to certify compliance, and
3 future certifications based on Board direction in
4 previous items, previous agenda items, will target
5 industries selling the largest number of products in
6 rigid plastic packaging containers.

7 The compliance agreement approach for 1996
8 seemed to work well. There were eight entities that were
9 out of compliance that we knew of. Seven of those
10 entities entered into compliance agreements and then one
11 company we held the hearing and assessed penalties. So
12 the threat of enforcement on this program because of
13 feedback we've been getting seems to be alerting industry
14 to the fact that they really need to take this law
15 seriously and they're asking for all kinds of information
16 about, you know, who's producing bottles that will meet
17 the requirements and that type of thing.

18 Any questions on that program?

19 CHAIRMAN EATON: I have two questions, not
20 necessarily related to the program but maybe for the
21 discussion. First off, we did impose a penalty on one
22 individual recently.

23 MS. BORZELLERI: Correct.

24 CHAIRMAN EATON: What is the status of that?

25 MS. BORZELLERI: Well, interestingly --

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1 CHAIRMAN EATON: Paid or not paid.

2 MS. BORZELLERI: He hasn't paid but we haven't
3 billed him. He hired an attorney, and it was my
4 understanding that he was trying to appeal. The
5 interesting part is that I think today is the deadline
6 for him to appeal. So we have not heard whether that
7 appeal has been filed with the Superior Court or not, but
8 we haven't sent any billings out because we were
9 understanding that they were -- that he was possibly
10 going to appeal. We'll proceed if he doesn't and send
11 the billings and try to take the collection action.

12 CHAIRMAN EATON: One other point, and I don't
13 want to steal Ms. Moulton-Patterson's thunder but it was
14 something that I did commit to in a motion, but if you
15 remember we talked about the 1997 and 1998 rates being
16 combined for April. Are we going to meet that? I just
17 want to know -- I'm just wondering. I don't remember
18 seeing -- you remember?

19 BOARD MEMBER MOULTON-PATTERSON: I remember.

20 CHAIRMAN EATON: It's a yes or no.

21 MR. ORR: The answer is "no." I'll just
22 elaborate on that for a second.

23 BOARD MEMBER JONES: Do you think?

24 (Laughter)

25 CHAIRMAN EATON: Bill, I'm sorry. We're getting

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1 punchy this late.

2 MR. ORR: Bill Orr, Waste Prevention and Market
3 Development. There is a memo that will be coming to you
4 shortly describing the status of the certification
5 process, but in light of the time frame to conclude the
6 certification or the calculation rate we won't be able to
7 do it in a combined fashion.

8 CHAIRMAN EATON: Thank you. All right.
9 Recycled content.

10 MS. BORZELLERI: All right. Recycled content
11 newsprint program. For this program the goal is to
12 encourage use of recycled content newsprint by consumers,
13 and consumers of newsprint include commercial printers
14 and commercial publishers.

15 This program has had a ratcheting-up effect. It
16 started, I think, with 20 percent, went to 30 percent.
17 It was at 40 percent for the years '98 and '99, and now
18 effective January 1, 2000 the required amount of recycled
19 content newsprint to be used by these consumers is 50
20 percent. So -- and consumers are required to submit
21 self-certifications under this program annually by March
22 1st.

23 The statute allows the Board to assess up to
24 \$1,000 per violation in administrative penalties for late
25 or non-filing of certifications, and this is an informal

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1 hearing. I think all of you members have been through
2 these. No Administrative Law Judge is required.

3 It is significant that the statute is structured
4 such that there is no enforcement ability where the
5 consumer didn't meet the minimum content requirements and
6 that's kind of the critical piece of this, although it is
7 my understanding that we have had very high compliance
8 rates with the minimum content. I don't have any numbers
9 for you but I think it has been met and exceeded in the
10 aggregate for each year.

11 We have legislation proposed to allow for that
12 type of enforcement where the minimum content isn't met,
13 certainly on an individual basis, and that might be a
14 valuable thing to have, and then also to increase the
15 penalties up to \$10,000 per violation because \$1,000
16 hasn't seemed to get the attention of at least one
17 violator that we've had.

18 We have some new regulations in place that allow
19 the Executive Director to assess penalties for late and
20 non-filers and the Board has adopted those. They set a
21 set penalty structure which, if they're 45 days late,
22 there's \$500 assessed, and if they're 90 days late it
23 would be a full \$1,000 based on the existing
24 requirements. So we don't expect the Board will have
25 much in the way of hearings this year, especially to

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1 assess penalties. Now, the regulations do allow for an
2 appeal process if one of those -- ones who get a penalty
3 assessed want to appeal that to the Board. We have a
4 process in place for that so we've protected their due
5 process rights.

6 As I did mention, we have assessed the maximum
7 penalties for one company for five years in a row for
8 non-filing, and for that one we actually went to small
9 claims court and got it converted to a judgment and we
10 are now in the process -- we filed an abstract and we're
11 proceeding with collection processes. We may just put a
12 lien on his property. We've looked at possibly going in
13 and taking in his receipts as they come in, but we
14 haven't proceeded that far yet.

15 And then for 1998 the Board did assess penalties
16 for two companies for late filings, and I believe one of
17 those has paid and the other maybe recently paid but I
18 don't have that information, and because the Board has
19 taken this action, the late filings, which were at least
20 a third of the consumers in the past, have really
21 diminished. And this year I'm hearing that the late
22 filings have really diminished quite a bit. I don't have
23 any numbers for you yet because the deadline of April
24 15th, by the time we assess penalties, hasn't come yet
25 but the enforcement actions have worked well on this

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1 program.

2 MS. TOBIAS: All right. Any more questions on
3 that section?

4 CHAIRMAN EATON: No, but do we have any
5 enforcement powers on trash bags?

6 MS. BORZELLERI: Trash bags, there's no penalty
7 assessment. They get -- if they violated, if they didn't
8 meet the minimum content requirements there's a list
9 that's published. We have a new aspect of that law that
10 does allow the Board to let the Department of General
11 Services know and we're in the process of letting them
12 know who is in violation, and we can prohibit them from
13 contracting with the State but that is a process that the
14 Board adopted or looked at a few months ago.

15 CHAIRMAN EATON: When do you think that may be
16 operational?

17 MS. BORZELLERI: We're hoping this year because
18 they have a March 1 deadline for self-certification as
19 well.

20 CHAIRMAN EATON: That comes to us? Where does
21 that go to, self-certification?

22 MS. BORZELLERI: It comes to us.

23 CHAIRMAN EATON: It does come to us.

24 MS. BORZELLERI: It comes to us, to our staff,
25 and we produce a list and then that list will go to

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1 Department of General Services, and if someone wants to
2 argue about it they can come to the Board if they need to
3 but ordinarily it's just a process that goes through. We
4 would certainly take it to the Board as an information
5 item at this stage.

6 CHAIRMAN EATON: I just want to know because as
7 I meet with General Services as we always do on green
8 procurement and green whatever, the excuse is they enter
9 into a three-year contract and therefore X, Y and Z. If
10 I know it's coming, at the next meeting I have I will ask
11 them what contracts as it relates to trash bags is coming
12 up and, therefore, I will ask they put off their
13 procurement until such time as we have the list. That's
14 all I'm trying to ask. I'm just trying to get a sense of
15 things.

16 MS. BORZELLERI: We'll be sure to make sure that
17 you have a copy of the list and let you know who is
18 getting it from their side.

19 CHAIRMAN EATON: Right.

20 MS. BORZELLERI: Okay.

21 BOARD MEMBER JONES: Is there anything -- if
22 that doesn't go through, is there anything to stop us
23 from doing that anyway or has it -- it's -- the policy
24 has been adopted?

25 MS. BORZELLERI: There's a policy that's been

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1 adopted but the statute also changed this last year.

2 BOARD MEMBER JONES: To make it available.

3 Otherwise we couldn't share that information?

4 MS. BORZELLERI: It's not that we couldn't share
5 it, but it's really the only enforcement --

6 BOARD MEMBER JONES: Tool.

7 MS. BORZELLERI: Quote, enforcement tool that
8 we've got for the program other than publishing the list
9 of those who were non-compliant.

10 BOARD MEMBER JONES: Okay.

11 MS. TOBIAS: All right. Linda Williams, as the
12 last item, will discuss the waste tire area.

13 MS. WILLIAMS: Good afternoon, Mr. Chairman and
14 Members of the Board. Before I refer you to my first
15 overhead, I'd like to make a few introductory comments
16 about the program.

17 With respect to the Board programs relating to
18 the waste tires, the inherent safety issues presented by
19 waste tire piles has dictated our objectives with respect
20 to enforcement in this area. The primary goal is
21 remediation of the site in the most timely fashion and at
22 the responsible party's expense. The primary strategy
23 for the prevention of new illegal waste tire sites is to
24 essentially control waste tire haulers as provided by
25 Chapter 19 of the PRC and control the accumulation of

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1 waste tires by permitting sites with more than 500 tires
2 as provided under Chapter 16 of the Public Resources
3 Code.

4 For facilities violations, the statutes allow
5 for the imposition of penalties up to \$10,000 per day per
6 violation. These may be pursued civilly in Superior
7 Court, criminally with the assistance of a District
8 Attorney. In lieu of a civil action, penalties or civil
9 liability may be assessed administratively through the
10 Office of Administrative Hearings.

11 The waste tire enforcement program is unique
12 among the other enforcement programs, as you heard
13 earlier today, because the majority -- not just because
14 of the statutory constraint but because the majority of
15 violators are unpermitted waste tire facility operators,
16 and many of these operate definitely on the fringe of
17 solvency or they may be land owners who inherited a site
18 after purchasing the property, unaware that the tires
19 pretty much were a nuisance more than they were just a
20 condition that they inherited, or in addition, they may
21 be -- they may have unwittingly rented the property to
22 unpermitted operators and they were unaware previously of
23 the illegalities of the site.

24 The primary enforcement tool for enforcement of
25 violations is the administrative complaint process. The

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1 civil penalty process is often a long and involved one,
2 and it typically requires several years in many cases to
3 bring the case to a conclusion. This makes it unwieldy
4 and quite frankly an ill-fit in a program that focus is
5 on compliance. Also, the waste tire enforcement program
6 deals with a significant volume of cases, which you'll
7 see demonstrated at the end of this presentation.

8 For this reason, the administrative penalty has
9 become one of the most widely used techniques in
10 enforcement programs, not only with this agency but with
11 other federal, state and administrative agencies as well
12 whose primary objective is compliance.

13 The administrative penalty process is more
14 flexible for both the agency and the respondent. It's
15 less of a formal process. It moves more swiftly to a
16 conclusion because of fewer formalities. It's ideal,
17 therefore, for this type of enforcement program where we
18 do have a large volume of cases without sacrificing a
19 uniformity of results and the objectivity that's
20 required. In addition, it also is significantly less
21 expensive for the agency as opposed to proceeding through
22 the civil courts.

23 Because a vast majority of the violators are not
24 well-funded operations, this administrative compliance
25 program often results in enforcement strategy that is

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1 more successful, not for the reason only because of the
2 flexibility of the program but because it also makes
3 negotiated compliance more readily accessible. The
4 success of this enforcement program depends on the
5 certainty also and the quickness in imposition of penalty
6 as well as the uniformity that I had mentioned earlier.

7 So I would like to refer you then to the first
8 overhead. As you heard something of it this morning, I'm
9 going to go pretty quickly through this first overhead.
10 The process begins with investigation and moves through
11 a verbal but documented verbal warning by staff in the
12 field. If there is not compliance after that, a letter
13 of violation ensues. Without compliance, further cleanup
14 and abatement order is issued for facilities. And
15 finally, with further lack of regard for cleanup and
16 abatement order, the filing of administrative complaint
17 for penalties.

18 In the situation of a hauler, a violator
19 receives a single verbal warning, which is also
20 documented, and if they continue to incorrectly fill out
21 manifests a written warning is issued, and finally
22 violations persist, an administrative complaint.

23 Our second slide. The amount of penalties
24 alleged in the administrative complaints depends on the
25 nature of the violation. The primary indicator or where

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1 we begin when we determine the penalty to be alleged
2 depends largely on the number of tires at the site. The
3 other considerations are the health and safety danger
4 posed. For example, if the site is in a densely
5 populated area or near a roadside, in the situation of
6 hauler violations the number of manifests that have been
7 incomplete, and in addition to all of the above the
8 length of time that the respondent is out of compliance
9 after warning or the number of previous offenses.

10 The penalty that we request can range from as
11 little as \$500 to \$300,000. When the situation seems to
12 call for fines approaching past \$300,000, we begin to
13 consider the appropriateness of a Superior Court or civil
14 court action.

15 In the administrative process, the complaint is
16 filed with the Office of Administrative Hearings. OAH,
17 as we refer to it, has hearing rooms throughout the
18 state of California and this is to accommodate the

19 requirement per statute that the hearing be held in the
20 jurisdiction where the violation occurs or where the
21 violator resides. So in practice we can be doing
22 hearings throughout this state in Oakland, Los Angeles,
23 here in Sacramento, Fresno, and as far north as Redding,
24 and I believe there's one other court which I have not
25 visited farther north.

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1 If the respondent refuses compliance, ultimately
2 the hearing is held and it can be held in their absence
3 where the default is taken but often we go through the
4 process of proving up the evidence in order to assure
5 that the record is made in case that the respondent
6 subsequently decides to appeal, then we have a record
7 from which to defend what we did.

8 In the case of facilities, the respondent is
9 given the option to settle if they are cooperative and
10 willing to remediate the site at their expense or in
11 addition they submit an application to obtain a permit
12 before the date of the hearing.

13 Are there any questions at this point?

14 BOARD MEMBER JONES: Okay. I just have one. If
15 they agree to clean up the site and they get you a permit
16 before the deadline but they're not cooperative, does
17 that mean that they don't get the settlement?

18 MS. WILLIAMS: No. And I misspoke if that
19 sounded like the attitude test.

20 BOARD MEMBER JONES: That's what it sounded
21 like.

22 (Laughter)

23 CHAIRMAN EATON: I had one question. You
24 mentioned that it's kind of like use the venue or where
25 the hearing is held is generally where the alleged

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1 violator resides; is that correct?

2 MS. WILLIAMS: As I understand, you asked
3 specifically if the venue is where the violation occurs
4 or where the violator resides, yes.

5 CHAIRMAN EATON: And is that for -- it's a
6 formal hearing; correct?

7 MS. WILLIAMS: It is a formal hearing. This is
8 specifically per statute for the waste tire facility
9 violations.

10 CHAIRMAN EATON: Okay. And is that where the
11 Board gets to choose whether or not they want to hear it
12 or the ALJ?

13 MS. WILLIAMS: It would require a legislative
14 change. The legislative -- the Public Resources Code
15 requires under 42852 that an independent hearing officer
16 hear this and it refers to the particular section of the
17 APA that requires the venue.

18 CHAIRMAN EATON: Okay. That's where I was
19 trying to connect the dots a little bit. Okay.

20 BOARD MEMBER JONES: If -- one more question,
21 Mr. Chairman.

22 CHAIRMAN EATON: Mr. Jones.

23 BOARD MEMBER JONES: Let's say you're looking at
24 something that could potentially be a \$300,000 fine;
25 right? On the surface. And it goes from tire staff to

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1 the attorneys to an ALJ. Is there -- is there -- what
2 are the checks and balances between, you know, if we're
3 going to go after this \$300,000 penalty in front of an
4 ALJ? What's the process that you all go through to
5 determine if this really makes sense? Because obviously
6 there are -- \$300,000 fine tells me that is pretty much
7 of a huge debacle, and I'm not sure -- I'm not sure I can
8 visualize a scenario where that -- where we would be
9 surprised by that, unless it was the fly-overs that
10 facilitated the investigators finding this location. But
11 I'm wondering where is the -- how does that work?

12 MS. WILLIAMS: Perhaps let me first answer your
13 question by saying --

14 BOARD MEMBER JONES: Let me just add one thing.

15 MS. WILLIAMS: Sure.

16 BOARD MEMBER JONES: Because the headlines will
17 say, "Integrated Waste Management Board receives fines of
18 \$300,000." Okay? Now, it also could say, "Integrated
19 Waste Management Board went out for fines of \$300,000 and
20 ALJ determined there was not a problem." So I'm just
21 wondering from a political standpoint how your process
22 works, to ensure that these scary ones --

23 CHAIRMAN EATON: Mr. Jones, I know it's late in
24 the day, but I know you don't want to dance. What you're
25 asking is how is the Board supposed to know --

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1 BOARD MEMBER JONES: What the hell is going on.

2 CHAIRMAN EATON: We don't want to read it in the
3 newspaper before we know that that's what's happening.

4 So that's what you wanted. I think Ms. Tobias had talked
5 about an informal way of advising the Board. I'll let
6 them speak to that. I think that's what I heard.

7 MS. TOBIAS: I think clearly -- let me add
8 before if we want to get into the process, which is

9 something that I also think we could come back on.

10 BOARD MEMBER JONES: That's fine.

11 MS. TOBIAS: I've heard questions on the waste
12 tire situation and I think that's something that we could
13 address, but let me also say that what we've been doing
14 since the split of the divisions where there's now a
15 division that's over the waste tire area is working in a
16 much more coordinated or concerted method with the tire
17 staff. I think before it really did probably work much
18 more of a staff level without a lot of oversight.

19 What we've moved to at this point is meetings
20 every two weeks where the tire staff and the legal staff
21 are sitting down together and going through the process
22 of talking about all these actions, everything from how
23 to the inspectors do their job, do they understand what
24 kind of evidence is necessary at the point at which we
25 take it forward to the administrative civil penalties or

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1 to the AG, if that's what's necessary. They're also
2 hearing when we discuss what's coming from them as far as
3 evidence that's required.

4 I think the other thing that's really, I'll say,
5 lacking at this point is that information going forward
6 to the Board, and what I think Mark Leary and I have been
7 talking about is perhaps a quarterly report, more often
8 if the Board thinks that would be more helpful, that
9 really shows where we are in the process of moving all
10 these alleged offenders through the process and how they
11 are going. So I think that's certainly something that we
12 could do a much better job of in terms of letting the
13 Board know what kinds of fines are being charged with
14 these, how many of these tend to move forward, how many
15 settle out and those kinds of things.

16 So if we could, I'd like to come back next month
17 or the month after or whatever that the Chair thinks is
18 appropriate and answer some of the issues that you've
19 raised today because I think there's been some good
20 questions on the tire process. I'm hoping that we all
21 understand this process better now that we all have a
22 grounding at which we can start to discuss the specific
23 types of things the Board would like to see changed, but
24 I do think the immediate thing we should be doing is
25 bringing forward a better discussion on a regular basis,

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1 whatever that means, to talk to you about where we are in
2 the process and how things get treated through that
3 process.

4 BOARD MEMBER JONES: It would be helpful for me.

5 I'm going to write down as many questions as I can think
6 of --

7 MS. TOBIAS: That would be great.

8 BOARD MEMBER JONES: -- and give them to you
9 guys to work on it because I would hope that I would get
10 more than some of the answers.

11 (Laughter)

12 BOARD MEMBER JONES: Go ahead.

13 MS. WILLIAMS: In the particular situation that
14 you were just asking about also, I just wanted to note
15 that this was one that we had brought before the Board
16 prior to it being heard by the Office of Administrative
17 Hearings because it was an extremely urgent situation
18 that we heard farther back in the fall, and we felt due
19 to the location of tire site near populations that we
20 needed to move very quickly.

21 BOARD MEMBER JONES: But you see, you came to
22 us; right?

23 MS. WILLIAMS: Yes, and I think that was because
24 you had -- the Board had decided that this was an urgent
25 situation.

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1 BOARD MEMBER JONES: Exactly.

2 MS. WILLIAMS: Okay. Are there any further
3 questions? We move on to the third overhead. As also
4 was discussed in the earlier agenda item, negotiated
5 settlement agreements are authorized by a PRC section
6 42851(b) and they are employed where the responsible
7 party decides, as I said before, that they can and have
8 demonstrated significant or complete compliance with the
9 cleanup and abatement order.

10 These settlements comprise our highest rate of
11 success for compliance for the following reasons.

12 BOARD MEMBER JONES: This looks like a
13 congressional hearing.

14 (Laughter)

15 BOARD MEMBER JONES: Go ahead. Keep going.

16 (Laughter)

17 MS. TOBIAS: Now is your chance.

18 MS. WILLIAMS: Remediation and compliance occur
19 voluntarily and often before an enforcement hearing.
20 Ultimately because it offers -- and because it offers
21 better protection for the public and the environment.
22 That's one of the reasons these are more advantageous.
23 The responsible party also has the opportunity to provide
24 input as to the manner in which remediation will be
25 achieved. It just gives them greater buy-in. They're

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1 aware of the course of action that's mandated by the
2 agreement. They concur that it's feasible and that the
3 cost to remediate is not overly burdensome, and they are
4 more likely to comply and bear a substantial portion if
5 not all of the remediation costs.

6 You need to refer to the overhead. In many of
7 our settlements they are stipulated settlements, and what
8 we prefer to do is to stipulate to factual findings on
9 the record and then submit the facts to the judge so that
10 they can reaffirm the terms of the settlement. Those are
11 also entered on the record and ultimately the judge
12 issues a decision based on the stipulated facts.

13 We prefer this method because in the event that
14 the respondent subsequently decides to not comply with
15 the settlement agreement, what we have then is a decision
16 which we can convert to judgment and file against the
17 property or what property may be available for us.

18 As I said before, the settlement process has
19 been very successful and it has probably been our highest
20 success rate so far for the ultimate collection of fines.
21 When there is not a settlement in case the hearing does
22 proceed, typically hearings take a minimum of one hour
23 and that is in the case of a default, and by "default" we
24 mean the respondent does not appear. As I said before,
25 we just put the evidence on the record.

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1 Often these can last a full day, and depending
2 on the seriousness of the offense, the number of
3 investigations that we have to enter on the record, the
4 documentation of the offense and whether or not the
5 respondent can test the facts of the case can take as
6 many as two to three days. The examples might be, for
7 example, even when we're doing this case and the
8 respondent is not represented by an attorney, the judge
9 intentionally moves very cautiously, even if the
10 respondent is not specifically contesting facts. This is
11 often because she's aware that the record is being made
12 for potential appeal and she feels that is her highest
13 service to us at that point.

14 Also, we've had the situation where English is
15 not the first language of the respondent and then we also
16 again have to move very deliberately to make sure the due
17 process rights are being understood and served. Finally
18 if the respondent is represented by counsel, not only is
19 the hearing itself often much longer, it is preceded by
20 prehearing motions which are either held in a prehearing
21 conference prior to the hearing date or prior to the
22 hearing itself on that day.

23 After the conclusion of the hearing process, a
24 judgment is ultimately rendered. Under our statutes for
25 the facilities, this is a final decision. The avenue for

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1 appeal is to the Superior Court. If the respondent does
2 not comply with the judge's decision, the site is
3 eventually remediated by the Board and we proceed to
4 civil court for cost recovery, in addition to any efforts
5 we may employ for the collection of the imposed
6 penalties. Are there any questions at this point in
7 time?

8 Next slide, please. Where the violation poses a
9 serious health threat or the violator continues to engage
10 in the activity despite the imposition of fines or
11 enforcement actions, the case is referred to the District
12 Attorney for criminal penalties including fines and/or
13 imprisonment. This decision is made occasionally with
14 the consult of our office, but the decision is ultimately
15 made by the Deputy of the Special Waste Program.

16 CHAIRMAN EATON: Why is that?

17 MS. WILLIAMS: It isn't required by statute or
18 by regulation that the Legal Office refer this, and I'm
19 really not the best person at this point to answer that.

20 CHAIRMAN EATON: It's just sort of funny if we
21 were thinking about an action that at least I would want
22 to consult with --

23 MS. BORZELLERI: And often that consultation
24 occurs.

25 CHAIRMAN EATON: But it's not --

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1 MS. BORZELLERI: It's not required.

2 MS. TOBIAS: The consultation would really occur
3 with the Executive Director at that point. The reason
4 it's done by the Deputy Director as opposed to the Legal
5 Office is because really it's their action that they're
6 taking. When they refer us something, we're their agents
7 to carry it through the process, but it is really the
8 division itself which decides whether something rises to
9 that level. I guess that's how I would explain it at
10 this point.

11 Certainly I think that falls under that same
12 issue I raised as -- we could provide more information as
13 to when that's -- that happens, what types of actions,
14 how often that happens and that kind of information to
15 the Board, and that would be no problem to provide that
16 and, in fact, I think we really need to provide that
17 information.

18 CHAIRMAN EATON: Because it could be concurrent.
19 You could have a civil proceeding going as well as a
20 criminal proceeding.

21 MS. TOBIAS: Correct. And, in fact, generally
22 you wouldn't have just a criminal --

23 CHAIRMAN EATON: Proceeding; right?

24 MS. TOBIAS: Proceeding by itself. That would
25 be in addition to whatever we were pursuing, unless we

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1 had completely tried everything and the only thing that
2 was left was a criminal proceeding.

3 CHAIRMAN EATON: Rather than to get hung up on
4 it, if we could just -- when you meet with Mr. Leary and
5 I assume the executive staff, Ms. Fish and Mr. Chandler,
6 if you can kind of flush that one out too, that may have
7 a potential for the same kinds of things you talked about
8 before about either in the report or something along
9 those lines, so that we at least understand.

10 MS. TOBIAS: And I think the first couple of
11 times we come back with these obviously there's going to
12 be a little bit of history that we're going to need to
13 bring back as well. I'm not anticipating these reports
14 are going to take up from here and start presenting
15 statistics. I think we're going to say at the current
16 time, for example, we have one referral to a DA. In the
17 past, here's the actions that we referred to the DA,
18 these were the kinds of things that engendered that type
19 of referral. So we're going to need to pick up some of
20 that information and bring it forward.

21 CHAIRMAN EATON: Could they also go to the
22 circuit prosecutor?

23 MS. TOBIAS: Generally that is who it goes to in
24 these counties that are covered by a circuit prosecutor.

25 CHAIRMAN EATON: So that's where it would be.

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1 So under the law, as I understand it -- correct me if I'm
2 mistaken -- that the circuit prosecutor, if he or she is
3 successful in the prosecution, that we as a Board receive
4 no penalties or fines out of that; is that correct?
5 Under the way the statute was written, if I'm not
6 mistaken.

7 MS. TOBIAS: Well, my understanding --

8 CHAIRMAN EATON: To entice them to do that. I
9 may be mistaken on that. Not that that's a bad public
10 policy, I just want to --

11 MS. WILLIAMS: I'm not clear on the question.

12 CHAIRMAN EATON: If there is -- when they were
13 asking for tremendous amounts of money to fund this
14 particular circuit prosecutor -- should come as no
15 surprise that we as a Board really didn't want to
16 participate given the amount of money that we were asked
17 to participate but were willing to contribute our fair
18 share, especially since a lot of these proceedings are
19 not proceedings that involve Board-type prosecutions
20 and/or complaints. They generally involve water or some
21 of the other kinds of more headline-grabbing, for lack of
22 a better word, types of proceedings.

23 My understanding was that one of the ways to
24 entice the locals to do more of these prosecutions were
25 that somehow the scheme was that if there are any cost

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1 recovery, those cost recoveries go to that jurisdiction.
2 And that makes perfect sense. That's an incentive
3 system.

4 So to back up, my connection of the dots so you
5 can clearly understand what I'm trying to get at is that
6 if we have Special Waste making that decision and yet the
7 Board has had to expend money in another arena for
8 cleanup or potential cleanup on that site, we not only
9 lose that money but we lose the ability to recover money
10 if it goes to the circuit prosecutor. I'm just trying to
11 make sure we've all got some decision making going on --

12 MS. TOBIAS: Let me try --

13 CHAIRMAN EATON: -- that understands those
14 sensitivities.

15 MS. TOBIAS: Let me try to add to that.

16 CHAIRMAN EATON: I think that's how it works,
17 but I may be mistaken.

18 MS. TOBIAS: As I recall, and I believe that
19 that's how the legislation went through, that if the
20 circuit prosecutor does bring the action by themselves,
21 that they can pursue those penalties and the penalties go
22 back to the locals. To be honest with you, I can't
23 remember whether that's legislation that passed or
24 whether that was proposed and it's still moving through.

25 However, what I do want to say is generally that

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1 would not be the case. What we would be trying to do is
2 work with the circuit prosecutor or the DA to have their
3 own actions going on. Often they would have a nuisance
4 cause of action, for example, along with their criminal
5 proceedings. We would be pursuing our own penalties at
6 the same time and we might -- if that wasn't working we
7 might be pursuing, for example, cost recovery through the
8 Attorney General at the same time.

9 So I think that one of the things that again we
10 can just give you more information on is that although I
11 do think that that's either proposed or has gone through
12 in terms of incentive for the circuit prosecutors to
13 pursue these types of actions, we would anticipate there
14 would be concurrent actions going on in some way, shape
15 or form with that. I'm not going to say it hasn't been
16 the case where there was only a DA or a circuit
17 prosecutor moving on it, but I think that if there was
18 that would be quite the exception. And again, I will
19 come back with that information.

20 CHAIRMAN EATON: I just speak, you know, my own
21 personal --

22 MS. TOBIAS: I think your point is well taken.

23 CHAIRMAN EATON: I don't generally have a
24 problem with that incentive program. I think that's one
25 of the ways that gets it out there in the arena where

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1 they're most able to get at some of these as opposed to
2 us or something. I just think in making the decision we
3 want to kind of look at is that something we want to do.
4 You'll look at that or however this formality with the
5 Special Waste Division is formalized and the Executive
6 Director, to look at that, be sensitive to that concern
7 or that potential is all.

8 MS. TOBIAS: The one example that I can think of
9 is where we did bring an action with the circuit
10 prosecutor. They had their own causes of action that
11 they pursued and when we were awarded or in this case we
12 worked out a settlement, they received a certain portion
13 of the money and we received a certain portion of the
14 money. So in that case, the only one I'm aware of, we
15 were both working hand-in-hand.

16 MS. WILLIAMS: So on the next overhead,
17 actually -- we've actually dealt with most of what's
18 included there. I think just to wrap up, I'd like to
19 remind the Board that also where the violator has
20 demonstrated a repeated history of violations, a
21 revocation of their facility permit or waste tire
22 registration is held before the Board. These hearings
23 are held before the Board with an ALJ presiding in the
24 situation of the facilities and also where the respondent
25 contests the facts or law in the case.

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1 Moving to the final overhead, this is just to
2 demonstrate the number of hearings that have been
3 conducted in the last two years, and for waste tire
4 facilities you'll see that in 1998, 14 administrative
5 complaints were filed. Ten of those were settled, and of
6 those settlements all achieved full compliance and two
7 were settled with compliance still in the process of
8 being accomplished. Finally, the ALJ decision was issued
9 in only two of those cases.

10 In 1999, you see a significant increase in the
11 number of administrative complaints that were filed and
12 this reflects, of course, the removal of the exclusion in
13 1998, and a number of the cases that we were developing
14 from '98 through '99 came to conclusion finally last
15 year. Out of those, 14 settled and have completed their
16 compliance in the terms of the settlement. One is still
17 ongoing and 18 have received a decision with four
18 remaining pending.

19 Do you have any questions on this?

20 CHAIRMAN EATON: What was the exclusion or the
21 removal of the exclusion?

22 MS. WILLIAMS: This is the removal of the
23 exclusions under the regulations for the waste tire --

24 BOARD MEMBER JONES: Facilities.

25 CHAIRMAN EATON: Facilities.

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1 MS. WILLIAMS: -- facilities. I can remember
2 the numbers but --

3 BOARD MEMBER JONES: Used tire stores --

4 CHAIRMAN EATON: I just want to try and --

5 MS. WILLIAMS: Where they were operating under
6 an exclusion because of the number of tires that they
7 were moving through their facilities.

8 CHAIRMAN EATON: Right.

9 BOARD MEMBER JONES: Can I ask one question?
10 When -- it needs to be an ALJ for facilities. That's in
11 the rules; right?

12 MS. WILLIAMS: Under 42962.

13 BOARD MEMBER JONES: Right. That's in the
14 rules, but then you said that -- or when facts are in
15 dispute.

16 MS. WILLIAMS: Yes.

17 BOARD MEMBER JONES: I think that was your -- so
18 does that mean that anybody --

19 MS. WILLIAMS: For the waste tire hauler.

20 BOARD MEMBER JONES: So if a hauler says I don't
21 agree with the State, let's have a hearing, that that
22 triggers the need for an ALJ?

23 MS. WILLIAMS: If they're contesting -- go
24 ahead.

25 MR. LEVINE: Actually, with regard to the

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1 haulers, there is a reference to the Administrative
2 Procedures Act and that raised the question as to whether
3 the formal hearing requirements should be triggered. As
4 we've been going further along this process, our
5 conclusion has been that since it has not specifically
6 referenced Chapter 5, which is the formal hearing
7 process, that it does give the Board the option of
8 hearing those. This is something that as we've gone
9 through we've come to that conclusion.

10 BOARD MEMBER JONES: If the threshold is if they
11 dispute the facts, I think every item we have in this
12 Board somebody disputes somebody's point of view around
13 here.

14 (Laughter)

15 BOARD MEMBER JONES: That would be strange
16 standard.

17 (Laughter)

18 MS. WILLIAMS: And then finally a brief summary
19 of our administrative complaints regarding hauler
20 violations.

21 In 1998, there were four. Two were settled with
22 full compliance and two resulted in an ALJ. In 1999,
23 four administrative complaints, four were settled with
24 full compliance, and five received administrative
25 impositions.

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1 CHAIRMAN EATON: Any questions?

2 MS. TOBIAS: If not, the last thing that I would
3 like to direct your attention to is the chart that's
4 labeled attachment 1. We put this together to assist the
5 Board in calendaring certain items and also to basically
6 see how many types of these hearings have been done over
7 the last two years.

8 So if you'll notice in the first column, you'll
9 see for a number of items it says no triggering date.
10 That means it arises as the Board decides to revoke a
11 permit or deal with some kind of violation as it comes
12 up, but what you'll also see is, for example, in waste
13 tire hauler registrations that in December 2000, that's
14 the time where the Board staff would be looking at
15 whether there were reasons to deny waste hauler
16 registrations. And you'll see in the next column over is
17 that in January, anyone who's denied a registration would
18 have the ability to appeal that to the Board.

19 So what we were trying to do here is just give
20 some assistance in saying you'll know that at that point
21 in the year there might be appeals, for example, in every
22 January if hauler licenses are denied. Elliott has
23 attempted to call out some of the dates in the planning
24 areas, but you'll see that some of those on the second
25 page are potential hearings, so we don't know really how

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1 many that might be.

2 Rigid plastic packaging containers, again, does
3 have set dates and so does recycled content newsprint.
4 So you can see, for example, with the waste tire facility
5 process, as Linda just called out, in 1998 there were 14
6 complaints filed, two hearings. In 1999, 37 complaints
7 filed, 18 hearings. It gives you some sense of the
8 magnitude we're taking through in terms of those
9 programs.

10 If there's no further questions, then I would
11 like to say in closing that we hope that this agenda item
12 fulfilled its purpose of providing the Board with a
13 strong overview of the Board's enforcement activities and
14 programs. I would like to acknowledge again the
15 assistance of the legal staff. We spent quite a bit of
16 time on this item and I think we've learned a lot as
17 we've done it to basically provide some context with you,
18 but staff has worked long hours to try to bring this
19 forward.

20 I also want to acknowledge our legal student,
21 Brett Jolley, who did the overheads and has done a great
22 job. She should probably be pursuing a computer-related
23 career instead of the legal one. And I also want to
24 acknowledge, along with legal staff, our paralegals, Dona
25 Sturgess and Keri Spaulding, who also really assisted us

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1 in getting this item done.

2 So if there are any questions, that's the end of
3 our presentation.

4 CHAIRMAN EATON: Any questions? Mr. Jones.

5 BOARD MEMBER JONES: Just a quick one. It was a
6 good overview. We have some pretty specific questions.
7 We'll get them to you. So I assume there will be a
8 consideration item that will be coming back where there
9 are options, we can make determinations on how we're
10 going to deal with these things.

11 MS. TOBIAS: Correct, and primarily that was in
12 the area of waste tires. So if that's not the case, you
13 might want to remind us now that there was another area
14 that you were interested in, but I do see an agenda item
15 coming back that addresses the questions you brought up
16 and as I understand some other questions that you may
17 have that you will get to us on waste tire.

18 BOARD MEMBER JONES: Waste tires, that's fine,
19 but I want to -- I've asked for the statute, for whether
20 or not it was grandfathered and what the options are for
21 the Board. Those would be on solid waste facilities, on
22 those permits, all the categories under solid waste
23 facilities, just take a look at all the different
24 categories. Don't -- waste tires I know you're going to
25 deal with, but the ones that we were talking about were

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1 the solid waste facilities, some of the other ones like
2 that, that there are questions as to those that have been
3 grandfathered.

4 If you want specifics, I don't have a problem
5 with the planning. I don't have a problem with the rigid
6 plastic or recycled content we've dealt with, so really
7 solid waste facility permits, waste tire facility stuff,
8 hauler stuff. That should cover it.

9 MS. TOBIAS: Okay. I do want to say that there
10 are references on the chart that's in green on here that
11 basically refer to the statutes which call out the
12 requirements for those hearings. So we did provide that.

13 BOARD MEMBER JONES: I understand. What I'll
14 try to do then is I'll write the question out because I
15 think you did a good job of putting all that stuff
16 together, but I think that the issues of what was
17 grandfathered and what wasn't is critical to me as to
18 what our options are. If there are two options, that's
19 fine. If there are three, I'd like to know what they are
20 so that we can make the determination from this dias as
21 to which of those paths we will follow.

22 MS. TOBIAS: Okay.

23 CHAIRMAN EATON: Ms. Moulton-Patterson.

24 BOARD MEMBER MOULTON-PATTERSON: Thank you,
25 Mr. Chair.

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1 I would just like to thank you for a really
2 great presentation. It's been very helpful to me. I
3 know you spent a lot of time on it, and not to be
4 redundant but I personally would really -- Mr. Jones's
5 comments about when large fines are being sent down to
6 the judges, I would like to know about that because those
7 are the questions that the press or the governor or
8 someone would likely ask the Board about. So I would
9 certainly want to be in the loop, but thank you for a
10 great presentation.

11 MS. TOBIAS: I think we'll bring two things
12 back. One is going to be an agenda item, one is we are
13 going to start a regular reporting system to the Board.
14 So I see those as somewhat separate items.

15 CHAIRMAN EATON: And I would just echo, and I
16 know that Senator Roberti who had a previous committment
17 that he couldn't get out of did want to say that he
18 appreciated it. I think I'd like to thank Ms. Williams,
19 Mr. Block, Mr. Bledsoe, Ms. Borzelleri, Mr. Levine --
20 your coming out party, it would appear. It was kind of
21 nice that you had company but we expect that you'll be
22 able to act on your own at the next one.

23 (Laughter)

24 CHAIRMAN EATON: Ms. Tobias, obviously, and as
25 you mentioned all of the support staff and legal. I know

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1 what it takes to put something like this together. I
2 think we made great progress. I'm not sure we're ready
3 for a consideration item, but when we get there we've got
4 some good dialogue.

5 Thank you, Mr. Chandler and Ms. Fish, for
6 bringing some of the first of what you had mentioned were
7 many of these items that will come forward because that
8 is how we learn and look at it, and just because it's
9 there doesn't mean it's the right thing to do. Things
10 change, things move, things need to be adjusted, and
11 hopefully in the future you'll look at things that we
12 either need to push in the legislative remedy, as was
13 mentioned in the first slide, or in any other way.

14 So on behalf of all of us, thank you, and thank
15 you for the Division Chiefs and the staff who sat in the
16 audience throughout the day, really, and basically
17 provided real backup on the details of some of the things
18 and it's far -- I think we have far too few times when we
19 really have people in who have the interaction that's
20 supposed to be. Everyone talks about cross-media, but
21 how about cross-division, just in here, talking about
22 things, the right hand knowing what the left hand is
23 doing and this, I think, is the beginning of it, and the
24 executive staff ought to be commended for putting some of
25 that together.

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4 I, Terri L. Emery, CSR 11598, a Certified
5 Shorthand Reporter in and for the State of California, do
6 hereby certify:

7 That the foregoing proceedings were taken
8 down by me in shorthand at the time and place named
9 therein and was thereafter transcribed under my
10 supervision; that this transcript contains a full, true
11 and correct record of the proceedings which took place at
12 the time and place set forth in the caption hereto.

13

14

15 I further certify that I have no interest
16 in the event of the action.

17

18

19 EXECUTED this 14th day of May, 2000.

20

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24

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Terri L. Emery

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