

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

BEFORE THE  
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

IN THE MATTER OF: )  
REGULAR MONTHLY BUSINESS )  
MEETING )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

August 21, 2000

2:00 P.M.

Visalia City Hall  
707 West Acequia Avenue  
Visalia, California

REPORTED BY:  
Terri L. Emery,  
CSR No. 11598  
Our File No. 1-62320

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

APPEARANCES :

MS. LINDA MOULTON-PATTERSON, CHAIR  
MR. DANIEL EATON, BOARD MEMBER  
MR. STEVEN R. JONES, BOARD MEMBER  
MR. JOSE' MEDINA, BOARD MEMBER  
MR. MICHAEL PAPARIAN, BOARD MEMBER  
MR. DAVID A. ROBERTI, BOARD MEMBER

STAFF PRESENT:

MR. RALPH CHANDLER, EXECUTIVE DIRECTOR  
MS. KATHRYN TOBIAS, LEGAL COUNSEL  
MS. YVONNE VILLA, BOARD SECRETARY

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

I N D E X

|   | PAGE               |
|---|--------------------|
| I. CALL TO ORDER  | 4                  |
| II. ROLL CALL AND DECLARATION OF QUORUM   | 4                  |
| III. OPENING REMARKS  | 4                  |
| IV. REPORTS AND PRESENTATIONS   |                    |
| Ex Parte Communications   | 4, 22, 55          |
| V. CONTINUED BUSINESS AGENDA ITEMS  |                    |
| VI. CONSENT AGENDA  |                    |
| VII. NEW BUSINESS AGENDA ITEMS  |                    |
| Other   |                    |
| ITEM 1: Hearing on Appeal of San Bernardino County Local Enforcement Agency from Decision by San Bernardino County Solid Waste Independent Hearing Panel that Proposed California Bio-Mass, Inc. Recycling Center/Transfer Facility, San Bernardino, California, Requires a Solid Waste Facilities Permit |                    |
| Staff Presentation  | 6                  |
| Public Testimony  | 39, 55, 68, 80, 92 |
| Action  | 119, 122           |
| VIII. PUBLIC COMMENT  | --                 |
| IX. ADJOURNMENT   | 125                |

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

1 FOUNTAIN VALLEY, CALIFORNIA, AUGUST 21, 2000 - 2:00 P.M.

2 \* \* \* \* \*

3 CHAIR MOULTON-PATTERSON: Good afternoon and  
4 I'd like to welcome you to the August 21st meeting of the  
5 California Integrated Waste Management Board. The  
6 meeting is now called to order and I'd like to ask the  
7 secretary to please call the roll.

8 BOARD SECRETARY: Eaton.

9 BOARD MEMBER EATON: Here.

10 BOARD SECRETARY: Jones.

11 BOARD MEMBER JONES: Here.

12 BOARD SECRETARY: Medina.

13 BOARD MEMBER MEDINA: Here.

14 BOARD SECRETARY: Papanian.

15 BOARD MEMBER PAPANIAN: Here.

16 BOARD SECRETARY: Roberti.

17 Moulton-Patterson.

18 CHAIR MOULTON-PATTERSON: Here.

19 At this time do any BOARD MEMBERS have ex  
20 partes to disclose? Mr. Eaton.

21 BOARD MEMBER EATON: I think I'm up to date.

22 Thank you.

23 CHAIR MOULTON-PATTERSON: Thank you.

24 BOARD MEMBER JONES: Yes. Denise Delmatier,  
25 said hi to Dave Hardy, talked to Mr. Cupps. I'm looking

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

1 around the room. George Larsen. I talked to Paul Ryan.

2 I -- that's it. And one to Ken Stoddard earlier this

3 morning.

4 CHAIR MOULTON-PATTERSON: Thank you.

5 Mr. Medina.

6 BOARD MEMBER MEDINA: None to report.

7 CHAIR MOULTON-PATTERSON: Mr. Papanian.

8 BOARD MEMBER PAPANIAN: Yes. I met Dave Hardy,

9 spoke with George Larsen and spoke with John Cupps.

10 CHAIR MOULTON-PATTERSON: Thank you. I just

11 said hello to John Cupps, otherwise I'm up to date.

12 If you would please turn off any cell phones or

13 pagers, we would really appreciate it at this time. For

14 those of you in the audience, this is a special hearing

15 with formal procedures which are outlined on page 1-191

16 of your hearing packet.

17 With that, I will call on Mr. Bledsoe. Is it

18 the staff report first? Sorry.

19 Mr. Chandler.

20 MR. CHANDLER: I think the presentation from the

21 staff will be led by the legal office, so we'll go right

22 to the legal staff.

23 CHAIR MOULTON-PATTERSON: All right.

24 Mr. Bledsoe.

25 MR. BLEDSOE: Good afternoon, Madam Chair,

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

1 Members of the Board. My name is Michael Bledsoe. I'm  
2 with the legal office.  
3 The item before the Board this afternoon is a  
4 hearing brought by San Bernardino County Local  
5 Enforcement Agency from a decision of the San Bernardino  
6 County Solid Waste Independent Hearing Panel that a  
7 proposed California Bio-Mass facility is a transfer  
8 station, which requires a Solid Waste Facility Permit,  
9 rather than a recycling center, which does not require a  
10 Solid Waste Facility Permit.  
11 The issue before the Board is whether a facility  
12 that accepts separated for reuse food waste and other  
13 organic materials which contain less than 10 percent  
14 residual, holds them for less than 48 hours and  
15 transports them to permitted compost facilities for  
16 composting is properly considered a transfer and  
17 processing station or a recycling center. The transfer  
18 and processing station regs, and in particular the  
19 so-called two-part test which defines recycling center,  
20 will be the primary law that applies to the question  
21 before you.  
22 As we will demonstrate, the applicable statutes  
23 and regulations are very clear. We don't see any  
24 ambiguity in the language at all. Both legal staff and  
25 program staff concur on the proper method of applying

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

1 those statutes and regulations to the California proposed  
2 California 310-Mass facility. This interpretation is  
3 consistent with transcripts of Board committee  
4 discussions on the two-part test which took place leading  
5 up to the Board's approval of the transfer and processing  
6 station regulations in 1999.

7 You have received copies of roughly 50 pages of  
8 transcript from the September 16, 1997 meeting of the  
9 Permitting and Enforcement Committee at which the  
10 committee discussed the two-part test in some detail.

11 That transcript shows that the Board was very concerned  
12 with and interested in the problem of putrescible waste  
13 at the recycling centers or that might be found to be in  
14 the residual waste under the second part of the two-part  
15 test, but they chose not to modify the language of the  
16 proposed regulations at that time.

17 So I think it's fair to say that the committee  
18 did not anticipate that a facility of the type that Cal  
19 Bio-Mass is proposing would come before them that is a  
20 recycling center, if you will, that handles entirely  
21 putrescible wastes.

22 What this demonstrates to us is why it's  
23 important for public policy makers to stay constantly  
24 vigilant in the face of an ever-changing industry. I  
25 think this is a new use proposed that simply wasn't

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

1 considered several years ago. At the time there was no  
2 facility acting as an organic materials recycling center,  
3 no one contemplated such a business practice, and yet  
4 here's this issue before you now.

5 Notwithstanding our understanding of the  
6 statutes and regulations, staff sees this as an important  
7 area that needs regulation. There are clearly potential  
8 impacts to the public health, safety and the environment  
9 which might arise from a recycling center that handles  
10 entirely putrescible wastes.

11 consequently, we will be recommending that the  
12 Board direct staff to take a look at this issue and come  
13 back to the Board with a proposed or set of proposed  
14 solutions. We believe that there's consensus among  
15 interested parties including the LEAs, the industry and  
16 even Cal Bio-Mass that this is an area that needs  
17 attention in our regulations.

18 The present circumstances of the appeal are that  
19 the facility is not yet in operation. The underlying  
20 Negative Declaration that was prepared for the City's use  
21 permit for the project was challenged in court. It's  
22 currently in court right now. So construction, although  
23 just barely begun, has been halted so this facility is  
24 not in operation.

25 We understand that the parties to the litigation

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

1 are close to settling the matter which will likely  
2 involve further work on the CEQA document, which means a  
3 substantial delay in any implementation of the new  
4 facility. That delay actually works to the advantage of  
5 the Board in this circumstance because it gives the Board  
6 time to address the -- to address this type of facility  
7 in modifying regulations when it actually comes back in  
8 the future.

9 Nonetheless, even if the homeowners' association  
10 which is challenging the project in court and California  
11 3+0-Mass were to settle their differences, this appeal  
12 and the issues raised in it is still an important one for  
13 the Board and an appropriate subject for the Board to  
14 consider.

15 The Hearing Panel made a decision that the San  
16 Bernardino County LEA incorrectly applied the Integrated  
17 Waste Management Act in its regulations. The Local  
18 Enforcement Agency would like to have the Board determine  
19 what the proper application of the Act is, thus vacating  
20 the Hearing Panel's determination.

21 The fundamental issue is one that's going to  
22 come to the Board again, whether or not the California  
23 Bio-Mass project goes forward. There has been a lot of  
24 interest in this topic from LEAs, so I think they're  
25 concerned with it. So this is definitely an issue that's

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

1 going to come back to you, regardless of what California  
2 Bio-Mass decides to do with its particular facility.  
3 And finally, the homeowners' association has  
4 asserted that the LEA is not a proper aggrieved party  
5 under Public Resources Code Section 45030, which provides  
6 for appeals from a decision by a Hearing Panel. The LEA  
7 would like to establish that it is a proper aggrieved  
8 party, and I believe that other LEAs would have a similar  
9 interest in knowing that they have the ability to appeal  
10 from a decision by a Hearing Panel, not just the project  
11 applicant.

12 You've referred to the section on procedures in  
13 the Board packet. Just very briefly, what we've provided  
14 for after the staff presentation are 15-minute  
15 presentations by each of the interested parties, the  
16 Cimarron Ranch Homeowners' Association, the Local  
17 Enforcement Agency and Cal Bio-Mass. If there is any  
18 representative of the San Bernardino County Hearing  
19 Panel, I would suggest they be given an opportunity to  
20 speak as well.

21 After their 15-minute presentations, they will  
22 have an opportunity for witnesses to speak for up to 10  
23 minutes and then later five minutes for rebuttal. I do  
24 not know if any of the parties have witnesses this  
25 afternoon.

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

1 There would then be some closing comments by  
2 staff and public comments which the Chair may entertain  
3 and may decide to limit the time that members of the  
4 public may speak if it's getting late in the day. The  
5 Board, of course, is free to ask questions of the  
6 participants and staff at any time as the Chair may  
7 determine.

8 I would urge you as we go through this process  
9 to try to maintain our focus on the specific issue at  
10 hand as set out in the Board agenda, which is the appeal  
11 being brought by the LEA. The fundamental issue here is  
12 whether the proposed Cal Bio-Mass facility requires a  
13 Solid Waste Facility Permit because it's a transfer  
14 station or is exempt from that statute and regulations  
15 because it's a recycling center. An important secondary  
16 issue is the one that we would propose coming back to you  
17 in the near future, which is how should this gap in our  
18 regulations be plugged.

19 So very briefly to summarize the project itself,  
20 Cal Bio-Mass is seeking to develop a facility in the City  
21 of San Bernardino that will receive source-separated  
22 organic materials including green waste, wood waste, wall  
23 board, paper, pre- and post-consumer food waste and  
24 liquid food waste. The materials would be held on-site  
25 for less than 48 hours and then transferred to an

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

1 off-site *facility* or facilities for composting. Those  
2 off-site facilities are permitted compost facilities.  
3 Finish materials would then be returned to the site for  
4 bagging, storage and bulk sales.  
5 The LEA determined that the proposed facility is  
6 a recycling center based on the two-part test set out in  
7 Board regulations and thus did not require a Solid Waste  
8 Facility Permit.  
9 The local neighborhood association from whom  
10 you'll hear later this afternoon objected to that  
11 decision and successfully appealed the LEA's decision to  
12 the local Independent Hearing Panel under our AB 59  
13 process. The Hearing Panel decided that a Solid Waste  
14 Facility Permit is required for the California Bio-Mass  
15 facility.  
16 The LEA appealed that decision to the Board. At  
17 last month's meeting the Board decided that it would  
18 accept the appeal, and the merits of that appeal are  
19 being presented to you this afternoon.  
20 Staff, at the conclusion of this presentation,  
21 we will be recommending that the Board grant the LEA's  
22 appeal and overturn the decision of the local Hearing  
23 Panel in that we believe the LEA properly found that no  
24 Solid Waste Facility Permit is required under our current  
25 statutes and regulations, and secondly we will recommend

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

1 that you direct staff to evaluate current regulations and  
2 return to the Board with a recommendation for  
3 modifications such that these kinds of facilities would  
4 be regulated under our procedures in the future.  
5 So the fundamental issue under the Integrated  
6 Waste Management Act and the Board's regulations, is the  
7 California Bio-Mass facility a recycling center or a  
8 transfer station. Recycling centers are excluded from  
9 regulation under our statutes and regulations. Solid  
10 waste facilities include as one of the -- one subset of  
11 solid waste facilities is transfer and processing  
12 stations.  
13 Transfer or processing station is defined as  
14 facilities that receive solid wastes, temporarily store,  
15 convert, separate or otherwise process the materials into  
16 solid wastes or transfer the solid waste directly from  
17 smaller to larger vehicles for transport. That's Public  
18 Resources Code Section 40200 (a). That sounds a lot like  
19 what California Bio-Mass's operation will be.  
20 However, the next subsection provides that  
21 transfer or processing station expressly excludes a  
22 facility whose principal function is to receive, store,  
23 convert or otherwise process wastes which have already  
24 been separated for reuse and are not intended for  
25 disposal. The Board has adopted regulations for transfer

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

1 and processing stations which place them in the tiered  
2 permitting system.  
3 Under those regulations, consistent with the  
4 statutory definition of transfer and processing station  
5 that I just read, recycling activities are not regulated  
6 as transfer and processing operations. They're expressly  
7 excluded from those regulations. The definition of  
8 recycling center, if you'll bear with me, I'll read  
9 through this. This is the two-part test which defines  
10 recycling center at Section 17402.5(b) in Title 14 of our  
11 regulations.  
12 Recycling center is, under the two-part test  
13 number one, "A recycling center shall only receive  
14 material that has been separated for reuse prior to  
15 receipt, and part two of the test, "The residual amount  
16 of solid waste in this material shall be less than 10  
17 percent of the amount of separated for reuse material  
18 received by weight."  
19 Those two provisions are the two-part test which  
20 we apply to determine whether a facility is a recycling  
21 center or a transfer and processing station. Under the  
22 first part of the test, recycling center may only receive  
23 material that has been separated for reuse. That phrase,  
24 separated for reuse, means materials including commingled  
25 recyclables that have been separated or kept separate

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

1 from the solid wastestream for the purpose of additional  
2 sorting or processing those materials for recycling or  
3 reuse. Source separated has a similar -- has the  
4 identical definition except for the separation occurs at  
5 the source of generation of the materials.  
6 So under the first part of the test the only  
7 materials that a recycling center may receive are  
8 materials that have been separated into categories of  
9 waste or kept separated at the point of generation before  
10 they are received at the facility.  
11 The second part of the test deals with the  
12 amount of waste residual that's left over after the  
13 recycling process occurs. A recycling center may not  
14 have more than 10 percent residual waste based on weight.  
15 Residual is defined as the solid waste destined for  
16 disposal, further transfer or processing as defined in  
17 section blah, blah, blah or transformation.  
18 That further transfer or processing which  
19 renders a material as residual does not include  
20 composting. So composting is expressly excluded from the  
21 future operations that determine whether a material is a  
22 residual waste or not. So a facility at which less than  
23 10 percent of the material received requires disposal or  
24 further processing except for composting can satisfy and  
25 does satisfy the second part of the two-part test.

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

1 Taking both parts of these tests together then,  
2 a facility that receives only materials destined for  
3 reuse in some form that have been separated from or kept  
4 separated -- kept separate from the general wastestream  
5 and that does not generate more than 10 percent waste or  
6 materials that require further processing exclusive of  
7 composting is a recycling center. A facility not meeting  
8 those requirements is a transfer processing station or  
9 operation.

10 Applying our Statute 40200 and these regulations  
11 to the facts at hand, the California Bio-Mass facility  
12 receives only separated for reuse recyclable materials.  
13 The residual at the facility is expected to be less than  
14 10 percent. Consequently, the Cal Bio-Mass facility is a  
15 recycling center under our definitions for which no Solid  
16 Waste Facility Permit is required. It is not a transfer  
17 and processing station for which a Solid Waste Facility  
18 Permit is required.

19 So if I could briefly summarize the arguments of  
20 the parties -- they are here today so I'm not going to  
21 dwell on this very long -- the LEA simply argues that  
22 under the two-part test the proposed facility is a  
23 recycling center, not a transfer and processing station.  
24 The material is source-separated organic recyclables and  
25 the residual wastes are expected to be about 3 percent,

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

1 so well under the 10 percent limit.  
2 The association makes a series of arguments,  
3 which I'm sure will be expanded upon this afternoon, but  
4 firstly they argue that California Bio-Mass has a poor  
5 record of compliance at other permitted facilities. I  
6 don't know whether that's true, but I don't believe that  
7 it bears on the issue at hand, and the question at hand  
8 is whether the proposed facility under our regulations is  
9 a recycling center or a transfer processing station.  
10 If the facility does not -- goes into operation  
11 and doesn't comply with regulations, then the Enforcement  
12 Agency is empowered to take appropriate steps. The local  
13 land use authority, the City of San Bernardino, also of  
14 course has the ability and the authority to enforce its  
15 Conditional Use Permit which contains a number of  
16 conditions regarding the proposed operation of the  
17 facility.  
18 Secondly, the association believes that the  
19 amount of residual waste in the materials received at the  
20 facility will exceed 10 percent. Again, the evidence  
21 before us is that it will not exceed 10 percent, it will  
22 be roughly 3 percent. So until there is a wastestream  
23 that exceeds 10 percent, I think we have to take the  
24 application at face value.  
25 Thirdly, the association argues that the

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

1 environmental document that the City prepared for the  
2 project is inadequate. And as I mentioned, that issue is  
3 in court right now. However, under our interpretation --  
4 and that issue will be resolved by the Cal Bio-Mass in  
5 court and the association in court.

6 Our Board is obligated when a matter is  
7 undergoing litigation to proceed as if the underlying  
8 environmental document is adequate. However, under the  
9 analysis that I've just given you, that facility does not  
10 require a Solid Waste Facility Permit so there's no  
11 discretionary decision for the Board to make respecting  
12 the facility and consequently we have no basis on which  
13 to comment on the environmental document.

14 California Bio-Mass argues essentially that the  
15 facility is a recycling center under existing  
16 regulations. Cal Bio-Mass also recognizes that the Board  
17 may wish to reevaluate its regulations regarding organics  
18 recycling in the future and asserts that that's something  
19 that should be done.

20 I think what Cal Bio-Mass is particularly  
21 interested in at this point, however, is that the rules  
22 of the game have to be the same for everyone. If the  
23 regulations would deem the proposed facility a recycling  
24 center, then those are the rules that apply at present  
25 when the recycling center -- when the proposal is going

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

1 through the process. If those regulations change in the  
2 future, the facility, of course, would be subject to  
3 them.

4 Finally, the representatives of the waste  
5 industry have presented materials -- and I believe a  
6 representative will be speaking with you this afternoon  
7 regarding that -- that attempt to show that the Board  
8 never intended the regulations, the transfer and  
9 processing station regulations to exclude putrescible  
10 wastes. However, in the materials that we've been able  
11 to uncover, and certainly in the regulations that the  
12 Board adopted which is what really counts, what are the  
13 laws of the state, that distinction is not made.

14 Putrescibles are not excluded from the possibility of  
15 there being a recycling center that deals with entirely  
16 putrescible materials.

17 I briefly would like to comment on the  
18 association's argument that the LEA is not a proper  
19 aggrieved party under Public Resources Code Section  
20 45030. We're very comfortable that the LEA is an  
21 appropriate body to bring an appeal. The LEA is a person  
22 as defined under our statutes. The LEA participated in  
23 the hearing, was a party to the hearing, was not  
24 satisfied with the result of the hearing. They were  
25 aggrieved, if you will, because the Hearing Panel imposed

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

1 a duty on them, on the LEA, to require a permit for the  
2 facility.  
3 This conflicts with another duty that the LEA  
4 has, which is to enforce the Integrated Waste Management  
5 Act and its regulations. The LEA is further burdened by  
6 the possible consequence that if it does require a Solid  
7 Waste Facility Permit, Cal Bio-Mass is quite likely to  
8 sue them. So we're comfortable that the LEA has enough  
9 at stake here, has enough of an interest in this issue to  
10 be a valid appellant under that code section.  
11 I'd like to point out to the Board that if we  
12 did not allow LEAs to appeal from Hearing Panel  
13 decisions, we could get into the situation -- and I'm  
14 sure this would happen in some cases -- where different  
15 Hearing Panels would interpret the Integrated Waste  
16 Management Act and our regulations in different ways, and  
17 one of the Board's important responsibilities is to  
18 attempt to apply the solid waste laws consistently  
19 throughout the state.  
20 So in conclusion, staff believes that the  
21 California Bio-Mass facility is properly considered a  
22 recycling center under Title 14, Code of Regulations  
23 Section 17402.5(d), and that the facility is not a  
24 transfer or processing station as defined by Public  
25 Resources Code section 40200 (b) (2) . Its principal

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

1 function is to handle materials that have been separated  
2 for reuse prior to receipt and they are not intended for  
3 disposal. No Solid Waste Facility Permit is required for  
4 the facility as long as it continues to satisfy the  
5 requirements set out in the two-part test.

6 So we would recommend that the Board adopt the  
7 attached Resolution Number 2000-381 which sets aside the  
8 determination of the Hearing Panel that the California  
9 Bio-Mass facility must obtain a Solid Waste Facilities  
10 Permit from the Local Enforcement Agency.

11 Secondly, we do recommend that the Board direct  
12 staff to evaluate our current regulations regarding  
13 recycling centers and transfer stations and return to you  
14 as quickly as you would deem it appropriate with some  
15 proposed solutions to or modifications of existing law so  
16 that the kind of facility that Cal Bio-Mass is proposing  
17 would fall under Enforcement Agency and Board regulation  
18 in the future.

19 If there are any questions, I would be happy to  
20 entertain them at this time or I can come back later  
21 after the presentations.

22 CHAIR MOULTON-PATTERSON: Thank you,

23 Mr. Bledsoe.

24 I know there are questions, but before we go to  
25 the questions, let the record reflect that Senator

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

1 Roberti is present. Senator Roberti, did you have any ex  
2 partes to report?

3 BOARD MEMBER ROBERTI: No, I do not.

4 CHAIR MOULTON-PATTERSON: Thank you.

5 Mr. Papanian.

6 BOARD MEMBER PAPANIAN: I have several  
7 questions. The first one is more of a process one to  
8 make sure I'm clear. If -- unless there are four or  
9 more -- just tell me if I'm right on this. Unless there  
10 are four or more votes on this Board to overturn the  
11 LEA's decision, then the LEA -- excuse me, the Hearing  
12 Panel decision, then that Hearing Panel's decision would  
13 hold and the facility would need a permit.

14 MR. BLEDSOE: That's correct.

15 BOARD MEMBER PAPANIAN: So it would take an  
16 affirmative four votes from this Board to overturn the  
17 Hearing Panel decision.

18 MR. BLEDSOE: Right.

19 BOARD MEMBER PAPANIAN: Let me ask you a few  
20 questions about what's going on at the facility and how  
21 it relates to some of the definitions. Some of the stuff  
22 coming to the facility is restaurant waste?

23 MR. BLEDSOE: Correct.

24 BOARD MEMBER PAPANIAN: What sort of source  
25 separation is happening with that restaurant waste as you

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

1 understand it?

2 MR. BLEDSOE: As I understand it, the material  
3 is pre- and post-consumer food waste that goes into  
4 particular bins at the restaurants so that those bins  
5 contain only food wastes, but we do have both the  
6 applicant and County of San Bernardino who are much more  
7 familiar with the facility than I.

8 BOARD MEMBER PAPARIAN: Just food waste going  
9 in, there would be the source separation we're looking  
10 for.

11 MR. BLEDSOE: Correct.

12 BOARD MEMBER PAPARIAN: Now, elsewhere the  
13 facility is taking in liquid waste apart from the food  
14 waste.

15 MR. BLEDSOE: Correct.

16 BOARD MEMBER PAPARIAN: Tanker trucks and  
17 transferring it to other tanker trucks and amongst that  
18 liquid waste is whey. W-h-e-y I think is how you spell  
19 it. I had to look it up and make sure I had my curds and  
20 whey correct. I understand whey, it's the very watery  
21 liquid that comes out from milk processing when you're  
22 making cheese or other dairy products. So that stuff is  
23 going into tanker trucks and going off someplace else.  
24 It's not being -- nothing else is happening with that at  
25 the facility.

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

1 MR. BLEDSOE: Correct.

2 BOARD MEMBER PAPARIAN: So the separation that's  
3 happening at the facility, you've got -- I think you've  
4 got maybe some C&D waste, maybe drywall stuff over here,  
5 some food waste over here, some green waste here, and  
6 some liquid waste over there.

7 MR. BLEDSOE: Well, all within an enclosed  
8 building.

9 BOARD MEMBER PAPARIAN: Right. But the fact  
10 that those things are separated, is it important for the  
11 definitions.

12 MR. BLEDSOE: No. The fact that it's important  
13 for the definition is that they were separated at their  
14 source or separated before they got to the facility.

15 BOARD MEMBER PAPARIAN: What happens if that  
16 separation isn't maintained?

17 MR. BLEDSOE: At the facility?

18 BOARD MEMBER PAPARIAN: Yeah.

19 MR. BLEDSOE: I don't think it is maintained at  
20 the facility. I think -- and we do have people here who  
21 can correct me, but I believe it goes into a pile in the  
22 building that is proposed for construction.

23 BOARD MEMBER PAPARIAN: I'm kind of confused  
24 about what source separation means.

25 MR. BLEDSOE: Source separated has to do with

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

1 the source. Once it gets to the Cal Bio-Mass facility it  
2 doesn't have to remain separate.

3 BOARD MEMBER PAPARIAN: You can start mingling  
4 things at that point.

5 MR. BLEDSOE: Commingled recyclables is clearly  
6 specified as one of the materials that is expected.

7 BOARD MEMBER PAPARIAN: In fact, in the initial  
8 study I think I read that what will happen with some of  
9 the food wastes that's very liquidy, apart from the  
10 whey-type waste, that liquid and food waste from  
11 restaurants will be mixed on the floor of the facility  
12 with green wastes.

13 MR. BLEDSOE: We'll have to confirm that with  
14 perhaps the proposed operator.

15 BOARD MEMBER PAPARIAN: In terms of the  
16 definitions, you don't think that's a problem mixing that  
17 kind of waste together on the floor of the facility?

18 MR. BLEDSOE: Under our regulations, no, I  
19 don't.

20 BOARD MEMBER PAPARIAN: Now, when you actually  
21 go to the definition of reuse, the definition of reuse is  
22 use in the same or similar form as it was produced of a  
23 material which might otherwise be discarded. In the case  
24 of the whey which I used as an example, what's the same  
25 or similar form as it was produced?

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

1 MR. BLEDSOE: You know, I see these materials  
2 as -- the compost is not -- is a product, if you will, is  
3 something that is not being disposed. The result of this  
4 recycling activity is that these materials are being  
5 reused as compost after they're properly processed and so  
6 they are properly separated for reuse.

7 BOARD MEMBER PAPARIAN: I guess where I'm having  
8 a little question in my mind with the definition when I  
9 think of food waste too and I look at the definition of  
10 reuse being the same or similar form as it was produced,  
11 and we're now asserting that compost is that same or  
12 similar form as it was produced?

13 MR. BLEDSOE: Or if you look at the definition  
14 of separated for reuse which follows right under reuse,  
15 it means --

16 BOARD MEMBER ROBERTI: What's that section?

17 MR. BLEDSOE: This is 17402.5.

18 BOARD MEMBER JONES: Page 122.

19 MR. BLEDSOE: (b) (2) and (b) (3) is where we are.  
20 Separated for reuse means materials including commingled  
21 recyclables that have been separated or kept separate  
22 from the solid wastestream for the purpose of additional  
23 sorting or processing of those materials for recycling or  
24 reuse in order to return them to the economic mainstream.  
25 So it seems to me that separated for reuse

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

1 contemplates further processing, recycling or reuse.

2 BOARD MEMBER PAPARIAN: If you continue in that  
3 definition, it says reuse in the form of raw material for  
4 new, used or reconstituted products which meets quality  
5 standard, et cetera, and again I get down to what's the  
6 raw material of whey.

7 MR. BLEDSOE: Whatever the result of the  
8 composting process would compost, I suppose, is the  
9 resulting product.

10 BOARD MEMBER PAPARIAN: When I think of a raw  
11 material, I think of something that leads to the  
12 production of something. When I think of whey I think of  
13 milk being the raw material.

14 MR. BLEDSOE: Well, I'm not going to try to  
15 argue that the compost converts into milk. It's clear to  
16 me that this definition contemplates -- and it may not  
17 have been what the BOARD MEMBERS had in mind at the time,  
18 but this definition contemplates that commingled  
19 recyclables which are going to be recycled or reused to  
20 return them to the economic mainstream, that's the  
21 purpose. That's the way the definition of recycling  
22 center was set out.

23 BOARD MEMBER PAPARIAN: Is there more answer  
24 coming there or should I continue?

25 MR. BLEDSOE: No. Please go ahead.

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

1           BOARD MEMBER PAPARIAN: When the liquid waste  
2 leaves the facility and goes for the composting, a very  
3 small portion of that liquid waste will actually become  
4 compost. Most of it, I believe, will evaporate. How do  
5 you account for the weight of that evaporated material in  
6 our definitions making more than 10 percent? How do you  
7 account for the way it is -- if you view -- is the  
8 evaporated portion considered part of that 10 percent or  
9 is that something else?

10 MR. BLEDSOE: The evaporation that you're  
11 talking about occurs at the composting facility, so it  
12 doesn't relate to this question at all.  
13 The definition of recycling center and residual  
14 does include an adjustment for moisture-laden waste, but  
15 the evaporation that you're talking about happens later  
16 in the process.

17           BOARD MEMBER PAPARIAN: So that would be used to  
18 decide whether that composting facility is a recycling  
19 center.

20 MR. BLEDSOE: Right. The composting facility is  
21 clearly a facility that requires a permit.

22           BOARD MEMBER PAPARIAN: Okay. That's -- those  
23 are my questions for now. I may have some more in a  
24 little bit.

25           CHAIR MOULTON-PATTERSON: Thank you.

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

1 Mr. Jones.

2 BOARD MEMBER JONES: I want to follow up on what  
3 Mr. Papanian was talking about on the definition for  
4 separated for reuse. I think that this is -- I think the  
5 issue we have in front of us is pretty tricky. Hearing  
6 if we should hear the appeal or not, clearly we all voted  
7 yes, we should because the issue was the two-part test.  
8 And I think for the record that LEAs have the -- are an  
9 aggrieved party and have a right to be in front of this  
10 Board, just like the industry and just like the public.  
11 But I think one of the key words that we've got  
12 to look at in this definition isn't so much the ones  
13 we've been dealing with is that they're going to be in  
14 the form of raw material for new, reused or reconstituted  
15 products which meet the quality standards to be necessary  
16 to be used in the marketplace.  
17 Quality standards to be used in the marketplace  
18 is the key to the two-part test. Commingled recyclables  
19 and dry goods, paper, glass and tin, those have to  
20 maintain a quality standard to be bailed, sold into a  
21 market that is going to make paper or make new tin or  
22 make whatever, but to lump food waste and paper, waste  
23 paper, under a definition that that is organic commingled  
24 recyclables doesn't go to the heart of what we were  
25 talking about in that committee, since I was a member on

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

1 that committee.  
2 You could say commingled cellulose which is just  
3 as broad a determination as any and then you could  
4 include plastic bottles because that's what that material  
5 is. Clearly that is part of the wastestream. It has not  
6 been source-separated to go into a processing facility.  
7 And what bothers me about that statement is I  
8 think that's the part of the two-part test that I've got  
9 to be convinced about today because in the description of  
10 the initial study by the operator, they say that waste  
11 paper is normally collected with food waste, but waste  
12 paper is a marketable item if it is kept free of moisture  
13 and free of contamination. It is a quality standard that  
14 can get sold and marketed every day as waste paper.  
15 To mix it with food waste and the fluid and  
16 water and stuff that is generated in the bin of a  
17 restaurant renders that waste paper not to meet a quality  
18 standard and goes to the heart of just commingling waste.  
19 The next one that will come in front of us will  
20 be somebody that wants to do in-vessel composting where  
21 they can take the entire wastestream, put it in a vessel  
22 and say they're going to compost it. Why do we have any  
23 health and safety standards?  
24 So I think that's my key is the quality  
25 standards necessary to go into the marketplace because

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

1 going to another process or to turn it into compost may  
2 not meet that definition in my mind of what the quality  
3 of that material is and, therefore, I have a problem with  
4 it meeting that second part of the -- or the first part  
5 of the two-part test because I don't think it is  
6 consciously source-separated because when they talk about  
7 removing the trash, which could be Styrofoam, but keeping  
8 the waste paper which is normally thrown in with the food  
9 waste, it isn't thrown into the food waste when they do  
10 rendering.

11 I guarantee you, rendered food waste from a  
12 restaurant is free from all of those types of  
13 contamination. This is the other bin less the tin, less  
14 the tin and the bottles at a restaurant, and that's  
15 municipal solid waste.

16 MR. BLEDSOE: Well --

17 BOARD MEMBER JONES: Unless it's in five bins.

18 MR. BLEDSOE: I think, Mr. Jones, when we have a  
19 definition that uses the phrase "including commingled  
20 recyclables," we would have a hard time convincing the  
21 judge that a bin that has nothing but food materials in  
22 it or food materials plus recyclable paper which goes to  
23 a compost facility and all turns out to be compost. I  
24 think we would have a hard time convincing the judge that  
25 phrase didn't mean what it seems to say, that commingled

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

1 recyclables are appropriate.

2 BOARD MEMBER JONES: Let me ask you a question.

3 Is the source-separated recyclable only source-separated  
4 because of the end user or can anybody that markets or is  
5 in the market for waste paper or food waste, would they  
6 be able to bid on that same source-separated activity?

7 And if so -- because I think your argument goes to it's  
8 okay to source separate it because of the end user in  
9 this case, not everybody that's an end user.

10 You know, where a curbside recycling bin or a  
11 source-separated cardboard program, that cardboard that's  
12 source-separated could be picked up or sold by that  
13 business to anybody that is in the market to buy  
14 cardboard if it's free of contamination.

15 MR. BLEDSOE: Right.

16 BOARD MEMBER JONES: But what you're talking  
17 about is a bin that commingles waste paper, water and  
18 food waste, and it seems to me it's only source-separated  
19 because they have an end user that will take that  
20 material.

21 MR. BLEDSOE: Right.

22 BOARD MEMBER JONES: And I'm not sure that's the  
23 definition of source-separated.

24 MR. BLEDSOE: Right. But I think you're  
25 absolutely correct. It's the fact that the end process

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

1 here is composting is the only way that this particular  
2 set of source-separated wastes falls within the  
3 definition of recycling because if it were going to be  
4 thrown away, discarded, it would be all residual. It  
5 would be a hundred percent residual.

6 BOARD MEMBER JONES: Or if it was a food  
7 composting that required that no waste paper be part of  
8 the project.

9 MR. BLEDSOE: Correct.

10 CHAIR MOULTON-PATTERSON: Senator Roberti.

11 BOARD MEMBER ROBERTI: Am I to understand along  
12 the lines of what Mr. Jones is saying in the specifics of  
13 the case involved right now that the materials, the food  
14 waste, whatever, which we normally consider contamination  
15 or often we consider contamination in this specific case  
16 you are not considering contamination and, therefore, not  
17 intended for disposal because there is a composting  
18 market? Is that composting market universal guarantee in  
19 all cases for this product?

20 MR. BLEDSOE: Well, I don't think any market is  
21 universal or guaranteed, but under the facts of this  
22 matter the waste in question is being handled by Cal  
23 Bio-Mass for subsequent transport to a Cal Bio-Mass  
24 facility. So I'm presuming that -- and they would be in  
25 violation of their use permit if they held it for more

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

1 than 48 hours. So I'm assuming for purposes of this  
2 discussion I think the market is there, I believe, and  
3 this is a question you might address to Mr. Hardy but I  
4 have to believe that Cal Bio-Mass would not accept these  
5 materials at this green waste transfer station if it  
6 could not subsequently ship them out to its compost  
7 facility. And if they couldn't, they would clearly need  
8 a Solid Waste Facility Permit because that's a classic  
9 transfer station right there.

10 So the key -- I think Mr. Jones has kind of hit  
11 on the key that the key to this entire analysis is the  
12 fact that the end result here is composting which  
13 generates an economically useful product, and the  
14 materials that are going into the compost facility are  
15 not raw materials for compost.

16 BOARD MEMBER ROBERTI: Well, just for purposes  
17 of the argument to my colleagues on the Board, I frankly  
18 think the regulations turn reality on its head.  
19 Nevertheless, I've been thinking about this since I've  
20 first been briefed and I cannot see, unless the  
21 association can come up with some arguments to the  
22 contrary, how this doesn't fall within the exceptions.  
23 So why I'm saying that right now is I don't want  
24 to convey the impression that I haven't read the  
25 regulations or the statutes which leads to them, but

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

1 nevertheless it appears that a loophole has been found.  
2 And I'm not saying that categorically I want to hear  
3 again what the association says, but for the life of me  
4 these are commingled products. They are commingled for  
5 composting. In my mind composting is exactly the kind of  
6 thing that ought to be regulated for odor and all the  
7 kinds of reasons that we normally would consider, but I  
8 don't know if that's in our purview as regulators to come  
9 up with. We have to enforce the statute and reasonable  
10 regulations that have been in place because of that  
11 statute for how long?

12 MR. BLEDSOE: 40200 predates 939.

13 BOARD MEMBER ROBERTI: It's been around for a  
14 while. I would like to hear from the association because  
15 frankly I would like to vote to say that this type of  
16 facility, whatever we call it, needs a permit, but I  
17 can't see how the law permits that.

18 BOARD MEMBER PAPARIAN: Just to follow up on  
19 that, it does seem peculiar that we're looking at  
20 regulating or not regulating this facility based on  
21 what's happening someplace else, it seems like, as we  
22 move forward in thinking about regulations in the future  
23 and regulating a facility based on what's happening at  
24 that facility and not just on what's happening somewhere  
25 else, and I hope you keep that in mind as we look at some

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

1 of these things.

2 Back to your point, Senator Roberti, about

3 whether this facility actually falls within the

4 definitions or not, I'm having trouble making it fit the

5 separated for reuse definition to be honest.

6 I'm thinking that when you look at what

7 Mr. Jones pointed out in the definition about the quality

8 standards and when you look at the raw material for new,

9 reused or reconstituted products, I'm not sure what the

10 raw material for new or reconstituted products is from

11 food waste. What's the raw material of food waste or the

12 raw material of whey? I can imagine what the raw

13 material is for an aluminum can or bottle or any number

14 of other things that might show up at a recycling

15 facility, but I'm having trouble with some of the

16 moist-type wastes that are coming to this facility.

17 CHAIR MOULTON-PATTERSON: Thank you. I see no

18 other questions.

19 BOARD MEMBER ROBERTI: Just to throw something

20 out, we're dealing essentially with compost, though, and

21 compost is not an easily segregated kind of thing like

22 you can segregate plastic or cardboard. It is something

23 that is sort of intermingled and it's hard to fit in the

24 definition, but it does seem -- appear to me to be

25 source-separated. I would like to be wrong.

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

1           CHAIR MOULTON-PATTERSON: Mr. Jones.

2           BOARD MEMBER JONES: I think compost is -- has

3 historically been -- the feedstock for compost has

4 historically been very, very tightly defined as far as

5 what that feedstock material is going to be.

6 Contaminations at one time, and I think Mr. Hardy and

7 others in the room will agree, used to be to take food

8 waste out, not vegetable waste but food waste, because of

9 rancid odors and things like that, and it's only in the

10 course of development of technology and in the

11 development of different grades of compost.

12 You know, I mean there are certain grades of

13 compost that that source-separated feedstock is very,

14 very closely watched to have a high degree of quality

15 compost, and there are different grades of quality

16 compost depending upon what that feedstock is.

17 So then the next point is we can throw

18 everything into a compost pile at which point all we

19 would probably do is have ADC after it's been composted.

20 So I think that that quality standards issue for

21 me kind of highlighted because quality standards are

22 critical to compost feedstocks. Put in Eucalyptus into a

23 regular -- Eucalyptus tree into a regular yard waste

24 program and see it composted and it will turn the compost

25 to garbage. That's how important those -- that source

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

1 separation is. That oils of the Eucalyptus are going to  
2 create problems. It is clearly a

3           BOARD MEMBER ROBERTI: Are there -- is there  
4 intermingling of any kind of these of -- generally laymen  
5 will consider almost any vegetative or animal matter  
6 compostable, and I recognize some things aren't and you  
7 bring up the Eucalyptus leaves. Do we segregate -- does  
8 the Bio-Mass or California Bio-Mass separate as to  
9 non-compostable vegetative or animal matters? If they  
10 don't, then along the lines of what Mr. Jones was saying,  
11 that might mean they don't come --

12 MR. BLEDSOE: Right. They're expecting to have  
13 residual of up to 3 percent. Yes, they are separating  
14 out the non-compostable materials.

15           CHAIR MOULTON-PATTERSON: Okay. Any other  
16 questions? I don't see any.

17 Mr. Bledsoe, you had mentioned the association  
18 would go next.

19 MR. BLEDSOE: No. The Local Enforcement Agency  
20 is set next, then the association, and then Cal Bio-Mass.

21           CHAIR MOULTON-PATTERSON: Okay. Thank you.  
22 We'll probably hear the association, then take a short  
23 break. The LEA. Excuse me. You're the LEA. We'll take  
24 a short break and come back and hear the association and  
25 Cal Bio-Mass.

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

1 MR. AVERA: Good afternoon, Madam Chair, Board  
2 Members. I'm Dan Avera with the San Bernardino County  
3 Environmental Health.  
4 Michael Bledsoe presented an excellent and  
5 comprehensive staff report regarding the Cal Bio-Mass  
6 facility. I also want to take this opportunity to thank  
7 Julie Nauman, Mark DeBie, Suzanne Hambleton and Diane  
8 Ohiosumoa for their assistance to the LEA in this process  
9 that we've recently gone through.  
10 You have before you a comprehensive staff report  
11 that identifies the issue regarding the Cal Bio-Mass  
12 facility. Based upon Public Resources Code and the  
13 California Code of Regulations, a Solid Waste Facility  
14 Permit is not required for the proposed recycling center.  
15 The proposed facility will receive recyclable organic  
16 material and transfer the material to a permitted  
17 composting facility. Mark Stevens with the LEA will  
18 present the staff and Sue Nash with County Council will  
19 present the legal basis for the LEA'S determination not  
20 to require the Solid Waste Facility Permit for the  
21 proposed recycling facility.

22 Mark.

23 MR. STEVENS: Good afternoon, Madam Chair  
24 Moulton-Patterson and BOARD MEMBERS. My name is Mark  
25 Stevens. I am employed as a Registered Environmental

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

1 Health Specialist with the County of San Bernardino  
2 Department of Public Health, Division of Environmental  
3 Health Services, Local Enforcement Agency.  
4 My LEA responsibilities involve permitting,  
5 inspection and related enforcement activities for solid  
6 waste facilities and operations such as landfills,  
7 transfer stations and compost facilities. My duties also  
8 include reviewing proposed recycling facilities for  
9 possible LEA jurisdiction.  
10 It has been alleged that the California Bio-Mass  
11 proposed recycling facility for the City of San  
12 Bernardino is really a solid waste transfer facility  
13 subject to permitting by our LEA. However, we have  
14 determined that the proposed facility is designed to be a  
15 recycling center and that it will only receive organic  
16 recyclables with less than 10 percent residual  
17 contaminants into larger loads and within 24 hours of  
18 receipt transfer these recyclables to permitted regional  
19 composting facilities.  
20 In my presentation today, I will explain how our  
21 LEA determined that the proposed facility is a recycling  
22 center pursuant to the laws and regulations of the state  
23 of California and is therefore excluded from our  
24 jurisdiction. BOARD MEMBERS are invited to turn to -- in  
25 the LEA packet to Exhibit A and the tab on the right-hand

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

1 side marked "transfer or processing station, no LEA  
2 jurisdiction."  
3 Here in Public Resources Code Section  
4 40200(b) (2) certain facilities are listed which are not  
5 subject to LEA jurisdiction. These include a facility  
6 whose principal function is to receive, store, convert or  
7 otherwise process wastes which have already been  
8 separated for reuse and are not intended for disposal.  
9 The LEA found that the proposed facility for the  
10 City of San Bernardino is in this category. It is a  
11 recycling center whose principal function is to receive,  
12 store, convert or otherwise process organic recyclables  
13 which have already been separated for reuse and are not  
14 intended for disposal. Our LEA has also found that the  
15 proposed facility is not subject to our jurisdiction  
16 under Title 14 of the California Code of Regulations.  
17 Waste BOARD MEMBERS are now invited to turn to  
18 LEA Exhibit B and the next to the last tab marked  
19 "regulatory tiers chart." In the first column of this  
20 chart are listed activities that are not subject to LEA  
21 jurisdiction. Among listed items with no LEA  
22 jurisdiction is the category of recycling centers.  
23 Continuing in Exhibit B, BOARD MEMBERS are now  
24 invited to turn to the bottom tab on the right-hand side  
25 marked "not subject to LEA jurisdiction" to see more

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

1 details on the definitions and related provisions  
2 pertaining to recycling centers under Title 14 of the  
3 California Code of Regulations section 17402.5(b). These  
4 details are listed on the pages in Exhibit B where tabs  
5 are marked on the right-hand side "separated for reuse,  
6 source-separated, and recycling centers two-part test."  
7 These definitions, combined with the two-part test,  
8 explain how our LEA determined that the proposed facility  
9 is a recycling center and, therefore, not subject to our  
10 jurisdiction.

11 The two-part test requires that a recycling  
12 center, one, only receive material that has been  
13 separated for reuse or source-separated prior to receipt;  
14 and two, the residual amount of solid waste in this  
15 material shall be less than 10 percent of the amount  
16 separated for reuse or source-separated material received  
17 by weight.

18 I will now give some of the chronology regarding  
19 our LEA's involvement in the case before you. On  
20 November 22nd, 1999, we met with the applicant for the  
21 proposed facility. At this meeting we were advised that  
22 an organic materials recycling center was being planned  
23 for the City of San Bernardino. Our LEA advised the  
24 applicant that in order for the proposed facility to be  
25 classified as a recycling center it would have to

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

1 demonstrate a recycling center design in accordance with  
2 the foregoing two-part test.  
3 on December 15th, 1999, our LEA received and  
4 reviewed the City of San Bernardino's draft California  
5 Environmental Quality Act initial study in support of a  
6 City of San Bernardino Conditional Use Permit for the  
7 proposed facility.  
8 On January 11th, this year, year 2000, we  
9 submitted comments on the draft initial study to the City  
10 of San Bernardino. In our comments we expressed specific  
11 concerns regarding insufficient information in the draft  
12 initial study to support a design for a recycling center.  
13 Upon receiving our comments, City of San  
14 Bernardino staff requested a meeting with us. On January  
15 19th, this year, 2000, our LEA met with City of San  
16 Bernardino staff and the applicant for the proposed  
17 facility. At this meeting various methods of incentives,  
18 quality assurance and control procedures were discussed,  
19 including how customers might keep their bins and loads  
20 of non-organic solid waste separate from their bins and  
21 loads of commingled, source-separated organic recyclables  
22 intended to transfer to the proposed recycling facility.  
23 The LEA left this meeting feeling confident that  
24 the operator would provide appropriate incentives for its  
25 customers to only bring organic recyclables to the

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

1 proposed facility and that the operator would also  
2 implement appropriate quality assurance and control  
3 procedures at the proposed facility to ensure that one,  
4 only separated for reuse source-separated recyclables  
5 would be received at the proposed facility; and two, the  
6 residual solid wastes from such recyclables received will  
7 be less than 10 percent.

a on January 31st, year 2000, our LEA received a  
9 copy of the revised initial study with responses to  
10 comments from the City of San Bernardino. We observed  
11 that the new wording in the revised initial study now  
12 substantiated that the proposed facility was designed to  
13 be a recycling center, one, to receive only separated for  
14 reuse source-separated recyclables; and two, that the  
15 residual solid waste and such recyclables received will  
16 be less than 10 percent.

17 BOARD MEMBERS are now referred to LEA Exhibit C  
18 and tabs on the right side on several pages marked "part  
19 one of the two-part test" and "part two of the two-part  
20 test." On page 9 of this revised initial study, our LEA  
21 found design compliance with the two-part test in the  
22 following wording: One, all material that is intended  
23 for transfer to the regional compost site arrives at the  
24 proposed recycling transfer facility as source-separated  
25 material; and two, based on operations that exist in

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

1 California Bio-Mass regional composting facility,  
2 California Bio-Mass experiences approximately 3 percent  
3 residual waste overall, which is well below the 10  
4 percent maximum allowable.  
5 Further, in highlighted wording on page 10, part  
6 one design compliance is restated as the proposed  
7 recycling center transfer station has the capacity to  
8 process up to 500 tons of material per day and will be  
9 limited to organic recyclables, and as restated part two  
10 design compliance in the highlighted portion on page 12,  
11 the maximum waste residual permitted for a green waste  
12 collection facility is 10 percent. Based on current  
13 operations at other regional composting facilities,  
14 California Bio-Mass typically experiences approximately 3  
15 percent residual waste overall.

16 Because of such clarified wording throughout the  
17 revised initial study, our LEA found that the proposed  
18 facility has been designed to be a recycling center,  
19 meets the required two-part test, and is not subject to  
20 our jurisdiction,

21 Incidentally, BOARD MEMBERS are reminded of  
22 the -- in Title 14 of the California Code of Regulations  
23 for our continuing scrutiny over recycling center  
24 activities. BOARD MEMBERS are invited to turn back to  
25 LEA Exhibit B and the tab on the right-hand side marked

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

1 "provisions for continuing LEA scrutiny."  
2 In these various highlighted subsections you  
3 will note that even after a recycling center has begun  
4 operations, we have brought authority and we are  
5 authorized to inspect such recycling centers to verify  
6 that they continue to not be subject to our jurisdiction.  
7 These subsections authorize us to make further extensive  
8 investigations if necessary and to place the burden on  
9 the operator of demonstrating compliance with the  
10 two-part test.  
11 Further, if and when we find that the two-part  
12 test is no longer being met at the proposed facility, our  
13 LEA can and will take immediate enforcement action to  
14 ensure compliance with all permitting and operational  
15 requirements applicable to the facility.  
16 In summary, our LEA has concluded that the  
17 proposed facility is excluded from our jurisdiction  
18 because it is pursuant to Title 14 of the California Code  
19 of Regulations designed to be a recycling center which  
20 will one, only receive separated for reuse  
21 source-separated recyclables; and two, the residual waste  
22 in such recyclables received will be less than 10  
23 percent; and also because under the Public Resources Code  
24 the proposed facility is a facility whose principal  
25 function is to receive, store, convert or otherwise

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

1 process wastes which have already been separated for  
2 reuse and are not intended for disposal.  
3 Therefore, the proposed facility is, by statute  
4 and regulation, not subject to our LEA'S jurisdiction.  
5 This concludes my presentation. I would be pleased to  
6 answer any questions you might have or to further explain  
7 what I have presented to you.

8 CHAIR MOULTON-PATTERSON: Thank you,  
9 Mr. Stevens.  
10 Mr. Jones.

11 BOARD MEMBER JONES: Just one quick question.  
12 With this facility, 10 percent residual, as being  
13 interpreted here, means of the feedstock that's going to  
14 be delivered to a permitted composting facility. They've  
15 said 10 percent -- less than 10 percent of the material  
16 delivered won't -- doesn't meet a standard to go out  
17 there; correct?

18 MR. STEVENS: Correct.

19 BOARD MEMBER JONES: What is the number after  
20 the material has been composted that gets taken out in  
21 screening? Because we have a unique situation here that  
22 there may be more allowable residuals in this stream to  
23 get away from a permit because they're the ultimate end  
24 users and set the standard for what the quality of that  
25 material will be, and after it goes through the

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

1 composting process screen it and pull off more  
2 contamination. There's no link between the two numbers,  
3 and it could drive that two-part test to be an  
4 inconsequential if they're ultimate operator and just  
5 take the material off at the end of the process.  
6 MR. STEVENS: It's my understanding -- and the  
7 applicant could confirm this -- that the less than 10  
8 percent, the design of 3 percent is after screening at  
9 the compost facility. Both before and after screening it  
10 still remains under 3 percent is my understanding.

11 CHAIR MOULTON-PATTERSON: Mr. Paparian.

12 BOARD MEMBER PAPARIAN: Couple questions. The  
13 question I asked previously of our staff, how would  
14 you -- in following up here, how would you calculate the  
15 moisture that evaporates at the other facility? How  
16 would you account for that? Would that be within the 3  
17 percent or would that be something else? Would that be  
18 in the 97 percent? Where would it be? Do you understand  
19 what I'm asking?

20 MR. STEVENS: I think I'm confused on the  
21 question.

22 BOARD MEMBER PAPARIAN: There's a certain  
23 weight of liquid that's going to evaporate from the wet  
24 wastes that are coming through this facility and go into  
25 the air. Is that weight part of the 3 percent?

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

1 MR. STEVENS: I would have to refer to the  
2 details in the regulations to answer your question. I  
3 know that moisture is needed at the composting facility.

4 BOARD MEMBER PAPARIAN: Right. I don't question  
5 the need for moisture there, but eventually a lot of that  
6 moisture is going to evaporate at that facility.

7 MR. AVERA: Are you referring to the liquid  
8 waste that's going to be transferred to the composting  
9 facility in their tanker trucks?

10 BOARD MEMBER PAPARIAN: Both the tanker trucks  
11 and the food waste there's going to be liquid in the food  
12 waste. That's why they're mixing it on the floor of the  
13 facility.

14 MR. AVERA: It's my understanding, and you can  
15 confirm with the applicant, there's a moisture content  
16 and there's moisture that's being evaporated. That's not  
17 calculated into the 10 percent residual. However, when  
18 we talk about residuals, the less than 10 percent, what  
19 we're looking at is that residual which is ultimately  
20 going to go for disposal not through evaporation or other  
21 means.

22 So we can talk to the operator about whether --  
23 I don't believe that the evaporation rate of either the  
24 garbage or the food waste or the liquid waste is  
25 calculated in the 10 percent residual.

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

1 MR. STEVENS: It's my understanding both before  
2 and after -- whether you calculate it before evaporation  
3 or after evaporation the residual consistently remains  
4 under 3 percent as experienced by the operator at its  
5 existing composting facility.

6 BOARD MEMBER PAPARIAN: Another question. You  
7 brought the list of things you would be able to do in  
8 terms of inspecting the facility and so forth in taking a  
9 look at what's going on here. Could you describe just in  
10 general terms the differences in the types of inspection  
11 and enforcement that would take place between the  
12 facility as a recycling center and the facility as a  
13 permitted facility? What would be the differences in  
14 what you could do or what you would do?

15 MR. STEVENS: I believe our jurisdiction of this  
16 facility as a recycling center is limited to the two-part  
17 test, and the other public health, safety and  
18 environmental concerns would generally be the  
19 responsibility of the City of San Bernardino under its  
20 Conditional Use Permit.

21 BOARD MEMBER PAPARIAN: Now, we're looking at  
22 another facility up north -- and I'm not asking you to  
23 know anything about this other facility we're going to be  
24 looking at up north -- but it's a facility that also is  
25 proposed to take food and green waste but falls out of

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

1 the two-part test because a lot of the paper products at  
2 that facility lead the total tonnage at the facility to  
3 violate the 10 percent part of the two-part test. So  
4 therefore, the LEA up there is going to wind up -- if we  
5 approve this is going to wind up. inspecting for the  
6 public health and safety aspects of the facility that  
7 you're saying we wouldn't inspect here.

8 MR. STEVENS: I believe the operator has been  
9 innovative and through their use of static piles where  
10 there's a precuring for approximately six months prior to  
11 windrows being established, there's opportunity for the  
12 breakdown of the cellulose products and that that's built  
13 into the design of the composting facility and that the  
14 slow time for paper to break down into compostable  
15 material has been taken into account by the operator.

16 BOARD MEMBER PAPARIAN: Okay. At the facility  
17 that we're talking about here, the recycling center  
18 facility where they're going to transfer the wastes, the  
19 materials, there will be food waste mixed in with green  
20 waste on the floor of the facility and scooped up,  
21 hopefully absorbed and carted off to the compost  
22 facility.

23 MR. STEVENS: Correct, but that is done on a  
24 daily basis.

25 BOARD MEMBER PAPARIAN: Right. Right. If this

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

1 were a permitted facility, would you be going in there  
2 and inspecting for potential public health concerns  
3 what's going on on the floor of that facility, how often  
4 it's being cleaned out, how it's being cleaned out,  
5 what's happening around the edges of the floor, the  
6 corners and so forth if this were a permitted facility?

7 MR. STEVENS: Yes. The operational standards of  
8 transfer stations, processing stations, would apply.

9 BOARD MEMBER PAPARIAN: Since it's proposed to  
10 not be a permitted facility, you wouldn't be able to go  
11 in and do that, you would have to rely on another agency  
12 to do that?

13 MR. STEVENS: It's my understanding pursuant to  
14 the statute and the regs that I quoted that the  
15 importance of recycling centers, promoting that was taken  
16 into account when the statute was written and the  
17 regulation was written, and it was a cautious decision to  
18 exclude LEA jurisdiction as long as the facility was  
19 meeting this two-part test.

20 BOARD MEMBER PAPARIAN: Assuming that it's  
21 meeting the two-part test, though, and you've got food  
22 waste on the floor of the facility that in another  
23 circumstance you might go in and look at to see how well  
24 it's being cleaned up and so forth -- I guess I'm asking  
25 who has the expertise here.

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

1 MR. STEVENS: It would be the City of San  
2 Bernardino, and I'm assuming it would be under their code  
3 enforcement group.

4 BOARD MEMBER PAPARIAN: So building code  
5 enforcement and so forth.

6 MR. STEVENS: Well, whatever entity for the City  
7 of San Bernardino that enforces the mitigation measures  
8 of a Conditional Use Permit and related conditions of  
9 approval.

10 BOARD MEMBER PAPARIAN: Okay.

11 MR. STEVENS: Incidentally, that was I believe  
12 quite thoroughly covered, in my opinion, by the City of  
13 San Bernardino.

14 BOARD MEMBER PAPARIAN: Okay.

15 CHAIR MOULTON-PATTERSON: Thank you,  
16 Mr. Stevens.

17 MR. STEVENS: Thank you.

18 MR. AVEPA: I'd like to add one comment. We are  
19 in support of staff's recommendation to have your Board  
20 take additional action to close this gap in the  
21 regulations. We agree that facilities that are handling  
22 food waste, pre-consumer, post-consumer food waste  
23 potentially pose an odor problem, vector problem. Based  
24 upon the current statute and current regulations we don't  
25 believe we have the jurisdiction or the authority to

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

1 require a permit for this proposed facility.

2 Thank you.

3 CHAIR MOULTON-PATTERSON: Thank you.

4 BOARD MEMBER JONES: Can I ask Mr. Avera one

5 question?

6 CHAIR MOULTON-PATTERSON: Mr. Jones.

7 BOARD MEMBER JONES: Mr. Avera, based on the, in

8 quotations, "commingled organics," is that what got you

9 to the two-part test?

10 MR. AVERA: Yes.

11 BOARD MEMBER JONES: Okay. Thanks.

12 CHAIR MOULTON-PATTERSON: Did that conclude your

13 presentation, Mr. Avera?

14 MR. AVERA: We may have additional comments from

15 our County Council depending on how the hearing proceeds.

16 CHAIR MOULTON-PATTERSON: But at this time that

17 concludes it? Thank you.

18 We'll take a short ten-minute break.

19 (Recess taken)

20 CHAIR MOULTON-PATTERSON: I'd like to call the

21 meeting back to order. I had two quick announcements.

22 First of all, the City of Fountain Valley would like us

23 to announce that they don't have out recycling bins

24 because they have a MRF and they wanted to make sure we

25 know that.

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

1 (Laughter)

2 CHAIR MOULTON-PATTERSON: I'm sorry I didn't  
3 announce that at the beginning.

4 Also, we only have the council chambers until  
5 5:00. So I just wanted to remind everybody of that.

6 At this time we will call forward the  
7 association members that would like to speak.

8 Excuse me. Thank you, Mr. Papanian. Ex partes,  
9 Mr. Eaton?

10 BOARD MEMBER EATON: None at the present time.

11 CHAIR MOULTON-PATTERSON: Thank you.  
12 Mr. Papanian.

13 BOARD MEMBER PAPANIAN: Jim Trujillo from San  
14 Bernardino County spoke with me briefly to clarify some  
15 matters.

16 CHAIR MOULTON-PATTERSON: Senator Roberti.

17 BOARD MEMBER ROBERTI: None.

18 CHAIR MOULTON-PATTERSON: Mr. Medina.

19 BOARD MEMBER MEDINA: None to report.

20 CHAIR MOULTON-PATTERSON: And I have none.

21 Thank you.

22 MR. CUMMINGS: Good afternoon, Madam Chair and  
23 Members of the Integrated Waste Management Board. My  
24 name is Stewart Cummings. I'm a citizen of San  
25 Bernardino. I'm also President of Cimarron Ranch

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

1 Neighborhood Association. We filed the appeal with the  
2 County Independent Solid Waste Hearing Panel.  
3 Just real briefly in going back to an issue  
4 about the Hearing Panel and why we felt the LEA wasn't an  
5 aggrieved party, I guess the thing that we felt was  
6 somewhat redundant was the fact -- and Ms. Nash from the  
7 County pointed this out during the Hearing Panel  
8 hearing -- if we have an Independent Hearing Panel and  
9 this decision isn't binding on the LEA, then whichever  
10 party loses in that Independent Hearing Panel is  
11 ultimately going to appeal to you. Hence, we have a very  
12 redundant process that could easily be expedited both in  
13 the interests of business and the interests of the Board  
14 by just simply taking an appeal straight to the Board and  
15 eliminating the provision for an Independent Hearing  
16 Panel because she pointed out in that hearing if we had  
17 been found against in that hearing, we would have  
18 appealed to you. And she made it quite clear to that  
19 Hearing Panel that if the LEA was found to be in error,  
20 they were going to appeal to you. Hence, it's a moot  
21 point whether that Hearing Panel ever convenes or not.  
22 Maybe something could be done to streamline those  
23 processes because certainly it can be time consuming.  
24 There are a number of ancillary issues involved  
25 with this, but I think the most important issue is does

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

1 this facility meet the definitions of a recycling center  
2 or is this facility in fact a transfer facility and,  
3 therefore, subject to regulation and permitting under 14  
4 California Code of Regulations.  
5 The first answer to that question can probably  
6 come most importantly from page 1-24 in front of you.  
7 This is the project description from the Conditional Use  
8 Permit and the initial study in City of San Bernardino.  
9 The applicant requests approval of a Conditional Use  
10 Permit under authority of Development Code Section dah,  
11 dah, dah to establish and operate a transfer facility for  
12 the collection and transfer of green waste and other  
13 organic materials and finished product, bagging,  
14 warehousing and marketing.  
15 Nowhere in the project description are they  
16 applying for a Conditional Use Permit for a recycling  
17 center. They're applying for a Conditional Use Permit  
18 for a transfer facility.  
19 When we looked at this operation, it's been  
20 called into question concerning the issue of  
21 source-separated materials. Nowhere in your  
22 documentation do you have any information that would  
23 inform you that the County of San Bernardino through the  
24 LEA and/or through code enforcement has absolutely no  
25 requirement that businesses participate in a source

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

1 separation program. Hence, any participation by any of  
2 the businesses identified in the project description,  
3 i.e., restaurants and food stores, would be required  
4 under law to separate any of their wastes as there is no  
5 existing regulation from the County to do so.  
6 Furthermore, the City of San Bernardino has no  
7 regulation requiring restaurants or food stores to source  
8 separate their wastes prior to collection. They defer to  
9 the county jurisdiction on those matters and county  
10 inspection on those Dumpsters placed behind food stores  
11 and restaurants. Hence, once again there is no legal  
12 requirement within the city limits of the City of San  
13 Bernardino to source separate the wastes coming from  
14 these businesses.  
15 If you look at our exhibit, Exhibit F, and you  
16 look at pages -- bear with me here for a second -- 172  
17 and 173, you'll see we took and pie-charted information  
18 from your own wastestream databases that characterizes  
19 the wastestreams coming from food stores and coming from  
20 restaurants, and it's clear that these wastestreams have  
21 in excess of 10 percent residual wastes by volume.  
22 Your staff seems to think that those  
23 generalizations probably don't apply to individual sites  
24 or an individual project or an individual jurisdiction,  
25 but if you go back to page 1-57 -- actually 1-55, 1-56,

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

1 1-57 and 1-58, there is an additional waste  
2 characterization database provided to you there that has  
3 selected business group by jurisdiction and breaks out  
4 the waste characterization for restaurants within the  
5 City of San Bernardino and for food stores within the  
6 City of San Bernardino. And going through those and just  
7 highlighting some very obvious non-compostable materials  
8 such as aluminum cans, clear glass bottles, colored  
9 glass, concrete, film plastic, household hazardous  
10 wastes, miscellaneous plastic, other ferrous composite  
11 glass remainder, remainder composite plastic, special  
12 waste, and tin and steel cans, the total residual in that  
13 wastestream for food stores is 15.5 percent by your own  
14 figures. For restaurants it's 16.1 percent.  
15 A lot has been touted of the California Code of  
16 Regulations 17402.5, but what I would like to point out  
17 to you in 17402.5 are a couple of sections that seem to  
18 have escaped interest here this afternoon.  
19 In particular I'd like to call your attention to  
20 page 1-84 and 1-85. First of all, halfway down page  
21 1-84, it's labeled number 3, the only separation that may  
22 occur at a recycling center is the sorting of materials  
23 that have been separated for reuse prior to receipt.  
24 Then I'd like to call your attention to the following  
25 page where the section goes on to say that if the

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

1 Environmental Agency has information that material that  
2 is being received is not separated for reuse or  
3 source-separated or that the residual is 10 percent or  
4 more of the total per month, the burden of proof shall be  
5 on the owner-operator to demonstrate otherwise.  
6 One section down from that, B, if the EA has  
7 reason to believe that a business is concealing the  
8 acceptance of material that is not separated for reuse or  
9 source-separated by averaging or combining those loads  
10 with other loads of separated for reuse material, the  
11 burden of proof will be on the business to demonstrate  
12 that it is not accepting loads of mixed solid waste.  
13 It is clear that if this facility is accepting  
14 loads generated by restaurants and food stores that the  
15 excess amount of residual does not meet the two-part  
16 test, and that to take those loads, combine them with  
17 other source-separated loads on the tipping floor and  
18 then average it out to come below the 10 percent  
19 threshold is specifically prohibited by this section and,  
20 that is, in fact, where they are coming up with their 3  
21 percent number.  
22 I would take issue with their 3 percent number.  
23 I've had extensive conversation with the Riverside County  
24 LEA and their enforcement division, and their numbers  
25 reflect that the current operation of this operator in

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

1 Thermal is running at a 12 to 15 percent residual.  
2 There is no similar operation of this type  
3 presently permitted. There are no data figures for the  
4 number or the percentage of residual as we don't have  
5 this type of facility existing anywhere else, so to  
6 correlate numbers from other types of operations and say  
7 they would apply to this operation, it just doesn't go.  
8 It just doesn't fly. There is no correlation that can be  
9 made.  
10 I think that in light of these facts, it becomes  
11 quite clear that given the fact that this is an integral  
12 part of the wastestream as identified in the Conditional  
13 Use Permit and that I've shown you by your own figures  
14 and your own facts that this wastestream has an excess of  
15 10 percent residual and I've shown you that your  
16 regulations say that you can't combine incoming loads  
17 with other loads and then average it out to meet your 10  
18 percent residual, that you have no choice but to find  
19 that this facility is, in fact, a transfer operation. It  
20 does not meet the two-part test. It is required to have  
21 a permit and does fall under the permitting tiers for a  
22 transfer processing station-type of operation, not a  
23 recycling center.  
24 Again, I would just like to reemphasize that  
25 there are no regulations to source separate those wastes.

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

1 Those wastes at the restaurants and food stores can have  
2 anything thrown in those Dumpsters that they want to  
3 throw in. To think that a restaurant or a business owner  
4 is going to voluntarily comply with waste regulations I  
5 think is somewhat bordering on fallacy. If business  
6 operators were going to comply voluntarily, you all might  
7 be out of a position real fast as we wouldn't have any  
8 boards or laws because all we would have to do is ask  
9 them and they would do it.  
10 It's obvious that isn't the case, and quite  
11 frankly, we, the citizens of Cimarron Ranch and I myself  
12 as a citizen, are going to rely on you folks to protect  
13 our health, our interests and our environment here in the  
14 state of California.  
15 I'm not going to bother you with any of the  
16 ancillary issues that were raised here. I don't think  
17 they're real pertinent to the issue at hand before the  
18 Board. I would be happy to entertain any questions the  
19 Board has at this time.

20 BOARD MEMBER ROBERTI: Madam Chair, I would like  
21 our staff to respond to the issue that they're arriving  
22 at their numbers by commingling residuals above -- below  
23 10 percent with those above 10 percent. Is that our  
24 finding or is that irrelevant?

25 MR. BLEDSOE: Mr. Hardy can probably respond to

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

1 this better than I, but the point of the two-part test is  
2 that the total residuals at the recycling center may not  
3 exceed 10 percent. So it doesn't matter whether  
4 source-separated material is coming in. As long as  
5 they're source-separated, that's permitted. The issue is  
6 what's the total of the residual at the recycling center.

7 BOARD MEMBER ROBERTI: Over what period of time?

8 MR. BLEDSOE: I would have to defer to program  
9 staff on that, but I don't know why it wouldn't be per  
10 day.

11 MR. CUMMINGS: I believe it's monthly in your  
12 regulations.

13 MR. BLEDSOE: We'll have Elliott answer that  
14 please.

15 MR. BLOCK: Elliott Block from the legal office.

16 The regulations provide that the measurement of residual  
17 is on a monthly average. It would be true if, in fact,  
18 there were a significant wastestream that was not  
19 source-separated, which might be evidenced by a very high  
20 residual, that based on the regulation the facility would  
21 not still qualify as a recycling center.

22 We have had an instance, for instance, in a site  
23 in San Francisco where .-- I don't know the exact  
24 percentage, but maybe about half of their wastestream was  
25 coming from a residential pick-up and they had about 30

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

1 to 40 percent residual, and we said that material is not  
2 source-separated, even though when you looked at the  
3 total amount of material they took on a monthly basis  
4 they were at 9.8 percent or something like that. So we  
5 could look at individual wastestreams.  
6 The difficulty, I think, in dealing with this  
7 particular situation is it's all on paper right now.  
8 This facility isn't operating, so there's no way for us  
9 to actually say whether they are or they aren't averaging  
10 per se. I would -- it is possible in terms of just the  
11 food waste to have that wastestream to be lower than the  
12 10 percent.  
13 I believe that the numbers that you're seeing in  
14 the packet themselves are waste generation numbers.  
15 They're a characterization of all the waste generated by  
16 restaurants, not necessarily what a restaurant might or  
17 might not then on their own take on source separating.  
18 Presumably Mr. Hardy will talk about the sources of his  
19 materials and he'll be able to tell you how that may or  
20 may not occur.  
21 I guess, if I might, just one more thing in  
22 terms of the residual because the green waste facility  
23 was mentioned as a permit that's coming up later but  
24 mentioned as part of this discussion.  
25 I'll move this so it will actually all fit on

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

1 the screen. This is actually from the Report of Facility  
2 Information from that green waste recycling facility, and  
3 you can see the different percentages diverted from that  
4 facility.  
5 The top three columns were the items that they  
6 were taking originally. That's why they originally got a  
7 permit a couple of years ago. You can see their debris  
8 box recycling and commercial recycling were 25 to 50  
9 percent residual range. The main reason I wanted to  
10 raise it here is you'll see that the proposed wastestream  
11 of food waste, which is the fourth one down, they are  
12 showing 99 percent diversion and only 1 percent residual  
13 from that. So I wanted to -- certainly in that proposed  
14 facility they're showing they can have well below 10  
15 percent residual in a food waste wastestream.

16 CHAIR MOULTON-PATTERSON: Thank you. Were there  
17 other questions for Mr. Cummings or were you finished?  
18 Mr Papanian.

19 BOARD MEMBER PAPANIAN: Senator Roberti was  
20 asking a question, but I wanted to follow up if I could  
21 with our staff and make sure I'm understanding. Let me  
22 try this hypothetical.  
23 Suppose again we're looking again at the food  
24 waste portion. Suppose they were getting in loads then  
25 taking them off to the compost facility and finding that

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

1 20 percent of those loads had to be rejected at the  
2 compost facility because of excess contamination.  
3 Now, if that was 20 percent of the food waste,  
4 it would still be less than 10 percent of the stuff back  
5 at the recycling facility, so my question is kind of  
6 two-fold. Can you look at what's happening at the  
7 compost facility to determine the 10 percent back at this  
8 facility and can you look at -- can you look at isolating  
9 the food wastestream and say if it's over 10 percent in  
10 the food wastestream, then this facility is going to need  
11 a permit?

12 MR. BLOCK: Multi-part question.

13 The reason that -- the reason that the  
14 definition of residual is set out in the way it is was to  
15 deal with exactly this kind of an issue for other types  
16 of facilities besides compost. In other words, the issue  
17 that was raised was what if somebody sends the same  
18 material to a series of transfer stations, each of which  
19 only pulls out 9 percent. So that's why the definition  
20 of residual includes all -- actually, if you look at the  
21 statutory definition it talks about material separated  
22 for use and not intended for disposal. In the regulation  
23 we added that residual is a material sent to disposal or  
24 transformation or another transfer station. What we  
25 didn't do is we didn't say "or composting" because this

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

1 was not a type of facility that we were looking at a few  
2 years ago potentially coming on.  
3 We do have some language, some fairly broad  
4 enforcement language in that regulation for an LEA to  
5 look at. So if you had a situation where they believed  
6 somebody was intentionally skewing their residual number  
7 by removing 20 percent residual at a later site, I  
8 believe that we could address that particular situation  
9 if somebody was intentionally trying to get out of the 10  
10 percent that way. I think I would still want to have the  
11 language be a little more explicit.  
12 Without looking at it, I'm not sure we described  
13 that exactly because it wasn't something that we were  
14 dealing with at the time. I'm not sure.  
15           BOARD MEMBER PAPARIAN: Let's assume Mr. Hardy  
16 is an honorable guy and he's taken this up with the  
17 restaurants and these restaurants, which we're not  
18 regulating and nobody is regulating, is sending them  
19 stuff loaded with plastic and it winds up at 20 percent.  
20 So back to the question.  
21 If it's not intentional, can we back that 20  
22 percent back up to the facility and look at what's  
23 happening there and can we isolate the food wastestream  
24 from the other wastestreams in the 10 percent  
25 calculation?

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

1 MR. BLOCK: You'll have, to give me about a  
2 minute to look at that regulation to see if we wrote the  
3 regulation broad enough to cover that kind of situation.

4 CHAIR MOULTON-PATTERSON: While we're waiting,  
5 Senator Roberti, had you finished?

6 BOARD MEMBER ROBERTI: I finished. Thank you.

7 CHAIR MOULTON-PATTERSON: Any other questions of  
8 Mr. Cummings?

9 BOARD MEMBER JONES: Just one, Madam Chair.

10 CHAIR MOULTON-PATTERSON: Mr. Jones.

11 BOARD MEMBER JONES: Is your objection just to  
12 the fact that it should be permitted or you're objecting  
13 to the facility if it does get permitted?

14 MR. CUMMINGS: The objection that we have as  
15 neighbors to this facility is one, that we feel the  
16 facility needs to be operated to best management practice  
17 standards for the industry, and in failing to permit that  
18 with the fact that the City of San Bernardino does not  
19 have the capacity to ensure enforcement under the  
20 Conditional Use Permit requirement that they've imposed  
21 and the LEA has no jurisdiction to come in and inspect  
22 the facility on their own, sans a problem coming to their  
23 attention, and no problem would foreseeably come to their  
24 attention if the City wasn't inspecting the facility on a  
25 regular basis, and the process for a neighbor to

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

1 document, bring to the attention of the City and then get  
2 that brought to the attention of the County to get the  
3 appropriate inspection conceivably is never going to  
4 happen.

5 Hence, the project is going to be able to  
6 operate sans any scrutiny for the most part on a  
7 continual basis. There are no requirements in the  
8 Conditional Use Permit for any inspections. The operator  
9 has said they will ask the LEA at their expense to  
10 inspect the facility for the first three months, but that  
11 is voluntary on the part of the operator. It is not a  
12 conditions of use. I have the Conditional Use Permit  
13 right here and nowhere in the language does it require  
14 any inspections. And the City's other enforcement  
15 bureaus are grossly overburdened.

16 I sit on an elective advisory committee in San  
17 Bernardino and we were presented with an informational  
18 presentation from code enforcement. Currently every code  
19 enforcement officer in the City of San Bernardino has  
20 between 200 and 600 open cases on their desk. It would  
21 be foolhardy to think that those same code enforcement  
22 officers are going to be able to provide an appropriate  
23 level of scrutiny for this facility.

24 So in answer to your question, we were not  
25 opposed to this type of facility. This is an integral

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

1 part of wastestream management in the state of  
2 California. This takes waste and converts it into a  
3 user-friendly, beneficial commodity for the state of  
4 California and we have a vested interest as people in  
5 ensuring our environment remains free of trash and debris  
6 and that we do everything we can to limit the amount of  
7 solid waste going into landfills, but we also have an  
8 obligation to ensure that those activities that divert  
9 and reuse and recycle these materials are operated to  
10 best management practice standards.

11 Unfortunately, we're existing in a time when  
12 these types of developments are coming at us very  
13 rapidly, and it appears that regulation hasn't caught up  
14 with technology in this particular instance. Hence we're  
15 faced with what may conceivably be a loophole in the  
16 regulations, but I think that demonstrating that there is  
17 no regulation on restaurant and food waste.

18 And if you would bear with me here and just take  
19 one further look at these wastestream characterizations  
20 and look at page 1-49 and I-SO, this is the  
21 jurisdictional profile for the City of San Bernardino.  
22 You'll note that the top four business types with the  
23 most disposal, restaurants are number three. If you look  
24 at the top four materials in business disposal, you'll  
25 see that all four are recyclable organics and all four

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

1 would be found in restaurant wastes, but the striking  
2 figure is on the back of the page when you look at  
3 business disposal rates versus household disposal rates  
4 and you realize that within the City of San Bernardino  
5 alone, business accounts for 70 percent of the  
6 wastestream generated within the city. Residential  
7 accounts for 30 percent.  
8 Hence, to characterize the waste coming out of  
9 restaurants of which there are some, I think, 378 in the  
10 City of San Bernardino, and I don't know about food  
11 stores, as being a small portion of the generated  
12 wastestream, your own figures and your own statistics  
13 suggest otherwise and suggest it's a large portion of the  
14 wastestream coming out of the City of San Bernardino.  
15 The City of San Bernardino currently is one of the  
16 largest accounts that Cal Bio-Mass has.  
17 In closing, there is one other thing I would  
18 like to make the Board aware of. This morning I spoke at  
19 length with the association's attorney who is handling  
20 our CEQA suit against the City of San Bernardino and the  
21 Economic Development Agency for the City of San  
22 Bernardino, and i.e. Cal Bio-Mass is a listed party to  
23 that lawsuit.  
24 The early part of last week the City of San  
25 Bernardino approached our attorney and admitted that the

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

1 CEQA suit was undefensable. On Wednesday of this week  
2 the City asked for a -- or asked for a motion to grant a  
3 30-day extension on trial date, and at the present time  
4 the City of San Bernardino is in negotiation with our  
5 attorney to enter into a stipulated judgment, the end  
6 effect of that judgment being the Conditional Use Permit  
7 for this project and the CEQA documents will be set aside  
8 and this project will go back to square one.

9 In light of the discussion we've heard here  
10 today, that will open up a wonderful window for you to  
11 address the issue of regulating these facilities at an  
12 appropriate level. You won't be coming in behind the  
13 eight ball after the fact and attempting to backstroke  
14 and put regulations in place for future facilities, but  
15 hence allowing some facilities to be grandfathered in  
16 with no regulation.

17 At the same time, it is important today that you  
18 find that this facility does not meet that two-part test,  
19 as the evidence presented to you in our opinion clearly  
20 shows because those negotiations could be broken off. We  
21 could be faced with continuing litigation. It's clear to  
22 us that this facility is in need of regulation and it's  
23 appropriate that it be regulated.

24 Thank you very much.

25 CHAIR MOULTON-PATTERSON: Thank you,

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

1 Mr. Cummings.

2 Mr. Block.

3 MR. BLOCK: Just to follow up on that question

4 that was asked earlier, if you turn to page 1-85 of your

5 packages -- unfortunately, I don't have this regulation

6 on an overhead to put up, but near the top of the page

7 starting with subdivision 6, it's actually D6, it would

8 be -- 6B was the one that I was referring to earlier that

9 talks about if the EA has reason to believe the business

10 is concealing the acceptance of material that is not

11 separated for use, et cetera, by combining loads, the

12 burden of proof is on the business to demonstrate that

13 it's not accepting loads of mixed solid waste. That is

14 the language that I was talking about before in terms of

15 intentional.

16 We do have language in the very beginning part

17 of this section after 6 that's somewhat general in terms

18 of saying if the EA has information to believe that the

19 material received is not separated for reuse or

20 source-separated, I believe, depending on the

21 circumstances given the hypothetical that you gave, we

22 might be able to argue that we could pull that type of

23 facility back in because of the 20 percent diversion

24 later.

25 I would say -- because your hypothetical if it's

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

1 unintentionally going on -- I would like to have the  
2 language revised and made more explicit so there was no  
3 question that we could pull a facility in if, in fact,  
4 that's what's going on. The existence of this language,  
5 which implies intentional concealing, is what gives me a  
6 little bit of a pause to be able to definitively say we  
7 definitely could. It's another one of those things -- I  
8 think we weren't looking at that in the context of  
9 compost. In the context of a transfer station it's  
10 covered because we put that into the definition of  
11 residual. We never had to deal with if it was  
12 intentionally being done or not.

13 CHAIR MOULTON-PATTERSON: Mr. Papanian.

14 BOARD MEMBER PAPANIAN: What about the question  
15 of -- let's say all wastestreams are just fine, no  
16 question about it, but the food wastestream is having a  
17 problem. Can you look at just the food wastestream or do  
18 you have to average it over all the wastestreams?

19 MR. BLOCK: Well, this is the language in terms  
20 of 6B where we've looked at that, where if there is a  
21 wastestream that is not meeting the two-part test on its  
22 own, that could pull a facility in. In other words, they  
23 can't average the different wastestreams to get below 10  
24 percent.

25 I guess the important way in terms of going back

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

1 to the concept of what the two-part test is, if you look  
2 at the statute, the statute talks about only in terms of  
3 separated for reuse. Essentially that's where the first  
4 part of the two-part test comes. The problem, of course,  
5 is that's incredibly subjective. So the idea behind the  
6 10 percent was to give some sort of safety net, if you  
7 will, the idea being that anybody can say their material  
8 is source-separated, but if the residual -- if what's not  
9 really being recycled out of that material is over a  
10 certain amount, that gives us some objective way of  
11 saying, "You know what? It really wasn't  
12 source-separated in the first place."  
13 Even if you had separate bins set up and you've  
14 got enough mixed waste going in, you've got 25 to 35  
15 percent residual, it's not really source-separated,  
16 whatever you call it. So that's sort of the concept that  
17 we're dealing with there.  
18 So taking that then to the example you've given,  
19 if you've got a wastestream, one wastestream that's  
20 coming into a facility that's at 20 or 30 percent food  
21 waste, let's say, 15 or 20 or 30 percent, that  
22 wastestream is not really source-separated. And so even  
23 though when you add them into all the material at the one  
24 site, they may be below that. Maybe they're at 8 or 9  
25 percent. They would not meet the test.

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

1 In the example that I mentioned earlier with the  
2 LEA because actually we've had two or three of these  
3 sites in this situation, what the LEA has done is issued  
4 a Notice and Order to those sites, saying either get a  
5 permit or -- either eliminate this wastestream or in some  
6 cases where it's close, it's a question of additional  
7 education, that sort of thing. So then the residual  
8 percentage, in fact, goes down.  
9 It kind of depends on the wastestream. If the  
10 reason that the contamination is high is because they're  
11 just not separating it well, it may just be a question of  
12 additional education. If the reason it's a high residual  
13 is because it's the nature of the material, then they may  
14 just have to either get a permit or stop taking that  
15 wastestream.

16 BOARD MEMBER PAPARIAN: Thanks.

17 CHAIR MOULTON-PATTERSON: Thank you.

18 Mr. Jones.

19 BOARD MEMBER JONES: I just want to ask Elliott  
20 a question. Getting back to that, I know there are  
21 permitted transfer stations, MRFs, recovery facilities  
22 that had contracts for curbside recycling programs, lost  
23 the contract for a curbside recycling program that was,  
24 by its own nature, a source separation, but contamination  
25 ran 30 to 35 percent. In Visalia that happened, and that

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

1 facility that took it over had to come in and get a  
2 permitted facility. They were trying to operate as a  
3 recycling center. So it wasn't that they -- they were a  
4 source separation, but the contamination was so high and  
5 it was just because people didn't understand and they  
6 didn't do a good job of source separating.

7 I think one of the key things I want to ask you  
8 about when we talk about separating for reuse and we talk  
9 about the quality so that it enters the marketplace, that  
10 was to make sure that that material had a quality that  
11 could stand on its own to meet marketplace, and I assume  
12 marketplace to be something other than composting in the  
13 way we were defining it at that time.

14 But I'm wondering if that over -- let's say that  
15 at that point of transfer at a non-permitted facility  
16 that the standard was set by the operator of the  
17 permitted composting facility and he allowed a higher  
18 level of contamination so that the transfer station  
19 didn't have to pick it quite as well as they would. Is  
20 there any linkage in the two-part test to that because it  
21 skews why we put in the quality of -- that have quality  
22 assurances.

23 MR. BLOCK: As it stands now we don't have  
24 language that addresses that issue. That is one of the  
25 things. I don't think at the time we were coming up with

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

1 that language we were going that deeply into the quality  
2 of the marketplace *issues*. Those continue to be fairly  
3 contentious as to what that standard should or should not  
4 be and who gets to set that standard. I think what  
5 you're suggesting here today is a way to just use the  
6 residual at the end of a process as one perhaps way of  
7 getting to that.

8 There's another possible way to do it other than  
9 somebody -- some body setting quality standards. The  
10 problem we ran into is that those may change over time  
11 depending on how the technology changes.

12 BOARD MEMBER JONES: Right.

13 MR. BLOCK: For the same reason that using  
14 tipping fees and those sort of things becomes difficult  
15 because markets go up and down, and in terms of writing  
16 the regulations we try to stay with things that are more  
17 objective in terms of the actual use, but I think in this  
18 case what we didn't do is we didn't add compost as  
19 another destination that would count something as  
20 residual or some variation on that which might be -- if  
21 there's residual at the end of the compost process, that  
22 gets counted back. That's another way to do it.

23 BOARD MEMBER JONES: Do we have a composting  
24 facility in the state of California that isn't permitted?

25 MR. BLOCK: We have some composting operations

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

1 that are in a notification tier, so they don't have  
2 permits, but anything defined as a composting facility is  
3 supposed to have a permit.

4           BOARD MEMBER JONES: If it's going to mulch and  
5 grind, it doesn't need a permit. But if it's a  
6 composting facility, it needs a permit.

7 So we're talking about a facility that feeds it  
8 but we're not sure about if a facility needs two-part  
9 test not having a permit. And it doesn't -- believe me.  
10 It's no reflection on the staff because I sat in those  
11 meetings and this never, ever -- I was arguing that  
12 putrescible waste could go into warehousing 300 tons a  
13 day, in their facility in Sacramento that took in 3,000  
14 tons a day, and since they were out marketing, looking  
15 for garbage business, I felt it was a pretty reasonable  
16 argument. But I sure as heck didn't know that we would  
17 be sending it in as food waste.

18 MR. BLOCK: And I think the staff report, as  
19 Michael has explained, indicates the position of the  
20 staff is not that we shouldn't be regulating these folks,  
21 it's just that the regulations as currently written don't  
22 cover them.

23           CHAIR MOULTON-PATTERSON: Thank you, Mr. Block  
24 and Mr. Cummings. In the interest of time, I want to  
25 make sure Cal Bio-Mass has time. And also we do have

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

1 public speaker slips. So who is representing Cal

2 Bio-Mass?

3 MR. HARDY: I am.

4 CHAIR MOULTON-PATTERSON: Okay. Thank you.

5 MR. HARDY: For all of us that live down here,

6 the fact we have to be out at 5:00 and those that have to

7 go out and fight traffic, this has not been a

8 well-flowing meeting and I sit there and kind of think --

9 first of all, let me introduce myself.

10 CHAIR MOULTON-PATTERSON: Please give your name

11 for the record.

12 MR. HARDY: My name is David Hardy. I'm

13 President and owner of California Bio-Mass, and before I

14 start on anything technical I need to clear up an issue

15 that arose just as I had walked into the room, and there

16 seems to be great concern on the part of one of my

17 contemporaries. So I just wanted to reassure that Evan

18 Edgar, I still love you and even though we disagree on

19 the process of this.

20 To give you a little background real quick, and

21 I'm going to be finished in six and a half minutes. The

22 company's been around ten years. We currently recycle

23 about 250,000 tons a year. We have two compost

24 facilities that have full-blown composting permits.

25 The facility in San Bernardino is designed to

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

1 give our customers the ability to cost effectively  
2 recycle organic materials. Regardless of permits and  
3 ordinances and stuff like that, it doesn't matter. What  
4 drives recycling is the all mighty dollar, and if I can  
5 save money. So it's going to be our corporate  
6 headquarters.  
7 The actual building that this material comes  
8 into is 8,000 square feet. We're also putting in a  
9 90,000 foot warehouse building and bagging plant. The  
10 office that my company is going to occupy is about half  
11 the size of the transfer station.  
12 This is -- when we're receiving the organic  
13 material is one small element of the overall project  
14 there. So I want to point out to you a couple of things.  
15 We don't care if you have to have a permit or  
16 not. Not that we don't love you the most and everything  
17 else, but there's 16 other agencies we're answerable to  
18 on any of our projects. The thing I take issue with is  
19 the fact that we came to the Board in advance. We worked  
20 through our LEA. We sat there and submitted all the  
21 information that was needed and a determination was made  
22 of which we filed for permits, we made financial  
23 contributions to the various permitting agencies, and we  
24 started to build a project.  
25 At the same time when we permitted that project

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

1 through the city, there were provisions in there, like  
2 all the rest of the agencies, that if you change the  
3 existing policy and rules, we incorporate those. In  
4 addition to that, since there weren't any other  
5 guidelines for something that's pretty innovative and I  
6 think we'll all agree now it hasn't come across the  
7 screen at this point, that we went and took the transfer  
8 regs and we said we would incorporate those, everything  
9 from the reporting standards to how we keep things clean,  
10 initial study, got to have odorizers and all these other  
11 things.

12 So it's the best of both worlds. You have a  
13 facility that came to you in advance, you had an LEA that  
14 worked it's ass off in conjunction with staff. They made  
15 a ruling, and just to be sure at the end if everything  
16 changes in the future, there's accommodations for that.  
17 What I really take exception to now is a couple  
18 of things. We go through all that process. And again,  
19 we don't care if it winds up we have to have a permit or  
20 not because like I said, we have to maintain a bunch of  
21 them. What I do -- am concerned about is the fact that  
22 going through this process that we all worked very hard  
23 over the last five years to bring some sense of civility  
24 to it in the way we go about making statewide regulations  
25 is going to be interfered with here and that we're going

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

1 to take this hearing and turn it into beyond a policy  
2 discussion but into a rulemaking that affects only me,  
3 with no considerations about what is going to happen from  
4 a statewide perspective or how the regs should read.  
S You've listened to us for two hours. We've had  
6 Board staff as well as the LEA, your own agents, sitting  
7 there and I see these subtle little twisty differences of  
8 the regs and what they say and don't say. The bottom  
9 line is we need to redo them, but we should be doing them  
10 through our normal rulemaking process in the normal  
11 thoughtful, participatory way that we do it, and you have  
12 plenty of time to worry since my facility is not going to  
13 be open until January anyway to get it worked out, but  
14 don't bow to the temptation to sit there and then on an  
15 individual basis tweak a particular facility.  
16 Even during our worst days of our green waste  
17 operators, which you were there at, when we had  
18 vermiculture people running rampant and setting up  
19 million-dollar liability messes, you overlooked -- I  
20 shouldn't say overlooked, but you ignored the temptation  
21 to try and fix an individual facility and come back with  
22 a statewide policy. We call those emergency regulations.  
23 If what's going on here and the definitions are  
24 so unclear, let's go through the emergency regulation  
25 process, let's get some dialogue, and let's put something

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

1 in place that makes good statewide sense because what's  
2 going to happen, and part of what Evan Edgar's biggest  
3 issue is, is when he wanted to permit his facility for  
4 his client, the board staff came back and said you know  
5 what, you don't need a permit. He said you know, I want  
6 one. You don't need one. I want one.

7 So in going through that process of trying to  
8 get a permit for his client, it's been a nightmare and  
9 the reason being is there's no framework. The Board has  
10 to adopt some framework. If you turn around and tell me  
11 I've got to now get a permit as it stands now, what  
12 permit? Am I destined to be in argument with staff  
13 because there's no real clear guidelines? They just know  
14 that the Board wants you to have a permit. Because food  
15 waste, which is a small percentage of the material that's  
16 coming in, represents a potential problem. Although the  
17 facility is not even built yet, we haven't had an  
18 opportunity to create one yet.

19 How do you sit there -- those aren't the type of  
20 regulations we want and that's certainly not the right  
21 way to go about in managing and directing the industry  
22 and giving them a set of rules that we all clearly  
23 understand and are consistent with a broad set of other  
24 rules we have.

25 Thank you.

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

1 CHAIR MOULTON-PATTERSON: Thank you, Mr. Hardy.

2 Any questions?

3 MR. HARDY: I believe that was four minutes and

4 35 seconds.

5 BOARD MEMBER JONES: I have one.

6 CHAIR MOULTON-PATTERSON: Mr. Jones.

7 BOARD MEMBER JONES: Mr. Hardy, I appreciate

8 what you're saying. I don't like seeing them on the run

9 either, regulations on the run, but I think that the

10 heart of this is the definition about what is recycling,

11 what is the terms, the categories, and a category called

12 commingled organics includes such a wide array of

13 materials that that was never, ever interpreted by me and

14 by others, I don't think, to be a specific commodity.

15 It's a type, but it goes to what I had said early on.

16 It -- I was having a hard time with this this

17 weekend. When I read that in your initial study, then it

18 just a light bulb went off and said we're not talking

19 about a specific product, we're talking about a category

20 of material, commingled organics, which could be --

21 MR. HARDY: Let me address that a little bit.

22 BOARD MEMBER JONES: -- an awful lot of things,

23 Dave.

24 MR. HARDY: Exactly. If you read the industry's

25 interested letter of support to help the Board make a

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

1 decision, you'll notice they didn't take any issue with  
2 commingled or biosolids or green waste. We would all  
3 agree those are putrescible, hay, straw, manures, all  
4 that stuff.

5 It goes back to where do we want to go. As the  
6 industry is evolving, we need to start addressing these  
7 things. Food waste came into existence four years ago.  
8 We pioneered this.

9           BOARD MEMBER JONES: Actually, food waste came  
10 into existence when people started eating.

11 (Laughter)

12 MR. HARDY: I'm sorry. I think the world  
13 revolves around recycling. From our business, from our  
14 perspective, incorporating food waste, it's an outgrowth  
15 of development of the business and it started four years  
16 ago. We've been recycling this stuff for four years.  
17 didn't pull those numbers out of my hat. That was a  
18 report that was submitted to the Waste Board that has  
19 been accumulated over four years.

20 I will tell you, though, that we need to be --  
21 because if you really look at the argument that's being  
22 made, we're now talking about food waste. I imagine if I  
23 polled all of you and I asked you what do you envision  
24 food waste is, I would guess that most of you would be  
25 wrong with what it looks like. When you talk about

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

1 contaminants in food waste, do you know what the number  
2 one contaminant in food waste is? Plastic trash sacks.  
3 Because there's no economic way to provide them a  
4 biodegradable bag to do the collection of food waste, so  
5 most programs allow them to continue to put it in plastic  
6 bags so they'll participate in the program, and we have  
7 to take that out. It's 80 percent of it.  
8 It just goes back to you're going to start --  
9 for the sake of making a decision, you're going to sit  
10 there and you're going to split hairs because I think of  
11 commingled and if I was following your line a little bit  
12 about waste paper, I also go back to certain recycling  
13 facilities that can't take commingled recyclables either.  
14 They're excluded because the collection system takes in  
15 both plastic, glass, metal and stuff like this. Some of  
16 them aren't capable of handling that.  
17 In food waste, that paper, it's a type of paper  
18 nobody wants. We thought it was pretty innovative that  
19 we went after it in the first place, but that's not  
20 something we're stealing from the paper industry. It's a  
21 type of paper typically they don't want in the first  
22 place. Did I answer your question?

23           BOARD MEMBER JONES: No. But Dave, let me just  
24 elaborate on your question. In your view the deal with  
25 food waste started four years ago. In my view dealing

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

1 with food waste was the heart of the solid waste  
2 industry. These guys were called pig farmers. That's  
3 how Aggajianian and all of southern California started was  
4 in taking residual food out and feeding pigs with it.  
5 And up and down this state that's how this  
6 industry started, but it started as a result of health  
7 and safety issues where those -- that food waste was a  
8 source of vectors and plague and everything else. It was  
9 how do you manage it correctly at that time, and those  
10 rules have since changed because of the contamination in  
11 that food wastestream. Now all that food has to be  
12 cooked to be sold to animals prior to ever letting them  
13 feed on it.  
14 To say that this is a four-year system, it's  
15 four years in how you are going to manage it and that  
16 I'll agree with you. Four years ago, five years ago, we  
17 were trying to figure out how to keep food out of the  
18 green wastestream so it wasn't a source of contamination.  
19 Go back to the heart of why we even started  
20 separating food waste out and it was because of health  
21 and safety. It wasn't this economic viability, but it  
22 was separated at the truck, at the curb, whatever. So I  
23 think that if we're going to go to the heart of it, let's  
24 go to the heart of what it was. It was a health and  
25 safety issue that started that separate collection and

1 that was only a hundred years ago.  
2 But I agree that you need to be able to move,  
3 but to throw all this stuff together and say because it's  
4 organic or because it's cellulose that that's okay, that  
5 commingled existence we can do something with it, doesn't  
6 meet the two -- and I don't want to change the rules. I  
7 want this to be -- I don't know how five other people are  
8 going to vote. I know how I'm going to vote and I don't  
9 think that -- I think the part of separated for reuse,  
10 that it meets a quality standard to go into the  
11 marketplace is key to my decision about did it pass the  
12 first part of the two-part test.

13 MR. HARDY: When you say "quality," what do you  
14 mean by that?

15 BOARD MEMBER JONES: See, I determine -- based  
16 on those meetings that we had that I sat in the middle of  
17 and everybody was fighting for their own stake.

18 MR. HARDY: Yes.

19 BOARD MEMBER JONES: That quality was to take it  
20 to the next -- the unpermitted next step of the facility,  
21 of the infrastructure, paper went to pulping mills or the  
22 those kinds of plants, glass went to glass crushers to be  
23 made into another product, aluminum went to smelters,  
24 steel went to steel processors that ended up making tin.  
25 That's what that whole argument was about.

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

1 So it left and went to the marketplace and the  
2 price of that commodity was judged on the quality of the  
3 separation and the quality of the commodity that was  
4 being sold. You know that. You've been in this business  
5 forever.

6 MR. HARDY: Okay.

7 BOARD MEMBER JONES: What we're talking about  
8 here is a standard that says the quality doesn't matter  
9 because the person that's going to end up taking it will  
10 deal with that later. And that goes to the heart of  
11 hurting the intent of the two-part test and that is  
12 source separation.

13 So that's where I'm having problems with that,

14 not to redo regs --

15 MR. HARDY: Let me address that.

16 BOARD MEMBER JONES: -- but to live with what  
17 we've got.

18 MR. HARDY: As you know, our facilities are  
19 CCQC, and so quality and those things we have to meet a  
20 certain standard. At the same time agriculture is our  
21 largest customer base. To say that quality's not an  
22 issue, I would strongly disagree with that. It's very  
23 much an issue.

24 When you sit and you look at the food waste  
25 programs we've put into place, we stress a couple of

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

1 things because being cleaner does make a difference. The  
2 one contaminant we do tolerate because from a functional  
3 standpoint it's got to be that way, which is the plastic  
4 trash bag. We've never been able to come up with a  
5 biodegradable one that made economic sense. That's a  
6 contaminant that it's incorporated. That's fine. We  
7 learn to deal with it.  
8 If you look at the rest of the program stuff,  
9 there's other containers there. They've got a wide  
10 variety of choices. They can put another container that  
11 separates all the quote "traditional recyclables" using  
12 their term, which is the plastic, the cans and the glass  
13 because glass is the number one thing that we can't do  
14 anything about. If we miss that, it screws up the  
15 quality of the program.  
16 Then you have another container and you always  
17 have to have what we call the crap container, but for  
18 lack of a better phrase that's the trash one at the  
19 facility that goes to the landfill. So those are the  
20 varying degrees of separation that go on and it's crucial  
21 that that happens because once it comes into the facility  
22 the material has to be clean organic material, excluding  
23 the plastic bags, or it will screw up the rest my stuff.  
24 So I would say that that's very consistent with  
25 how we're looking at what commingling means. This isn't

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

1 just MSW. I don't want something that's got cat poop in  
2 it, batteries and all this other stuff. I need clean  
3 organics because if I don't get it out in front, I'm  
4 going to see it in the end and I can't market that  
5 product and nor can I make the standard.  
6 I will tell you this -- and I'm assuming we're  
7 in agreement that this needs to be looked at and made  
8 consistent so it doesn't take us two and a half hours to  
9 discuss the finer points. Are we in agreement that needs  
10 to be done?

11 BOARD MEMBER JONES: We're in agreement that we  
12 need to go a further step. I'm not saying that that's  
13 what we're talking about right now, though.

14 MR. HARDY: That's fine. I'm happy with that.  
15 You're welcome.

16 CHAIR MOULTON-PATTERSON: Thank you. And now  
17 for the public, Denise Delmatier.

18 MS. DELMATIER: Madam Chair, Members of the  
19 Board, Denise Delmatier with Norcal Waste Systems. I'm  
20 happy to be here today. I'm going to try and make it  
21 real brief because I'm going to try and let people get  
22 their points in.  
23 First point, obviously I'm going to cut right to  
24 it. The first point on the two-part test is the language  
25 in the statute that describes the potential exemption for

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

1 the requirement to have a permit for the transfer  
2 station, the (b) (2) that we've been looking at all day.  
3 I want to bring your attention to language which was  
4 specifically negotiated when we negotiated AB 939.  
5 Staff will recall these discussions. We've been  
6 discussing it for years, but "which have already been  
7 separated for reuse." That's the statutory language,  
8 "which have already been." That's past tense. Not for  
9 purposes of future processing and separating for reuse  
10 but which has already been, and again with emphasis on  
11 separated for reuse.  
12 Then we look at the regulatory, which we heavily  
13 negotiated, the regulatory definition of separated for  
14 reuse, and that's the key point Mr. Jones has been  
15 making, that the exemption is for a recycling center.  
16 Where did that language come from in the definition of  
17 separated for reuse, the language which Mr. Jones has  
18 been referring to all afternoon, the language which  
19 specifically refers to the materials for purposes of  
20 recycling or reuse in order to return them to the  
21 economic mainstream?  
22 That language is specifically lifted from the  
23 statutory language which defines the activity of  
24 recycling. In the statutory language in the Public  
25 Resources Code recycling means "processing materials in

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

1 order to return them to the economic mainstream." That's  
2 a direct quote from the statutory language.  
3 Then further redefined the term "reuse" in the  
4 regulatory language and that gets to Mr. Paparian's point  
5 about what are you doing with the whey and that is the  
6 same kind of product that's ready for purposes of going  
7 to the economic mainstream in a similar form as it was  
8 originally produced. And that's why in the regulatory  
9 language reuse means the reuse in the same or similar  
10 form as it was produced.

11 If you take a bunch of whey and dump it on the  
12 floor at, I'm sorry, a transfer station, it has not been  
13 separated, already been separated for reuse, ready to  
14 enter the economic mainstream in the same form as it was  
15 originally produced. So we don't have, in this instance,  
16 materials that are coming into a facility which have  
17 already been separated for reuse, for purposes of  
18 returning to the economic mainstream, a recycling  
19 definition and for -- in the same form as it was  
20 originally produced.

21 Then secondly -- if I can get some assistance on  
22 these -- when we negotiated the language both in the  
23 statute and the regs, solid waste means all putrescible  
24 waste. Putrescible waste is solid waste. The  
25 regulations specifically define putrescible waste as food

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

1 waste, and the reason it's defined as putrescible waste  
2 is because of the environmental health and public safety  
3 concerns, as are mentioned in the definition of the  
4 regulation, that these types of materials will be  
5 decomposed by microorganisms with sufficient rapidity as  
6 to cause nuisances because of odors, gases or other  
7 offensive conditions.

8 And then finally when we negotiated the  
9 language, and as mentioned by Mr. Jones earlier today, in  
10 the letter that was submitted by a whole host of  
11 interested parties who negotiated the language, that  
12 putrescible waste, any diminimus amount of putrescible  
13 waste, including food waste, was always intended to be  
14 outside the scope of the two-part test. If there was any  
15 incidental amount of putrescible waste, then you have not  
16 met the two-part test, and I specifically refer to the  
17 letter that was previously submitted.

18 So we think under existing statute and existing  
19 regulation, this operation clearly has not met the  
20 two-part test under existing statute and existing  
21 regulation. With all due deference to the applicant, I  
22 think the applicant probably has a very good proposed  
23 facility here and unfortunately his proposed facility is  
24 getting caught up in a huge policy discussion on how to  
25 apply the two-part test, but it is also very important

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

1 that we not embark on a road that undermines the  
2 necessity of implementing the two-part test in the first  
3 place, and that was to protect public health, safety and  
4 the environment.

5 Happy to answer any questions.

6 CHAIR MOULTON-PATTERSON: Thank you very much.

7 Senator Roberti.

8 BOARD MEMBER ROBERTI: An observation, if  
9 Ms. Delmatier would like to respond. I agree with where  
10 you're trying to go. I just don't agree that we have a  
11 legal remedy to get there, but --

12 MS. DELMATIER: If that's the case for purposes  
13 of today, we would certainly recommend strongly that we  
14 embark on an emergency regulation immediately.

15 BOARD MEMBER ROBERTI: I agree. I would have to  
16 think, however, if what we need is a regulation or what  
17 we need is a statute. I'm not sure in my own mind as to  
18 if we could only do this by regulation, but that's my own  
19 personal thought.

20 However, Section 17402.5 of our regs makes  
21 reference to, without reading the whole thing, return  
22 them to the economic mainstream in the form of raw  
23 material for new, reused or reconstituted. Reconstituted  
24 doesn't strike me as what we've been talking about, whey  
25 to whey. Reconstituted means reconstituted, and so

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

1 therefore it means something that is chemically, visibly,  
2 whatever, different from its original status. Hence, I  
3 don't think -- I don't think that -- I think that section  
4 speaks to the issue that these products probably have  
5 been separated for reuse.

6 Then we get to the section here, definition of  
7 recycling center, section -- you're probably more  
8 familiar with this than I am. The section specifically  
9 in calculating residual, second part of the two-part test  
10 composting, compost feedstock is out. So either by  
11 accident or more probably by design, this kind of  
12 material was intended to not count as part of the  
13 two-part test, the residue, and I'm therefore at a loss  
14 as to what I could possibly do to vote the way you would  
15 like me to and the way I actually would like to.

16 One other point is why I think a statute is that  
17 the statute specifically says separated for reuse and  
18 are not intended for disposal.<sup>o</sup> That seems to be  
19 relatively clear, especially in the light of the  
20 understanding of the statutes. Separated for reuse,  
21 which is the real problem, it's the crux of the problem,  
22 it's not commingled recyclables, the words separated for  
23 reuse, separated for reuse, composting, it is something  
24 that gets all mixed up. If that were the intent, we

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

1 MS. DELMATIER: We spent -- as Mr. Jones knows,  
2 we spent years --

3 BOARD MEMBER ROBERTI: I'm sure.

4 MS. DELMATIER: -- negotiating separated for  
5 reuse, so it's not new. But I point you to the letter  
6 that was signed by Allied California Refuse Removal  
7 Council, and by the way I'm also representing Institute  
8 of Scrap Recycling Industries who couldn't be here today,  
9 Jefferson SMRFR Corporation (phonetic), Norcal, Republic  
10 Waste, Waste Management, who all participated in these  
11 discussions. And Diane Kelly at the time in representing  
12 Weyerhaeuser said in her testimony residual is not  
13 putrescible. We handle commodities, the source-separated  
14 recyclables that come in the front have an amount of  
15 residual out the back. It can vary from paper that you  
16 could not use, it could be bailing wire, plastic,  
17 something like that that you cannot use in a process, but  
18 it's not putrescible waste.

19 Mr. Rellis, BOARD MEMBER Rellis, at the time in  
20 responding to that said, "I think we're all of one mind.  
21 If they received it, and I even think I saw heads nodding  
22 from the paper folks, that clearly if they receive  
23 putrescibles, they would be in agreement that they would  
24 need to come to us for a permit." That was the crux of  
25 the discussion.

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

1 We took putrescibles off the table and never  
2 talked about it again because we all agreed that  
3 putrescible wastes are wastes that any diminimus amount  
4 would require a permit. That's why they're not in the  
5 regs because we just took it off the table. And now we  
6 have a facility coming forward that is putting, that issue  
7 right back at center front on the table. Now, how do  
8 we--

9           BOARD MEMBER ROBERTI: I'm always impressed by  
10 your arguments. It's very good.

11 MS. DELMATIER: Thank you.

12           BOARD MEMBER ROBERTI: However, I think you're  
13 arguing in contradiction to what appears to be the clear  
14 statement of the statute in the regs. I agree with you  
15 that we should opt -- if the LEA is upheld this  
16 afternoon, we should opt swiftly for a change in both the  
17 regulations and the statute. I think it takes both. I,  
18 for one, would be happy to join with everybody who wants  
19 to make that change because I think it's consistent with  
20 what our purposes are.

21 MS. DELMATIER: The real risk here of going down  
22 that path without addressing this issue in a quick  
23 fashion is, as we all know, everything in the wastestream  
24 is potentially recyclable. And so what we're doing here  
25 then is parading a potential scenario that the entire

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

1 wastestream could be unregulated.

2 CHAIR MOULTON-PATTERSON: Thank you very much.

3 George Larsen.

4 MR. LARSEN: Madam Chair, Members, George Larsen

5 representing Waste Management. I also will attempt not

6 to repeat, maybe only to emphasize some of the points

7 Denise has made because we are a signator of that letter

8 also and you've heard many of the points.

9 We feel based on the history of the two-part

10 test as it was developed, it's arguable that it

11 putrescible wastes are present in any more than diminimus

12 percentages or quantities and certainly not in excess of

13 the 10 percent limit that the facility is not eligible

14 for a permit exemption.

15 I think the issue today is not so much the

16 specific action being taken here because I'm not here to

17 testify against this facility on behalf of Waste

18 Management. I'm here to address a policy issue and a

19 precedent that may be set by the decision you make.

20 The question must be posed can an operation

21 utilize a segregated single wastestream precedent that

22 may be established by the decision today to exempt the

23 operation from solid waste regulation. Should this be

24 the policy even if it can be demonstrated there are

25 distinct public health, safety and environmental impacts

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

1 from such a decision?  
2 Secondly, what environmental and public health  
3 structure will govern the operation of the facility? It  
4 was noted today that the LEA and the CUP or the land use  
5 decision would voluntarily, at the cost of the proponent,  
6 undergo three months of operational inspections. I  
7 really don't think that's sufficient, and I think it  
8 points to the fact there's a lot of unidentified  
9 operational aspects of this type of facility that need  
10 very thorough investigation.  
11 Your Board in the item developed, agenda item,  
12 also noted that the type of activity planned at the  
13 facility has the potential to cause adverse effects for  
14 public health, safety and the environment. I think,  
15 Senator Roberti, you went right to where I think we would  
16 be. I think If the decision is made, it creates a major  
17 gap that could lead to some policy implications and  
18 outcomes that all of you would not like to see.  
19 So if we do decide -- if you make that decision  
20 today, I think along with that decision should be a very  
21 definitive and forceful directive to staff to go forth  
22 and study this issue and come back with regulatory --  
23 maybe a short fix in a short time of emergency  
24 regulations, and if it requires statutory amendment, we  
25 certainly would be there to help participate and make

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

1 this system work.

2 Be glad to take any questions.

3 CHAIR MOULTON-PATTERSON: Thank you, Mr. Larsen.

4 Evan Edgar is our last speaker and here's a

5 handout he has.

6 MR. EDGAR: Thank you, Chair and Members. My

7 name is Evan Edgar, Edgar and Associates, on behalf of

8 the California Refuse Removal Council. I'll keep this

9 short.

10 Food waste is a denseless garbage, and if you

11 follow my handout on Title 14 regulations, on the front

12 page you can connect the dots. Garbage is food waste is

13 solid waste, and with that you need a Solid Waste

14 Facilities Permit.

15 I concur with Denise Delmatier and the testimony

16 of George Larsen on the industry group letter that from

17 the very beginning food waste was solid waste and you

18 need a Solid Waste Facilities Permit. In fact, from my

19 experience, working with source-separated food waste is

20 more pragmatic than regular MSW. MSW has been diluted by

21 physical contaminants.

22 If you just take source-separated food waste,

23 food waste is more odoriferous, has more vector

24 attraction, has more liquids, but by adding other things

25 to it, it actually absorbs the liquids, it cuts down on

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

1 odors and you have less vector attraction potential. So  
2 by dealing with source-separated food waste in the permit  
3 that you'll be hearing tomorrow, we have Solid Waste  
4 Facility Permit conditions that are far beyond the  
5 transfer regulations. We took the state minimum  
6 standards as a basis and added to it where you have a  
7 solid waste transfer for food waste down to 24 hours  
8 instead of 48 hours and we're managing the leechates a  
9 lot better. We're managing the odors. What we have is  
10 actually a solid waste transfer station.  
11 I believe the big crux of the definitions is  
12 what is a recycling center, and Mr. Jones hit on it a few  
13 times today. When you have a recycling center, all the  
14 byproducts and all the stuff that leaves that recycling  
15 center meets that quality standard, whether it be bailed,  
16 whether it be shredded or whatever. It goes to the  
17 marketplace and gets manufactured. It doesn't go to  
18 another solid waste facility. It goes to the  
19 marketplace, and with quality standards that meet the  
20 marketplace specifications.  
21 However, if you look at a food waste transfer  
22 station, it gets transferred to another Solid Waste  
23 Facilities Permit that you have to go through another  
24 process there in order to make a quality standard to meet  
25 the marketplace. The permit is in the processing of

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

1 taking the food waste to a higher standard at the compost  
2 facility. That's why I bring up the Title 14 definition  
3 in front of you in large print there, 17402. It says it  
4 right there that the solid waste -- large and medium  
5 volume transfer processing facility for the purposes of  
6 storing, handling or processing the waste prior to  
7 transferring the waste to another solid waste operation  
8 or facility. It doesn't say landfill, it doesn't say  
9 disposal, it says to another solid waste facility.  
10 So what is happening with the definition of a  
11 solid waste transfer station for food waste is that  
12 they're taking food waste, garbage, putrescibles, taking  
13 it to a permitted facility for additional processing to  
14 hit the quality for the marketplace. Therefore, I  
15 believe there's adequate information in the solid waste  
16 transfer station regs to handle food waste processing.  
17 It's there. It can be added to under the full permit  
18 because it leaves -- it could be higher and better state  
19 minimum standards than we have today.  
20 So it's a statewide implication. I'm not here  
21 to talk about the specifics of the permit, but we  
22 experienced a loophole a couple years ago that was for  
23 vermacomposting (phonetic) and I believe San Bernardino  
24 County and a lot of people spent a lot of money and AB  
25 2136 money on cleaning up chipping and grinding

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

1 operations and vermacomposting operations. Should the  
2 same loophole be exploited today it would lead to the  
3 same problems we had in the past. We don't want to see  
4 that happen.

5 So in closing, CRRC recommends option two to  
6 deny the appeal. What I would like to say is if it looks  
7 like a permit, it smells like a permit, it's a permit and  
8 it smells.

9 Thank you.

10 CHAIR MOULTON-PATTERSON: Thank you, Mr. Edgar.

11 Yes, Mr. Cummings.

12 MR. CUMMINGS: Madam Chair, If I could indulge  
13 the Board, could I have 90 seconds?

14 CHAIR MOULTON-PATTERSON: Certainly.

15 MR. CUMMINGS: Thank you. Two issues.

16 Mr. Jones, you brought up a very good point dealing with  
17 end quality standards, and I would just like to point out  
18 that presently there are no quality standards for end  
19 product compost that are uniformly accepted nationwide or  
20 even statewide as to what that end product should be.

21 There are manufacturer self-imposed standards  
22 and association-imposed standards, but we don't have a  
23 quality standard for what is compost and what those  
24 grades should be.

25 To Mr. Roberti, you seem to be having some

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

1 trouble with the statute language and whether or not that  
2 two-part test is met, and you've heard your own staff  
3 tell that you there are similar facilities in this state  
4 that have had wastestreams coming into them that did not  
5 meet that 10 percent residual test, and as a result the  
6 LEAs in those jurisdictions have told those operators  
7 either eliminate those streams or apply for a permit.  
8 This facility has similar streams, the streams  
9 that would be coming from restaurants and the streams  
10 that would be coming from food stores.

11 BOARD MEMBER ROBERTI: Hasn't the evidence  
12 indicated that it was like 3 percent?

13 MR. CUMMINGS: No, sir. The evidence before you  
14 indicates that the residual in those two wastestreams  
15 runs at 15.5 and 16.1 percent, in excess of the 10  
16 percent threshold. And consequently the LEA here failed  
17 to tell the City of San Bernardino and this operator  
18 either eliminate those wastestreams or apply for a  
19 permit.

20 You have that opportunity today to tell this  
21 operator to apply for a permit. Because you have an  
22 accepted Conditional Use Permit and because you have an  
23 accepted mitigated negative declaration, the option of  
24 eliminating those sources from the wastestream you can't  
25 enforce. You can't require that because the Conditional

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

1 Use Permit and the description of the project

2 specifically include those streams.

3 BOARD MEMBER ROBERTI: I hear what you say and  
4 everything you say makes good policy. I don't think it's  
5 in the law and the regs. We've heard the 3 percent may  
6 not be the stream, but it's the other end, whatever we  
7 call it, call it from the --

8 MR. CUMMINGS: My only point to you, sir, is  
9 it's an unsubstantiated argument not based on fact with  
10 no numerical data to back it up, and I've provided with  
11 you with your own numerical data generated by your own  
12 staff over a period of years to show that those  
13 wastestream characterizations from those two sources  
14 which are integral parts of the source for this project  
15 exceed the 10 percent threshold.  
16 I've opened the door to you and I really  
17 can't -- I don't want to belabor the point. I've already  
18 taken up more time than I thought I would, but there's  
19 the opportunity to close the door.

20 BOARD MEMBER JONES: Madam Chair.

21 CHAIR MOULTON-PATTERSON: Mr. Jones.

22 BOARD MEMBER JONES: Just one thing to respond.

23 There is no --

24 CHAIR MOULTON-PATTERSON: Mr. Cummings, would  
25 you come on back?

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

1 BOARD MEMBER JONES: There is no nationwide  
2 standard or statewide standard for compost, but  
3 Mr. Hardy's operation is part of a voluntary rating  
4 system that rates good quality compost.

5 MR. CUMMINGS: Yes, sir. And I'm aware there  
6 are - -

7 BOARD MEMBER JONES: And you need to understand  
8 that the industry itself has to make compost for certain  
9 applications to certain types of land.

10 MR. CUMMINGS: I understand that, Mr. Jones.  
11 I'm a certified master gardener with the University of  
12 California Cooperative Extension, and I'm well aware of  
13 industry standards within the composting arena, but they  
14 are self-imposed standards imposed by self-created  
15 organizations representing the industry. And it is a  
16 very laudable attempt and very good attempt at putting  
17 those in place, but without some definitive statewide or  
18 nationwide standards, we have composts that are sold at  
19 Home Depot that range in composition from stuff that  
20 includes human waste all the way to the stuff that is  
21 totally organic and only has forest products and manure  
22 in it.

23 BOARD MEMBER JONES: -- organic; right?

24 MR. CUMMINGS: Organic is organic is organic.

25 BOARD MEMBER JONES: I think it's under that

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

1 commingled organic recycling.

2 MR. CUMMINGS: We need to visit this -- we need  
3 to visit this issue with a lot more scrutiny than what it  
4 has previously been.

5 BOARD MEMBER JONES: I knew you were a master  
6 gardener. I listened to the tape of the last hearing and  
7 I wanted to make sure that everybody knew Mr. Hardy  
8 produces --

9 MR. CUMMINGS: I applaud Mr. Hardy's  
10 operation.

11 BOARD MEMBER JONES: -- some pretty high  
12 quality end product.

13 MR. CUMMINGS: I couldn't agree more with  
14 Mr. Hardy that this issue needs to be addressed by  
15 putting in place solid regulation, statutory requirements  
16 that govern this industry so that everybody's interests  
17 are protected, the operator's, the public's, the  
18 environment's. The problem we have here is do we allow a  
19 facility to go in without that regulation and be  
20 grandfathered in without regulation because a loophole  
21 exists.

22 I hope I've shown you that the loophole can be  
23 closed because of one or two specific sources in this  
24 stream. With that, we're all going to be on the same  
25 page.

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

1           CHAIR MOULTON-PATTERSON: Thank you,  
2 Mr. Cummings.  
3 Mr. Bledsoe.  
4 By the way we can stay a little after 5:00. I  
5 did receive a note, so I didn't want anyone to think I  
6 just threw that out there.  
7 MR. BLEDSOE: Thank you, Madam Chair.  
8 Just very briefly on the point that Mr. Cummings  
9 just made regarding the amount of residual in the  
10 proposed waste, the evidence before you with respect to  
11 the Cal Bio-Mass facility is that that facility will not  
12 have more than 3 percent residual. The statewide average  
13 figures that Mr. Cummings was citing to don't necessarily  
14 apply to the wastestreams that the Cal Bio-Mass facility  
15 is going to be accepting.  
16 So I would just like to make a concluding  
17 remark. I think we're in a situation here where you're  
18 not faced with a very easy situation and perhaps the  
19 result is not a happy one from your perspective, but the  
20 Waste Board staff has to apply the regulations and the  
21 statutes that are on the books. We cannot rely on  
22 representatives of interest groups who are at hearings to  
23 recall what everybody actually meant, nor can we rely  
24 from a legal perspective, frankly, on what was in your  
25 minds what you were adopting those regulations.

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

1 The law that gets adopted in the state is the  
2 law that gets written down in the regulations and in the  
3 statutes, and so that's why we went through a lengthy  
4 process of trying to explain precisely why we believe  
5 these regulations do lead us to the result that the Cal  
6 proposed facility is a recycling center.  
7 That's not necessarily a good result from a  
8 state policy perspective and that's why the staff  
9 recommends firstly that you adopt a staff recommendation  
10 and overturn the decision of the Hearing Panel, but  
11 secondly direct us to come back with some proposed fixes  
12 for what we see as a gap in the regulations.  
13 Thank you.

14 CHAIR MOULTON-PATTERSON: Thank you,  
15 Mr. Bledsoe.

16 BOARD MEMBER JONES: Let me ask our counsel,  
17 either Elliott or Michael, a question.

18 CHAIR MOULTON-PATTERSON: Certainly, Mr. Jones.

19 BOARD MEMBER JONES: Elliott, Under 17402  
20 definitions, a large volume transfer station is a  
21 facility receives 10 tons or more of solid waste on an  
22 operating day for the purpose of storing, handling and  
23 processing waste prior to transferring the waste to  
24 another solid waste operation or facility, that the  
25 uniqueness of this exercise here is that the composting

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

1 facilities are permitted and yet we're saying that --  
2 well, I'm not sure it passed the two-part test, but the  
3 discussions are around whether or not it's a recycling  
4 center -- I mean a recycling center or a transfer  
5 station, but under this definition that says that it can  
6 be doing, handling and processing of waste prior to  
7 transferring to another solid waste operation or facility  
8 seems to be not making up new policy but kind of looking  
9 at that definition, and maybe why the need to not include  
10 it explicitly existed at that time because clearly this  
11 is going to a permitted facility.

12 MR. BLOCK: Okay. If the question you're asking  
13 is whether this definition would somehow supersede the  
14 definitions we've been talking about under recycling, I  
15 think actually the way I see these as written it's the  
16 other way around. In other words, the recycling  
17 definitions are an exception to this definition in terms  
18 of the way the language is written.

19 Having said that, I think there's no -- I do not  
20 believe there is a question that the earlier indications,  
21 if you look at what was discussed, was not to have a  
22 loophole like this involved. If three years ago this  
23 particular facility was placed before the Board and the  
24 working group that was working on the regulations, I  
25 think the language in the regulations would address it.

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

1 I have no doubt that's the case. It just wasn't there  
2 and we haven't covered it and then that's what we're  
3 grappling with.  
4 The problem being that given the way the  
5 regulations are written right now, I believe there is a  
6 convincing argument that this facility is not covered by  
7 these regulations. Whether we meant them to be or not,  
8 they're not covered by that and that's because those  
9 recycling center -- Section 17402.5, the one that has the  
10 definitions of residuals separated for reuse and the  
11 like, the two-part test is an exception to all the other  
12 general rules of this article and that's the way it's  
13 phrased if you look at the beginning of that section.  
14 Activities that are in compliance with these  
15 provisions are not subject to the other provisions, and  
16 one of the articles that it references is 6.0, which is  
17 the one that includes the definitions.

18 BOARD MEMBER JONES: Right. But nowhere in that  
19 does it say it's going to another permitted solid waste  
20 facility or operation.

21 MR. BLOCK: Right.

22 BOARD MEMBER JONES: So -- I mean that I think  
23 is pretty critical to -- because every one of those other  
24 exceptions goes to an end use; right? Goes to a steel --  
25 it wouldn't go to another permitted facility. The only

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

1 exception is that this is going to a permitted composting  
2 facility. I don't --

3 MR. BLOCK: And I think that's -- what you're  
4 pointing out is exactly - and I still would prefer that  
5 we took some time to meet with all the interested parties  
6 to make sure we didn't accidentally capture some  
7 operations that we didn't mean to, but what you're  
8 pointing to is one of the potential fixes which is in the  
9 way we define residual is it only talks about the waste  
10 going to disposal, further transfer or processing, which  
11 would be operations or facilities, or transformation.  
12 What's missing from there is composting and that's the  
13 crux of why this material isn't residual under the  
14 current regs.

15 BOARD MEMBER JONES: Because the health and  
16 safety --

17 MR. BLOCK: And it is different than that  
18 language. The language you pointed out seems to say  
19 something different, and that's the crux of the problem  
20 is the way this is defined.

21 BOARD MEMBER JONES: Right. I think the health  
22 and safety risk with a green waste or lawn clippings,  
23 tree trimmings, road sweepings are considerably different  
24 than that when you include putrescible solid waste. That  
25 you know --

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

1 MR. BLOCK: The one thing I think I should add  
2 only because I know this. There's a work group working  
3 on the draft organic regs in bringing those forward, and  
4 this whole issue has been part of the discussions of that  
5 group as well, and I just wanted to urge some caution in  
6 terms of the way that staff recommendation is we come  
7 back with potential solutions because there are a number  
8 of different things -- actually, there are a number of  
9 different potential solutions raised today that I hadn't  
10 thought of before the discussion.

11 The problem that we always run into, and this  
12 was something I saw time and again as we were working in  
13 these regulations in the first place, when we start  
14 dealing with definitions and start making broad  
15 statements in one place and they start having all sorts  
16 of consequences in other places -- I'll throw out one  
17 example.

18 It comes from the food waste and the situation  
19 we're talking about now. If for instance we simply added  
20 the word composting here, there are a number of  
21 supermarket chains now that, as part of helping out their  
22 jurisdictions meeting 25 and 50 percent, back-haul unsold  
23 produce from their different sites to a central facility,  
24 and the reason they do it is put it all on one big truck  
25 and it goes to composting. If we simply just put the

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

1 word composting in here and we didn't monkey with any  
2 other definitions as to pre-consumer versus  
3 post-consumer, food waste and that sort of thing, if  
4 they're doing more than a hundred tons a day they need a  
5 full Solid Waste Facilities Permit.  
6 So that -- and that may or may not be. The  
7 Board may look at that and say if they're doing that much  
8 food waste, maybe they should be. It's an example of why  
9 we would like to, in terms of the fix, be able to come  
10 back and provide some different options and potential  
11 consequences like that.

12 BOARD MEMBER JONES: I'm not asking we rewrite  
13 the regulations today.

14 CHAIR MOULTON-PATTERSON: Excuse me. Could you  
15 tell the people in the back we're to use this door?  
16 Thank you. This side door. Sorry, Mr. Jones. Sorry  
17 about that.

18 BOARD MEMBER ROBERTI: Madam Chair.

19 CHAIR MOULTON-PATTERSON: Senator Roberti.

20 BOARD MEMBER ROBERTI: Is a motion in order?

21 CHAIR MOULTON-PATTERSON: Yes. Did you want  
22 to --

23 BOARD MEMBER EATON: I had one procedural  
24 question.

25 CHAIR MOULTON-PATTERSON: I'm sorry.

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

1 Mr. Eaton.

2 BOARD MEMBER EATON: I was going to wait until  
3 Mr. Block had finished.

4 The procedural posture that we have here,  
5 obviously you had three options for us to follow, but  
6 this kind of reminds me of the Dr. John song, right  
7 place, wrong time, where I think we have the right  
8 analysis, option, the right result. We have a right  
9 analysis with the wrong result. We could have the wrong  
10 analysis with the wrong result, or we could have the  
11 wrong analysis with the right result. It's that way, but  
12 I think what we've heard here is at least I can see a  
13 couple of BOARD MEMBERS and definitely everyone who has  
14 spoken is that the result, no matter which analysis we  
15 use, would probably be the wrong result at least for us  
16 right here.

17 I'm wondering from a procedural posture if we  
18 come to a decision today regarding the analysis and the  
19 result, what are our options with holding that decision  
20 back under submission until such time as regulations can  
21 be produced, or I think Mr. Hardy's fairness argument is  
22 one that is very persuasive. On the other hand, I think  
23 Mr. Jones's follow-up question with regard to the  
24 facility and the implication right there, so I'm a little  
25 worried about that procedural posture as to what do we

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

1 have for obviously coming to a decision, but withholding  
2 that decision until such time 90 days or whatever it  
3 might be in terms of that as a way to look at some  
4 things. I can see they're conferring, so at this point  
5 I'm giving our court reporter a break. Please talk  
6 amongst yourselves. You can't do that under the Brown  
7 Act. Or Bagley-Keene.

8 (Laughter)

9 BOARD MEMBER EATON: I don't follow that advice,  
10 Counsel.

11 MS. TOBIAS: I was talking so I didn't hear  
12 what you were saying. I think what the Board could do if  
13 they wanted to today is to hold this decision in abeyance  
14 and instruct the staff to go work on some proposed  
15 language so that when the language was adopted, you could  
16 decide what you wanted to do about the permit at the same  
17 time.

18 BOARD MEMBER ROBERTI: Madam Chair.

19 CHAIR MOULTON-PATTERSON: Senator Roberti.

20 BOARD MEMBER ROBERTI: I lean toward believing  
21 statute. I don't think this can be handled only by  
22 emergency regs. I would support a change in statute. I  
23 think we should vigorously pursue it as much as we can,  
24 but I think that end regs are needed. That being the  
25 case, we're going to be holding this decision in abeyance

1 a long time.

2 MS. TOBIAS: Well, what you may want to do is  
3 send staff away and see what we can do with the  
4 regulations and see if you still feel like you need a  
5 change in statute as well.

6 BOARD MEMBER ROBERTI: That's fair enough.

7 CHAIR MOULTON-PATTERSON: Did you finish,  
8 Mr. Eaton?

9 BOARD MEMBER EATON: Yes. Yes. Thank you. I'm  
10 sorry.

11 CHAIR MOULTON-PATTERSON: Senator Roberti, did  
12 you --

13 BOARD MEMBER ROBERTI: Well, we have a  
14 resolution before us. I'll move the resolution and  
15 whatever happens, up or down, whatever. I move that the  
16 Board adopt Resolution 2000-381, my own preference to  
17 kind of offer this would be depending on how it's voted  
18 on, then we would have some follow up, I guess remedial  
19 resolution is what we do, and in the broader sense of the  
20 pending regs and/or statute that cover this item.  
21 However, personally and speaking to the motion,  
22 I think the LEA has made a case that the facility  
23 involved is a recycling center. And that being the case,  
24 they should not be bound by the necessity to have a  
25 permit. If I were a member of the legislature, as I used

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

1 to be, I would be voting differently, but I think we have  
2 to restrain ourselves at times to follow the law and  
3 follow our own regulations and the law, and that kind of  
4 restraint says that no matter what we think the public  
5 policy is, the law in its clear wording trumps our  
6 philosophical predilections and, therefore, I think  
7 Mr. Hardy in this case is entitled to relief and he's  
8 entitled to it today.

9 CHAIR MOULTON-PATTERSON: I'll second your  
10 motion, Senator Roberti. Could you just -- a  
11 clarification for me. As a follow-up, you're saying that  
12 before we can do the regs, we have to have --

13 BOARD MEMBER ROBERTI: That's my feeling. I'm  
14 willing to listen to our attorneys, but I tend to  
15 think -- if I had it in front of me, separated for --

16 BOARD MEMBER EATON: The resolution only speaks  
17 to regulations.

18 BOARD MEMBER ROBERTI: No, no. Yeah.

19 BOARD MEMBER EATON: I don't think there's a  
20 statute.

21 BOARD MEMBER ROBERTI: The resolution speaks to  
22 decision of the Hearing Panel made on June 8th contrary  
23 to the Board's determination above is vacated. It speaks  
24 only to the actions of the San Bernardino Hearing Panel.  
25 I think for us to discuss regs and statutes, that will

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

1 take further action.

2 BOARD MEMBER EATON: I'm saying that the statute  
3 is that it's a recycling center as defined by  
4 regulations, not by statute, which goes to your point  
5 about a statute having to be changed, regulation has to  
6 be changed.

7 BOARD MEMBER ROBERTI: Yes. But -- fine, but I  
8 think that can be handled in the follow-up resolution  
9 because that's a more general point that I think we all  
10 want to get to.

11 CHAIR MOULTON-PATTERSON: So we have the motion  
12 by Senator Roberti.

13 BOARD MEMBER JONES: Madam Chair.

14 BOARD MEMBER PAPARIAN: Can I speak to it?

15 CHAIR MOULTON-PATTERSON: Yes. Mr. Jones.

16 BOARD MEMBER JONES: Go ahead, Mr. Paparian.

17 BOARD MEMBER PAPARIAN: I've got to say I like  
18 what's happening or proposed to happen at the facility.  
19 I like the composting and I hope Mr. Hardy is very  
20 successful at what he does. I also understand where the  
21 staff is coming from and the LEA in terms of their  
22 interpretations of the law, but I've got to look at the  
23 law and the regulations and come to my only conclusion as  
24 to what I believe it actually says, and I just don't  
25 agree with the LEA and the staff as to whether this

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

1 facility proposal falls under the -- properly under the  
2 definitions and properly under the two-part test.  
3 I look at the definition of separated for reuse,  
4 and specifically when I look at what reuse means within  
5 the definition of separated for reuse, reuse means the  
6 use in the same or similar form as it was produced of a  
7 material which might otherwise be discarded.  
8 When I look at the food wastes going into this  
9 facility, I just don't see how it fits into the  
10 definition of being ultimately used in the same or  
11 similar form as it was produced.

12 CHAIR MOULTON-PATTERSON: Thank you,  
13 Mr. Papanian.  
14 Mr. Jones.

15 BOARD MEMBER JONES: Madam Chair, I want to say  
16 that I think the LEAs did a good job on this thing. I  
17 think when we start talking about the two-part test,  
18 which I don't think has been met, and when we start  
19 talking about a definition of commingled organics, that's  
20 a little broader than we had ever envisioned. Therefore,  
21 I don't think it makes the two-part test.  
22 I'm going to offer a substitute motion. I want  
23 to make the substitute motion that we do not adopt  
24 Resolution 2000-381 and, therefore, uphold or concur with  
25 the Hearing Panel's decision.

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

1 BOARD MEMBER PAPARIAN: Second.

2 CHAIR MOULTON-PATTERSON: We have a substitute  
3 motion by Mr. Jones, seconded by Mr. Paparian, to not  
4 approve Resolution 2000-381.  
5 Secretary, will you please call the roll.

6 BOARD SECRETARY: Eaton.

7 BOARD MEMBER EATON: Aye.

8 BOARD SECRETARY: Jones.

9 BOARD MEMBER JONES: Aye.

10 BOARD SECRETARY: Medina.

11 BOARD MEMBER MEDINA: Aye.

12 BOARD SECRETARY: Paparian.

13 BOARD MEMBER PAPARIAN: Aye.

14 BOARD SECRETARY: Roberti.

15 BOARD MEMBER ROBERTI: No.

16 BOARD SECRETARY: Moulton-Patterson.

17 CHAIR MOULTON-PATTERSON: No.

18 Motion carried.

19 Mr. Medina.

20 BOARD MEMBER MEDINA: I think I agree with Board  
21 Member Eaton that -- on all three observations in regard  
22 to the choices that we had, and I have to get used to the  
23 luxury of these lengthy discussions. When I was on the  
24 San Francisco Board of Permit Appeals, on these cases we  
25 had at most an hour to vote on the decisions. We had a

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

1 bit more than that.

2 I thought Mr. Paparian brought up a lot of good  
3 issues and I felt that the industry reps that were here  
4 today made some very good and persuasive arguments. So  
5 that's the basis for my vote here today.

6 CHAIR MOULTON-PATTERSON: Thank you, Mr. Medina.  
7 Mr. Jones, did you want to give some direction?

8 BOARD MEMBER JONES: Madam Chair, I think we as  
9 a Board have to send a pretty strong message that we need  
10 to look at making sure that putrescible wastes, that we  
11 start having discussions on what the next regulation  
12 package is going to look like to deal with these types of  
13 elements that may be falling through the cracks.  
14 So I would suggest that as we -- I think  
15 transfer regs only took six or eight years literally.  
16 There are a lot of different stakeholders involved. I  
17 think that we need to at least direct staff that they  
18 need to start the process of accumulating the information  
19 and maybe the areas of discussion or waste types that  
20 need to be included to take care of holes, and then give  
21 us some kind of an update in the next couple of meetings  
22 or so, however long it takes you to determine what you  
23 think the right course of action may be to take us  
24 forward from here, to develop additional regulations that  
25 will help include and make clearer for people, especially

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

1 the LEAs, this type of hazy -- and we won't get them all,  
2 but this type of hazy. Does this cover it for the Board  
3 Members?

4 CHAIR MOULTON-PATTERSON: Do we need to give you  
5 a time?

6 MR. CHANDLER: If it would satisfy the Board, on  
7 page 1-2 of your packet under staff recommendation we  
8 have a second paragraph there that we've attempted to get  
9 to this additional direction needed of staff. What I  
10 hear Mr. Jones saying seems to be consistent with what we  
11 tried to phrase there, that we would be coming back at a  
12 future board meeting at your direction to provide for you  
13 how the regulations would be modified such that recycling  
14 organic wastes would require a Solid Waste Facility  
15 Permit.

16 BOARD MEMBER JONES: I knew I read it somewhere.

17 MR. CHANDLER: If that's your intent and it's  
18 clearly articulated there, we will do that.

19 CHAIR MOULTON-PATTERSON: I think that's the  
20 intent of the Board. Thank you.

21 This meeting will be adjourned and thank you  
22 very much.

23 \* \* \*

24

25

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

1 STATE OF CALIFORNIA

2

3

4 I, Terri L. Emery, CSR 11598, a Certified

5 Shorthand Reporter in and for the State of California,

6 do 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

12 at 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 25TH day of OCTOBER, 2000.

20

  
TERRI EMERY

24

25