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

# BOARD MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

BOARD ROOM

8800 CAL CENTER DRIVE

SACRAMENTO, CALIFORNIA

TUESDAY, JANUARY 23, 2001

9:30 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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



APPEARANCES

BOARD MEMBERS

Linda Moulton-Patterson, Chairperson

Dan Eaton

Steven R. Jones

Jose Medina

Michael Paparian

David A. Roberti

STAFF

Bonnie Bruce, Interim Executive Director

Karin Fish, Chief Deputy Director

Kathryn Tobias, Chief Counsel

Julie Nauman, Deputy Director

Rubia Packard, Deputy Director

Pat Schiavo, Deputy Director

Linda Williams, Staff Counsel

Deborah McKee, Executive Secretary

Yvonne Villa, Executive Secretary

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



INDEX


| | | | PAGE |
|---|---|---|---|
| I | Call to Order | 1 | |
| II | Roll Call and Declaration of Quorum | | 1 |
| III | Opening Remarks | | 2 |
| IV | Reports and Presentations | | 4 |
| V | Continued Business Agenda Items | | |
| | 1. Consideration of Approval of Fiscal Year 1999/2000 Grant Awards | 71 | |
| | 2. Consideration of Board Direction on Waste Tire Administration Penalty Hearings | 75 | |
| | 3. Consideration of a Revised Solid Waste Facility Permite for Highway 59 Disposal Site | 158 | |
| | 4. Consideration of Approval of Facility Compliance Loans | | 226 |
| VI | Consent Agenda | | |
| | Items 5, 7, 14, 15 | 103 | |
| VII | New Business | | |
| | Diversion, Planning and Local Assistance | | |
| | 6. Consideration of Approval of Contractor for the Development of Web Site Environmental Education Units Contract | 104 | |
| | 8. Consideration of Approval of Contract for the Earth Resources Curriculum Training Program Contract | | 107 |
| | 9. Consideration of Staff Recommendation to Change the Base Year to 1997 for the Previously Approved Source Reduction and Recycling Element | | 109 |
| | 10. Consideration of Staff Recommendation of the Completion of Compliance Order IWMA BR 98-001 | 136 | |

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



INDEX CONTINUED

PAGE

11. Consideration of Staff Recommendation to Change the Base Year to 1999 for the Previously Approved Source Reduction and Recycling Element 139

12. Consideration of Staff Recommendation Regarding Completion of Compliance Order IWMA BR99-24 132

13. Consideration of Procedures for Annual Reports and Proposed Compliance Orders (SB 2202) 146

Permits, LEA and Facility Compliance

19. Consideration of Approval of New Sites for the Solid Waste Disposal and Codisposal Site Cleanup Program 15

Administration and Policy

27. Consideration of the Report to the Legislature on the Duplication or Overlap Between California Integrated Waste Management Board and Department of Conservation Programs 54

Reporter's Certificate 287

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



1 PROCEEDINGS

2 CHAIRPERSON MOULTON-PATTERSON: I'd like to call
3 the meeting to order, please.
4 Good morning, thank you and welcome to our
5 January 23rd meeting of the California Integrated Waste
6 Management Board.
7 Would the secretary please call the roll.
8 SECRETARY VILLA: Eaton?
9 BOARD MEMBER EATON: Here.
10 SECRETARY VILLA: Jones?
11 BOARD MEMBER JONES: Here.
12 SECRETARY VILLA: Medina?
13 BOARD MEMBER MEDINA: Here.
14 SECRETARY VILLA: Paparian?
15 BOARD MEMBER PAPARIAN: Here.
16 SECRETARY VILLA: Roberti?
17 Moulton-Patterson?
18 CHAIRPERSON MOULTON-PATTERSON: Here.
19 Okay, we have a quorum. I'd like to ask you to
20 please turn off cell phones or pagers at this time, and
21 also to let you know that there are speaker slips on the
22 back table. If you wish to address any item on the
23 agenda, please fill one out and give it to Ms. Villa who's
24 right up here, and she'll make sure that we know that you
25 want to speak.

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



I have committed to hear Agenda Item 27 at approximately 10:30 this morning and also to hear Item number 32, the audit, at 10:00 a.m. tomorrow morning. And also I'd like to announce the rest rooms are right around that corner. You go out there and then right around there you'll see the signs and also in the next building at 8010. Those are available this morning also.

Okay. Ex partes.

Ms. Eaton?

BOARD MEMBER EATON: I'm up to date, thank you.

CHAIRPERSON MOULTON-PATTERSON: Thank you.

Mr. Jones?

BOARD MEMBER JONES: As am I.

CHAIRPERSON MOULTON-PATTERSON: Mr. Medina?

BOARD MEMBER MEDINA: One ex parte. Jerry Santian, City Manager for the City of the Rollins, meet and greet.

CHAIRPERSON MOULTON-PATTERSON: Mr. Paparian.

BOARD MEMBER PAPARIAN: Yeah, I received late yesterday an E-mail from Liz Cetrino of the California Resource Recovery Association regarding item 23. I also have a meet and greet with Michael Straling of Santa Barbara county.

CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr. Paparian.

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



1 I have three items here that I believe all the
2 Board was copied on and they came in very late. The first
3 one is from the California Regional Water Quality Control
4 Board from a Lee Mitchland regarding the facility
5 compliance loan, Item number 4.
6 Also, one from the California Resource Recovery
7 Association, Item 23, regarding waste paint. And one on
8 item 26, which has been pulled, from the Asphalt Pavement
9 Association.
10 And that brings me up to date and also the rest
11 of the Board.
12 BOARD MEMBER EATON: Were we CCd on that just out
13 of curiosity, because I haven't gotten those?
14 CHAIRPERSON MOULTON-PATTERSON: They came very
15 late. Yes, at least the one on the --
16 BOARD MEMBER EATON: They came in late, that's
17 all I needed to know.
18 CHAIRPERSON MOULTON-PATTERSON: Yeah. I think
19 everybody was --
20 BOARD MEMBER EATON: So for purposes of the
21 record, those that came in late are after the report, so
22 I'm not up to date.
23 CHAIRPERSON MOULTON-PATTERSON: For all the Board
24 Members.
25 Okay, reports.

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



1 Mr. Eaton, do you have a report?
2 BOARD MEMBER EATON: Nothing right now.
3 CHAIRPERSON MOULTON-PATTERSON: Thank you.
4 Mr. Jones.
5 BOARD MEMBER JONES: Just briefly, a couple of
6 things. I want to thank our staff, Tom Estes, Bill Orr,
7 Scott Walker, John Blue. They were doing some work with
8 all the other regulatory agencies at Camp Roberts and
9 taken a lot of effort, but it is a good series of meetings
10 to try to get that demolition and deconstruction done in a
11 sensible manner.
12 And then I also want to both thank and inform
13 that the diversion study guide that has been on the street
14 for about 18 months and didn't receive a whole lot of
15 comments has been -- if people realize that the Board held
16 that back about two months ago to go through some fine
17 tuning of that document so it's more of a guide because we
18 found some pretty glaring holes in it.
19 And I want to thank the working group, which --
20 what we were working on is the math and on the issues of
21 when you're doing audits kind of information that people
22 get and how we quantify that. This item will come back in
23 front of the Board, I think, in either February or March,
24 right. I think it's -- I'm not sure. I think it's going
25 to be March or February.

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



1 We've got one more working group meeting
2 scheduled to kind of get this fine tuned. Board member
3 Eaton and his team Tammy and Lisa have been participating
4 as has Heidi Sanborn from the Chairman's office and John
5 Sitts, Jeff Hunts, Lorraine Van Kekerix, Elliot Block and
6 especially Cara Morgan and Pat Schiavo. I want to thank
7 our staff as well as a whole host of folks that are -- a
8 whole host of folks that are helping us with the math and
9 some of those things. I appreciate that.
10 And I do want to say that Mr. Medina and I joined
11 SWANA in Monterey and Mr. Medina addressed that group and
12 did a great job of laying out what our upcoming policies
13 and issues are going to be pretty good seminar.
14 CHAIRPERSON MOULTON-PATTERSON: Great. Thank you
15 Mr. Jones.
16 Mr. Medina.
17 BOARD MEMBER MEDINA: Thank you Madam Chair and
18 thank you Board Member Jones. I was able to attend the
19 SWANA conference there in Monterey where we discussed the
20 State Auditor's report to some degree and also the Board's
21 review of current policies and practices. And a number of
22 the participants, and these were senior waste management
23 people from around the country, one of the issues that
24 they brought out was again the importance of support for
25 alternative uses of energy.

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



1 And certainly this is an issue that had been
2 raised many years before and they said it's time to take
3 another look at it.
4 I also, on January the 15th, had an opportunity
5 to meet with a number of probable leaders in regard to the
6 need for cleanup on tribal lands. For years people have
7 been dumping waste tires and other solid waste materials
8 on tribal lands. They would like to see if they could
9 work with us in some sort of a cooperative effort in
10 cleaning up some of these lands.
11 That's something that we'll be looking to. I've
12 been invited to a conference that they're having in
13 February and so we'll be taking that issue up at that
14 time.
15 I would also like to take this opportunity to
16 introduce my new advisor and that's Arturo Aleman, who has
17 recently joined me as my advisor.
18 Would you stand up.
19 (Applause.)
20 BOARD MEMBER MEDINA: That concludes my report.
21 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
22 Medina.
23 Mr. Paparian.
24 BOARD MEMBER PAPARIAN: Yes. I, last week, went
25 down and visited with the Solid Waste Committee of the

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



1 Southern California Association of Governments to talk
2 about electronics waste and actually found out that they
3 are doing a few innovative things in the Los Angeles area
4 that I wasn't aware of before, having a few collection
5 days in the next couple months for electronics waste in
6 the Los Angeles area.
7 I attended a meeting of the Finance Committee of
8 the Governor's Infrastructure Commission a couple of weeks
9 ago. This Finance Committee is chaired by Bill Hulk of
10 the Business Round Table. And we discussed some
11 intriguing financing mechanisms for State infrastructure,
12 some of which we might actually spill over to some of the
13 stuff we do with RMDZ loans and some of our grant
14 programs. So I may be bringing some more information back
15 to the Board about that.
16 I've also been meeting with my staff and staff of
17 the Waste Board with the Department of Toxic Substances
18 Control and Cal EPA to discuss the electronics waste issue
19 and what we can do to assure that there's clarity as to
20 the definitions of what electronic waste is, where it can
21 be disposed of and so forth. And hopefully, we'll have
22 some more information about that in the next few months.
23 And then, finally, I wanted to introduce, Kit
24 Cole, my new advisor, who joined us just a few weeks ago.
25 (Applause.)

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



1 BOARD MEMBER PAPARIAN: Kit was a consultant to
2 the Assembly Natural Resources Committee a few years ago,
3 has spent a lot of time working on the tire issue and
4 other solid waste issues, recently with a consulting firm
5 that deals with waste amongst other things. So I'm very
6 pleased to have Kit helping me out.
7 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
8 Paparian.
9 I would just like to echo Mr. Jones' remarks
10 about the group that has worked so hard and thank he and
11 Mr. Eaton for spending long, long hours on the diversion
12 study efforts. And also thank Mr. Paparian and Mr. Medina
13 for all of their extra efforts. It's really a team effort
14 up here and I really appreciate it.
15 I visited -- I was honored to give the RAP of the
16 Year award to Bently Mills and the City of Industry and to
17 see all the great things they're doing down there on
18 December 15th.
19 I also visited the Brea Linda landfill. And then
20 just last week I took a tour of the Marin County MRF and
21 saw the great things that they're doing in Marin County.
22 And I would encourage all of the members if you have a
23 chance to go down there and see what's happening, I was
24 very, very impressed.
25 And at this time, I would like to turn it over to

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



1 our interim Executive Director, Ms. Bruce.
2 INTERIM EXECUTIVE DIRECTOR BRUCE: Thank you.
3 Good morning, Madam Chair and members, we are all aware
4 obviously as the lights are dimmed in the Board room that
5 there is a seriousness and we are really experiencing an
6 energy challenge here in California. And I thought it
7 would be important that I share with you some of the
8 things that our staff is doing in working both Cal EPA and
9 indeed all of the State agencies are coordinating with the
10 administration to identify ways that we can reach out to
11 our constituents about the need for energy conservation.
12 We have placed a prominent notice on our internet
13 home page. This links us to a page within the Energy
14 Commission's web site that gives us energy related tips.
15 In addition, we are incorporating an appropriate energy
16 related message into our regular external communications
17 and this includes our agendas and any of our press
18 releases.
19 Individually, we're asking that you also remember
20 to include a comment when you're doing any public speaking
21 and we encourage others to practice energy conservation.
22 One of the areas that we have been talking at at
23 the staff level that we think maybe we might want to
24 suggest to the Board to consider and promoting energy
25 conservation would be through our programs when we do our

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



1 evaluation and selection criteria for grants and awards.
2 Similar to our green purchasing criteria, perhaps we might
3 want to look at including energy conservation as a
4 criteria, for example, in the waste reduction awards
5 program. This would be pretty much consistent with an
6 examination of the applicant's environmental compliance
7 record as we look at their grant application.
8 We continue on a daily basis to receive
9 information from the Administration about the statewide
10 energy conservation effort, and I will continue to keep
11 you updated on what we're being asked to do and make sure
12 that you are given all talking points that are coming out
13 of the Administration's office.
14 On another note, there's probably nothing more
15 exciting in an organization, I think, that brings pleasure
16 to all of us than to recognize and employee. At the end
17 of 2000 our state employee's food drive brought also the
18 end of the tenure that our Board's food drive coordinator,
19 Don Peri, has been serving in. Don has led our food drive
20 program, I'm told, for eight of the past nine years. And
21 his commitment to the food drive transcends his time with
22 us as I understand he previously coordinated the drives at
23 the Department of Justice Division of Law Enforcement for
24 a number of years.
25 I think these statistics will speak for

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



1 themselves as to the hard work that Don has done, because
2 under his leadership we have collected 12,576 pounds of
3 food and $13,257.01. We don't know yet what form the food
4 drive activities are going to take in our new location,
5 but when you have those kind of statistics, you know,
6 we're going to miss the leadership of Don Peri.
7 And Don is with us today. I'd like to formally
8 recognize him and I know the Chair has a certificate of
9 appreciation she'd like to present to him. So Don if
10 you'll come forward to receive that and let us show you
11 our appreciation.
12 (Applause.)
13 CHAIRPERSON MOULTON-PATTERSON: I'd like just to
14 thank Don. Again, he's done a fantastic job on the food
15 drive. And as we recognized him earlier, I believe it was
16 last year, on the mentoring program that he put together
17 and really you've done so much good and we just appreciate
18 it so much.
19 Thank you very, very much.
20 (Applause.)
21 INTERIM EXECUTIVE DIRECTOR BRUCE: And then
22 lastly, last Tuesday afternoon, when I say this room, this
23 may ring a bell on what happened, but in Room 113 at the
24 Capitol, Secretary Hickox had a public rollout of the
25 Governor's budget for all of Cal EPA. Many of us that

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



1 were sitting in that room that afternoon as we heard the
2 events that evening were glad that that event took place
3 in the afternoon.
4 As you know, highlights of the Board's budget for
5 the next year aren't quite as significant as I know many
6 of you have experienced in the last two or three years.
7 However, we are happy to mention that our outgoing
8 programs continue to be adequately funding -- or our
9 ongoing programs. Our budget this year is going to be $94
10 million, which is about 15 percent below the current year.
11 But when we looked at those figures, primarily that's due
12 to a reduction in the one-time costs that were associated
13 with some of the expiring BCP's from previous years.
14 And also the budget does not yet reflect and
15 expansion of the tire program as provided for in SB 876,
16 because the Board is currently, as you know, developing a
17 five-year plan to address both the priorities and the
18 resources that are necessary for this expanded program.
19 On the staffing level, we will stay the same as
20 the current year, 472.4 PY's. I would like to point out,
21 however, that the Governor's budget does include the
22 continuation of 23.5 limited term positions that were due
23 to expire this year. And those are for an additional two
24 years. So those positions will support the AB 939 goal
25 evaluation effort and the strategic planning that we're

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



1 involved in.
2 Our Chair, at that time, and her report spoke
3 briefly commenting on the continuing rise in diversion,
4 the significance of the upcoming goal evaluation effort,
5 the initiation of efforts to develop the recommendations
6 required by SB 2202. She also spoke of our commitment to
7 environmental education, to market development and to
8 environmental protection.
9 And lastly she mentioned the State Audit Report
10 in the context that this is the first time that you as a
11 Board are going to have the opportunity to discuss the
12 findings and recommendations that were presented by the
13 Auditor.
14 I do want to relate a comment that I think was
15 very significant, and it was a comment that Secretary
16 Hickox shared with the audience regarding the Waste Board
17 and I want to quote him.
18 He said, "I was recently asked what was
19 the greatest accomplishment of Cal EPA
20 in the last ten years. And without
21 diminishing the hard work of our ARB and
22 others, I said it was the vision of
23 Senator Brian Sheer in creating the 50
24 percent benchmark in AB 939. And
25 clearly the most important

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



1 accomplishment of Cal EPA was the Waste
2 Board's incredible work in the last
3 decade."
4 Those of us sitting in the room, and although I'm
5 a newcomer on the block, I have to tell you for the short
6 time I've been here, I felt pride for all of you that have
7 worked so very hard to receive that type of a compliment.
8 I know that it goes for Board members, for staff, it goes
9 for many of you in the audience that are a part of the
10 business committee, a part of local jurisdictions.
11 And I think that although maybe right now we
12 don't see quite the significant budgetary rewards in this
13 budget, the efforts are noticed, the Secretary's comments
14 I really believe reflect a deep understanding and
15 appreciation of truly the Herculean task that was
16 undertaken and response to AB 939.
17 So I want to tell you personally from someone
18 that comes from a little bit outside looking in, I salute
19 each and every one of you that was a part of all of the
20 work that was done in these last ten years. And I know
21 our Chair has a comment she'd like to make and an
22 important announcement that we just heard about yesterday.
23 CHAIRPERSON MOULTON-PATTERSON: Thank you, Ms.
24 Bruce. I'm very, very pleased to announce that the
25 statewide diversion rate for the year 2000 is 42 percent.

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



1 This rate reflects the efforts of California, of Local
2 Governments, citizens and businesses to divert waste
3 through waste prevention recycling and composting.
4 During the year 2000 many local governments have
5 worked with citizens and businesses to significantly
6 increase diversion efforts. And just on behalf of the
7 Board members and myself, I would like to thank all of you
8 who have contributed to this tremendous effort.
9 Thank you.
10 (Applause.)
11 CHAIRPERSON MOULTON-PATTERSON: Before we go to
12 the continued business items, Mr. Medina, did you wish to
13 make a change?
14 BOARD MEMBER MEDINA: Madam Chair, I wanted to
15 request that we move Item 19 to the beginning of the
16 agenda. By moving this item, we'll open the opportunity
17 for facilitating discussion on Item number 4. Once a
18 decision is made on Item 19, we will be able to expand our
19 options on the approval of facility compliance loans.
20 CHAIRPERSON MOULTON-PATTERSON: Fine. Any
21 objections?
22 Hearing none, we will begin with number 19.
23 DEPUTY DIRECTOR NAUMAN: Good morning, Madam
24 Chair and members, Julie Nauman, Deputy Director of the
25 Permitting and Enforcement Division.

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



1 Item 19 is consideration of approval of a new
2 site for the solid waste disposal and pure disposal site
3 clean up program. Scott Walker of our staff will be
4 making the presentation.
5 MR. WALKER: Madam Chair, members of the Board,
6 this item presents consideration of approval of an
7 application from Imperial County for cleanup of the
8 Brawley Landfill pursuant to the solid waste disposal and
9 codisposal site cleanup program or AB 2136 program.
10 Staff is recommending approval of the Board
11 managed project based on the view pursuant to program
12 requirements. Should the Board approve the 2136 project,
13 it would replace the county's request for funding from the
14 facility compliance loan program cleanup to be considered
15 in the following item.
16 The following is a description of the site and
17 project. The Brawley Landfill is a county owned and
18 operated solid waste disposal site located 1.5 miles north
19 of the City of Brawley, Imperial County. The site is
20 within the Mexico/United States border zone and major
21 environmental focus area of both Cal EPA and US EPA.
22 The site is situated along 2,500 feet of the
23 southern bank of the New River. Intermediate cover has
24 failed and significant erosion and exposure of waste has
25 occurred on the eastern 1,000 feet of the landfill slope

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



along the New River.

The resulting erosion and stability problems were noted this past summer, basically, as the natural meandering of the New River has recently encroached directly on the landfill footprint. This site is prioritized with respect to public health and safety and the environment, as priority A2, which is a confirmed condition of pollution or nuisance based on comparison with State minimum standards with significant residential, industry, park, recreation or environmentally sensitive areas within a mile of the site.

The site was listed in August of 2000 on the inventory of solid waste facilities which violates State minimum standards.

Board staff concludes that these violations result from past landfill practices during early operation of the landfill when standards and industry practices were less stringent than today.

The local enforcement agency has issued a compliance schedule to correct the ongoing violations.

(Thereupon an overhead presentation was presented as follows.)

MR. WALKER: The proposed remediation project would remove the waste along the problem areas and reconstruct the slope to a stable environmentally sound

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



1 grade. The work would be performed by the Board's
2 existing AB 2136 program remediation contractor.
3 Engineer's cost estimates for the project include
4 an estimated Board cost of $750,000 and an estimated match
5 of one million one hundred and sixty thousand dollars or
6 60 percent of total project costs.
7 These are basically in-kind services provided by
8 the county specific to the project. And they include,
9 basically, the air space, free air space, for
10 approximately 100,000 cubic yards of waste that has to be
11 moved from the slope area.
12 There are also additional in-kind costs that we
13 have included in here that might be able to be realized,
14 and that includes avoided costs from clean fill material.
15 Also, should this material have to be moved to another
16 landfill, there are other transportation costs that are
17 avoided as a result of the county's in-kind match.
18 Based on the historical fill rate and the
19 remaining capacity, the Brawley Landfill would reach
20 capacity in approximately 2005. Remediation of the slope
21 and disposal of waste in a suitable area would shorten the
22 closure date to approximately February of 2002. As a
23 condition of the proposed project, the county is
24 committing to closing the land fill in 2002 upon
25 completion of the remediation project.

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



In addition, the county proposes to implement early closures of three other unlined trickling landfills located in the border zone area. These include Ocotillo, Palo Verde and Picacho.

The early closures would be implemented over five years. Should the Board approve the recommended project, Board staff would develop, in consultation with legal staff, an enforceable agreement with the county that would require them to meet their proposed commitments or be subject to the Board's repaying the Board's costs plus interest.

The following overhead provides a brief summary of the financial information county has provided to support their application.

--o0o--

MR. WALKER: The County operates ten on-line landfills on behalf of the Joint Powers Authority. Currently, the county and the City of Brawley are members of the JPA.

In 1997, three cities pulled out of this JPA resulting in a significant decline in revenues and also annual tonnage. The annual tonnage has decreased from 58,000 tons to 33,000 tons.

Gate fees have been raised ten percent over the past two years. Any additional gate fee increase

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



1 according to the county will acquire Prop 218 elections.
2 And the county feels that tax increase election has a
3 minimal chance for passage.
4 This county also has an unemployment rate of
5 about -- November, this past November, the rate was 26
6 percent. And they are 56 out of the 58 counties in per
7 capita income. The JPA has had deficits in the past two
8 years and the deficits are projected to continue in the
9 foreseeable future.
10 The JPA has expended considerable funds recently
11 and is making progress in bringing facilities into
12 compliance with permitting, financial assurances and
13 groundwater monitoring requirements. The JPA is currently
14 in compliance with financial assurances for closure and
15 post-closure maintenance. And we also have staff here
16 from our Financial Assurances Section to elaborate further
17 should the Board desire it.
18 The JPA will need another, approximately $2.7
19 million based on the current closure -- preliminary
20 closure cost estimates to meet their commitments for these
21 early closures.
22 Board staff believes that these final closure
23 cost estimates will be significantly reduced, based on
24 final closure plans under development. We are working
25 with this county in a similar manner that we worked with

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



1 Siskiyou County a few years ago, in which we were able to
2 figure out a way, with cooperation from the Water Board,
3 with one closure plan to close multiple sites using some
4 in-kind services from the County.
5 And we feel pretty confident that this will be
6 able to -- this will be able to work and meet this
7 five-year commitment.
8 Another final point on the County's Financial
9 Condition is to point out that Imperial County and the
10 counties and cities are performing well in meeting their
11 diversion program and rate requirements.
12 The diversion rate in 1995 for unincorporated
13 Imperial County was 80 percent and for the City of
14 Brawley, it was 39 percent.
15 In response to the inventory listing and the
16 financial need, the county had submitted an application to
17 the facility compliance loan program for assistance.
18 Because these loans are capped, the loan application of
19 $450,000 would only address remediation of the steepest
20 slopes and not the entire slope along the New River where
21 the New River is encroaching on the landfill footprint.
22 In addition, the County would also be subject to
23 a separate contract procurement process that could
24 significantly delay the remediation and also divert
25 limited county funds from other contract management

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



1 essential to their solid waste programs.
2 Another point is that approval of the remediation
3 project under the 2136 program would free up facility
4 compliance loan funds for other loan applicants as the
5 number of eligible loan applications exceeds the available
6 funding. In response, the county submitted a request for
7 a preferred AB 2136 program Board managed remediation
8 project for the entire slope problem.
9 Essentially, Imperial County is a responsible
10 party that is unable to pay for the time and remediation
11 of the disposal site. That constitutes a condition of
12 pollution and nuisance with threat to public health and
13 safety to the environment.
14 Therefore, subject to Board concurrence, the
15 proposed project would meet AB 2136 eligibility
16 requirements. The Board managed option is the only
17 funding option that would ensure completion of the
18 remediation project in a timely manner and provide an
19 alternative for the Board to leverage funds for commitment
20 to early closures of trickling on-line landfills in this
21 jurisdiction.
22 Trickling on-line landfills are major issues
23 brought up in the audit record that will be considered
24 tomorrow.
25 Prior to the conclusion of staff's presentation,

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



1 I just wanted to give a couple brief comments of related
2 AB 2136 program policy issues and questions raised at the
3 Board briefing. These policy issues will be brought back
4 before the Board for detailed discussion and stakeholder
5 input in a future item.
6 The main issues concern Legislative intent of the
7 program related to funding cleanups of publicly operated
8 disposal sites. The Legislature did not intend that the
9 funding be oversubscribed to public operated sites at the
10 expense of others, such as those with no responsible party
11 identified.
12 The Board deliberated extensively on the
13 legislative intent during startup in 1994 and they set
14 aside a limit of 30 percent of total funds to be used for
15 public operated site projects.
16 The legal office has recently opined that public
17 operated disposal sites should be restricted to matching
18 grants or loans and policy and legislative intent.
19 However, the Board's implementation of the program to date
20 has not restricted cleanups of public sites to specific
21 funding options.
22 And the funding options include Board directed or
23 managed, matching grant or loan, or operational status.
24 And in operational status is a disposal site as an
25 all-inclusive term, that would include facilities active,

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



1 inactive or closing, disposal sites or a closed disposal
2 site.
3 In addition, Board managed cleanups over time
4 have looked more like matching grants, because in response
5 to previous Board directions on policy, we have requested
6 where a site cleanup is in a local jurisdiction area,
7 we've requested contributions from the local jurisdiction,
8 regardless of whether they were a potentially responsible
9 party or not.
10 The proposed remediation project is similar to a
11 matching grant, should the Board consider the contribution
12 of in-kind services. In addition, it's important to point
13 out that this landfill will no longer be an active
14 facility upon conclusion of the proposed remediation
15 project.
16 Therefore, program staff concluded that this
17 project meets legislative intent and is consistent with
18 implementation of the program to date, should the Board
19 concur. To date, 22 public operated disposal sites,
20 remediation projects, have been approved, including 13
21 Board managed, five matching grants and four loans. The
22 overall total percent funding to date of public operated
23 sites is 28 percent, which meets the 30 percent target.
24 In addition, the proposed project would be the
25 second public operated disposal site project approved this

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



1 fiscal year. So far that would total approximately 20
2 percent of fiscal year 2000 and 2001 funding. Should the
3 Board have restricted previous public operated site
4 projects to matching grants or loans, the 13 Board managed
5 projects would not have been approved and it is unlikely
6 that the remediation would have been completed.
7 And again, these issues will be brought back
8 before the Board in policy discussion both for the Board
9 consideration and for stakeholder input.
10 In conclusion, pursuant to the AB 2136 program,
11 staff recommend adoption of resolution 2001-17 approving
12 the Brawley Landfill remediation project.
13 Staff are available to answer questions.
14 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
15 Walker.
16 Questions before we go to our speaker?
17 Okay.
18 BOARD MEMBER EATON: I'll wait for the speaker.
19 CHAIRPERSON MOULTON-PATTERSON: Mr. Gerald Quick.
20 MR. QUICK: Madam Chairman and Members of the
21 Board, my name is Gerald Quick. I'm the contact person
22 for the LEA of Imperial County. If there was ever a
23 landfill that needed some help and correcting some
24 environmental concerns, it's the one in Brawley. And I do
25 believe that's probably the most significant site that

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



you've approved to date for remediation work.

It's very difficult to follow Scott Walker, who explained the conditions in Imperial County quite well. I do not operate the County's budget. I don't have a key to the landfill. I am the regulatory person. But I do know that the Director of Public Works who recently came on Board in Imperial County approximately three years ago, having gone through three of them, is here to answer any questions from his budget standpoint.

We also have the City Manager from the City of Brawley, Mr. Jerrry Request and one of the council members Mr. Benson.

All I can say is that there's a method for the County to protract the closure of these landfills for a number of years. You know, if we are eligible for the California Lottery, we could probably do lateral expansion and those landfills would last another 50 to 90 years.

This is one of our greatest opportunities to prematurely close some landfills in Imperial County. And my opinion that the County doesn't have the funds to operate all of the landfills anyway. That's just my personal opinion. As I say I don't run their budgets and I don't have their keys.

If I was a good regulator, I would like to operate the scales, then we'd know we'd get our proper

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



1 tipping feet, but I know Brawley would be the very
2 beginning of probably premature closing of all of the
3 landfills in Imperial County.
4 If you don't have any questions of me, I would
5 like to introduce and ask Mr. Tim Jones, our Director of
6 Public Works, who operates ten of the county's 12
7 landfills.
8 CHAIRPERSON MOULTON-PATTERSON: Okay.
9 MR. JONES: Good morning, members of the Board,
10 Madam Chair. I do appreciate your time this morning. I
11 won't labor. I know you've got a long agenda today, so
12 I'll be available for questions. I'd just like for
13 your -- to have your support.
14 Thank you.
15 CHAIRPERSON MOULTON-PATTERSON: Thank you. Mr.
16 Eaton, do you want to start off?
17 BOARD MEMBER EATON: Yes. I should first start
18 off by saying that I think this is a project worthy of the
19 Board's help. However, I'm not so confident that the way
20 it is to be funded or proposed to be funded in this
21 particular item is appropriate nor why.
22 And I'd first like to kind of start off by asking
23 staff why would we discuss a policy about how we should
24 spend funds on particular items after the fact we've
25 funded an item in a manner that may be inconsistent with

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



1 that policy that's later adopted. Are we not putting the
2 cart before the horse?
3 MR. WALKER: Basically, in the presentation from
4 program staff's standpoint this is consistent with the way
5 that existing policy is and the way the Board has
6 implemented the program. Now, we recognize that there are
7 questions and concerns that the Board wants to bring back
8 that probably potentially could change that policy. And
9 so we are planning to bring back an item to include all
10 these issues so that the Board can give staff additional
11 direction and also allow for stakeholder input.
12 But basically this would be consistent with the
13 Board's current policy and also how the Board has actually
14 implemented the program.
15 BOARD MEMBER EATON: Perhaps, my program staff
16 could, because you obviously differ with the legal office,
17 to some extent by your comments. Is this in an illegal
18 dump site?
19 MR. WALKER: No, this is classified as a disposal
20 site.
21 BOARD MEMBER EATON: So it's not abandoned or
22 illegal.
23 I'm talking about statute now. We're not talking
24 about what program staff feels.
25 MR. WALKER: It is basically defined as a

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



disposal site.

BOARD MEMBER EATON: So under statute, can you point me to the authority by which you are going to take an operating landfill and correct it with 2136 funds?

MR. WALKER: Yes. That's an issue. The definition of disposal site, again, is all inconclusive. It does not distinguish whether it's closed, a facility, or it's operating. And if I might add, I could bring up the definition of disposal site.

BOARD MEMBER EATON: In the statute?

MR. WALKER: Correct, yeah.

BOARD MEMBER EATON: Okay. Why don't you bring it up.

MR. WALKER: I'm sorry for this, but I think that with your statute you can look up Public Resources Code Section 40122, and that's the definition of disposal site.

And I apologize for this handout, it's kind of -- or overhead, it's a little bit hard to read. But essentially a disposal site is defined in PRC Section 40122 as the place, location, tract of land, area, premises, in-use, intended to be used or which has been used for landfill disposal of solid waste and includes solid waste landfill as defined in Section 40195.1.

BOARD MEMBER EATON: As it relates to the 2146 program, where is that definition?

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



1 MR. WALKER: The definition, there's no separate
2 specific definition that distinguishes disposal site for
3 the 2136 program than the Board has disposal site for any
4 other case or program or enforcement, inspection program
5 that it has.
6 BOARD MEMBER EATON: Are you submitting then that
7 the 2136 program, as proposed by then Assemblywoman
8 Delaine Easton, dealt with, that really wasn't intended to
9 deal with, illegal or abandoned sites, but rather dealt
10 with ongoing landfills based upon the letter of intent
11 that we talked about in the briefing, is that what the
12 position of program staff is?
13 MR. WALKER: The discussion that the Board had
14 and deliberation on the policy is that the intent was
15 certainly to caution the use of funds for publicly
16 operated disposal sites.
17 Now, the term disposal site facility was used in
18 various -- you know, inconsistently.
19 So it was, you know, not necessarily restricted
20 to facilities over disposal sites.
21 One of the main points was that the program not
22 be used to fund closure. And that was an important clear
23 aspect of legislative intent. And the fund has not been
24 used for that.
25 BOARD MEMBER EATON: But isn't the effect of what

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



1 you're doing based on your own comments today in effect
2 providing money for closure.
3 MR. WALKER: No.
4 BOARD MEMBER EATON: Because you said at the end
5 of this remediation project, they will be able to be
6 closed.
7 MR. WALKER: No, because the current closure
8 plan, the current closure plan right now does not address
9 the remediation. The remediation in the County's plans
10 has been referred to during the operation. So it's been
11 distinct from closure, this is a remediation mediation
12 situation.
13 The County, upon completion of the project, the
14 County will be required, under their commitment, to
15 implement and to pay for their final closure plan. And so
16 upon completion of the project, technically it will be
17 considered -- now it would be considered a closing
18 disposal site upon Board approval and when the project is
19 done.
20 So it's not going to continue to be a facility
21 when the Board gets -- if the Board approves the project.
22 BOARD MEMBER EATON: Explain to me the match,
23 then, that you claim this county's going to provide.
24 MR. WALKER: The match essentially includes the
25 avoided disposal capacity in the existing landfill.

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



1 That's the estimate that's applied to that.
2 Essentially, what you have here is a very old
3 portion of the landfill that was designed and built with a
4 certain capacity that was acceptable at the time, but
5 right now because of the fact that a meandering of the
6 River has resulted in this being -- essentially this is
7 not -- does not meet current standards, that has to be
8 reconfigued.
9 And so that waste has to be moved somewhere. And
10 the value of that air space is estimated at $1.16 million.
11 BOARD MEMBER EATON: So where is that waste going
12 to go, the waste being the soil, correct?
13 MR. WALKER: The waste will go into the soil.
14 BOARD MEMBER EATON: The waste being the soil?
15 MR. WALKER: Well no, the waste will basically --
16 BOARD MEMBER EATON: I really want to get to the
17 specifics. Are you talking the matching part of this will
18 be that the soil that's going to be removed and brought in
19 new soil for remediation, that the soil that's being
20 removed is going to be put into the landfill, and
21 therefore the county is going to waive that portion of the
22 fee?
23 MR. WALKER: All the waste -- essentially, we
24 don't anticipate -- right now we're not predicting that
25 we're going to be able to screen out any soil from that

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



area, that it's all going to be handled as waste.

And so all that material would have a complete waiver of any tipping fee.

BOARD MEMBER EATON: And that would just go into the other portion of the landfill.

MR. WALKER: That would go into the existing portion and it basically would fill up the hole in there now that has the remaining capacity.

BOARD MEMBER EATON: Well, the waste is already in there and there's been a tipping fee paid on that, at some point in time.

MR. WALKER: Well, another point is that this is a very old portion of the landfill.

BOARD MEMBER EATON: No, answer my question. The waste that's in there has already had a tipping fee paid on it, because if you're talking about moving waste from one area of the landfill to another, that waste has already had a tipping fee or if there was no tipping fee, it's already been part of what the county owns. So they're really not giving us anything as a matching component.

MR. WALKER: Essentially.

BOARD MEMBER EATON: When I think in terms of matching funds and the definition of matching funds, I think they're going to contribute something or that there

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



is some other item that they're doing, but simply taking waste that's already in an existing landfill and moving it over to another portion of that landfill and saying that they're matching the grant kind of is a little strange to me.

So I'm hoping you can point to me in the statute where that would be, that kind of matching fund.

MR. WALKER: Well, essentially the Board has implemented approved projects with avoided costs and waivers of tipping fees. In this particular case also, we haven't put a value on it, but we do anticipate that we're going to have additional avoided costs as a result of the clean soil.

BOARD MEMBER EATON: Correct. And that material has always come from some other place. When we did Cajon, that material was going to be taken and moved to another landfill and they waived the tipping fee.

So here we have an existing pile of waste that's going to be moved from one area of the footprint. And you're saying that this has matching funds. So that's point one. So I'm not quite sure.

The other thing I'd like to know is under Proposition 218, how is this a tax under your analysis?

MR. JONES: Tim Jones, Director of Public Works, County of Imperial. Part of our revenue source is the

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



1 land use fees. And to increase the land use fees, we are
2 told by our county counsel that it takes a Prop 218
3 election.
4 And in this timing increasing the taxes to
5 individuals takes two-thirds votes. The chances of that
6 passing is pretty slim. So it would take a countywide
7 election to increase the fees, which would increase our
8 revenue stream.
9 BOARD MEMBER EATON: But it's a fee, not a tax
10 under 218. We just passed a tire bill with a fee of a
11 dollar. You can ask many of the people in the audience,
12 that was a fee. It's not a tax. And under 218 I don't
13 think that you -- but you already have a fee at the
14 landfill. It's a tipping fee. It's not a land use fee.
15 It's a fee for purposes of 218.
16 So I'm not sure that that financial argument, you
17 know, holds any real strength.
18 MR. JONES: Well, the fee that's charged on the
19 individuals that they pay is on their tax statement, under
20 their annual tax payments, that's how it's paid. And so
21 the people perceive that as a tax, but it's the fee --
22 about 40 percent of our revenues are based on the land use
23 fee.
24 And to increase that fee to getting additional
25 revenues, we'd have to go before the people and pass it in

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



1 an election, which requires a two-thirds vote.
2 BOARD MEMBER EATON: But we're talking about
3 increasing the tipping fee at the landfill, not what they
4 pay for their service.
5 MR. JONES: We can do the gate fees. We can
6 increase by doing public hearings. But, you know, I'm
7 talking about a portion of our revenue stream would come
8 through the land use fees. And to increase it, that's
9 what we'd have to do.
10 BOARD MEMBER EATON: But you could increase the
11 tipping fee.
12 MR. JONES: Yes, we have. The last two years
13 we've increased it ten percent a year.
14 Thank you.
15 BOARD MEMBER EATON: Then I was wondering if, Mr.
16 Walker, you could explain to me some of the closure,
17 post-closure arguments you had at the briefing, in terms
18 of the fact that these sites are going to close earlier.
19 Will they require a permit revision?
20 MR. WALKER: No. Essentially, the way the
21 regulations work is that once you have a final approved
22 plan, final approved closure plan, that's the governing
23 document. It takes the place of the permit when the
24 facility ceases accepting waste. They are required to
25 have an approved final closure plan.

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



1 BOARD MEMBER EATON: So with regard to financial
2 assurances then, wouldn't that increase since you're
3 moving it up in the time frame as you explained on the
4 briefing?
5 MR. WALKER: I think essentially --
6 BOARD MEMBER EATON: You made the statement that
7 it would cost more because you're moving it up, so do we
8 have adequate final assurances then under the current
9 closure plan?
10 MR. WALKER: The cost estimate -- well, okay let
11 me -- I think Garth Adams will come up and help me with
12 this, if I butcher it up here, but essentially the funding
13 formula is such that if you close early, you're not going
14 to have enough money based on the current cost estimates
15 on file.
16 So in other words, the county has to come up with
17 the difference or when they submit the final closure plan,
18 the final closure plan will have the final cost estimates.
19 And that case you look at areas where you can save costs,
20 and so that will reduce that.
21 So in this particular case, a combination of the
22 cost estimates being adjusted downward, which we
23 anticipate, based on, you know, this is case where we
24 think and Water Board feels is an alternative final
25 cover -- a perfect case for alternative final cover.

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



1 You will see that. But for the plan to be
2 approved and the county to meet the commitment, they'll
3 have to fully fund at the time the final plan is
4 submitted. And I think that Diana Thomas is here to maybe
5 talk a little bit more about how financial assurances to
6 closure, post-closure work.
7 MS. THOMAS: Good morning, Madam Chair, Board
8 members. I'm Diana Thomas with financial assurances
9 section. This particular overhead briefly describes how a
10 built up mechanism works. We use a formula to fund if an
11 operator is using a trust fund or enterprise fund.
12 And basically the operator is funding the
13 mechanism as fast as they fill the landfill. So as
14 they're putting waste into the landfill, that is part
15 of -- that is a component of the formula that we use to
16 determine how much money they put into that landfill.
17 BOARD MEMBER EATON: The faster it's built, the
18 more money they have to put on file, in essence.
19 MS. THOMAS: Exactly, the deposits, of course,
20 are not equal increments each year. If they put more
21 waste into the landfill in a particular year, then that
22 will waste their deposit for that year.
23 BOARD MEMBER EATON: What have been our
24 discussions, Mr. Walker, with them with regard to how much
25 money they have to come up with in the next six months as

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



1 regard to setting the whole place. Have we had
2 discussions?
3 MR. WALKER: Yes.
4 BOARD MEMBER EATON: And what was that amount?
5 MR. WALKER: Well, right now the total deficiency
6 based on the current cost estimates if they closed
7 everything early today, not including a five-year period
8 to allow additional deposits, about $2.75 million coming.
9 That's what they're going to have to come up with in the
10 current cost estimate.
11 BOARD MEMBER EATON: With or without the
12 remediation?
13 MR. WALKER: That's not considering the
14 remediation.
15 BOARD MEMBER EATON: Not my point. If you do the
16 remediation it's going to close quicker. Quicker is what
17 you said in the item. What I'm trying to find out is how
18 much are they going to have to come up with during that
19 period of time, because if they haven't got money to pay,
20 or at least the argument on your behalf is they don't have
21 the money to be able to pay for the remediation, how are
22 they going to have to pay for the closure?
23 And in essence, are we helping them or hurting
24 them?
25 MR. WALKER: Well, essentially at the same time,

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



1 we have been working with the county Water Board, again --
2 in the former closure plan, these are cost estimates that
3 are based on a different configuration for the landfill.
4 So when you close early it's going to change. You don't
5 know exactly -- typically it's going to be less.
6 BOARD MEMBER EATON: But you'll know how much --
7 typically less?
8 MR. WALKER: It's typically less, because your
9 landfill grades are shallower. And in this particular
10 case we have to work with Siskiyou County and we've got
11 agreement with a Water Board that essentially they'd
12 submit one final closure plan for multiple sites, the
13 county may include in-kind as part of their closure
14 activity to help reduce costs. And also this is an arid
15 area and we have a new technology of an environmental
16 superior final cover system, which is a lot cheaper than
17 the prescriptive standard. It performs better too.
18 And this is a situation where it's ideal for
19 that. And so with the Water Board, we feel -- we've been
20 working with the Water Board and we feel that this is
21 clearly where these landfills need to go in terms of the
22 final cover system.
23 And so the final cover system costs are expected
24 to be substantially lower. So under those circumstances
25 in the five-year plan, you know, the county has

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



1 committed -- you know, will commit as a condition of this
2 project. And so under those circumstances, we are
3 confident that the County will be able to meet their
4 commitments.
5 BOARD MEMBER EATON: Financially?
6 MR. WALKER: Yes.
7 BOARD MEMBER EATON: Based on what, a pledge of
8 revenue?
9 MR. WALKER: They have a pledge of revenue for
10 post-closure maintenance and they have an enterprise fund
11 for closure.
12 BOARD MEMBER EATON: With regard to the loan,
13 which is the item, can someone explain to me how you can
14 be eligible for a loan and then say that you don't have
15 any money to be able to pay for remediation? If you can
16 qualify for a loan, to me that indicates that there's some
17 sort of financial ability, given some of the policy
18 discussions that have yet to be discussed by the Board or
19 by others and also with the opinions with regard to this
20 particular item being abandoned, illegal, et cetera.
21 DEPUTY DIRECTOR NAUMAN: Mr. Eaton, I know you
22 direct that question to staff, I would politely ask if the
23 County would respond to why they feel they should get the
24 Board managed cleanup instead of the loan.
25 BOARD MEMBER EATON: It's not a question -- I

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



1 understand why they want that. I mean we all would want
2 to be able to get a gift instead of a loan or a grant.
3 What I'm trying to discern is the fact that under the
4 statute it says the ability to not have a responsible
5 party, unable or unwilling. Well, they're not unable if
6 they're qualifying for a loan. They may prefer a
7 different manner by which to fund this. I accept that.
8 But don't tell me that it's under -- that they're unable
9 if they can qualify for a loan.
10 Because on the one hand one of our departments
11 has made a mistake in allowing them to qualify or we're
12 just not, you know, doing things right given some of the
13 policy questions that have arisen. As I mentioned before,
14 I don't have any problems with helping the county. But I
15 do have, as we walk through this path, that we do things
16 properly and with the utmost of due care as it relates to
17 the Treasury, because it is a program that needs to be
18 continued ongoing, the 2136 program.
19 So that's what I'm trying to find out, because
20 statutorily as I read it, it says unable to pay. Well,
21 they may not be able to pay for all of it, but I think
22 there are other ways then that you can get there. For
23 instance, you may be able to do part of the work under the
24 loan, then based upon policy discussions that we, as a
25 Board, may have, we may say in this situation you can get

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



1 a loan for the remaining part under 2136. And therefore,
2 you have completed the projects of Parts 1 and 2 to get to
3 the $750,000 figure.
4 So perhaps the county can explain to me.
5 MR. JONES: Again, Tim Jones Director of Public
6 Works. We applied for the loan program back in July for
7 the August deadline for $450,000. And the funds -- the
8 $450,000 would not do all the remediation.
9 So then we heard about the 2136 funds and we were
10 informed that it might be a better program to apply for.
11 We couldn't do both, so we were told to either have a
12 chance for the 2136 which would complete the whole
13 program, so we felt like if we removed ourself from the
14 loan program, which would allow some other agencies to
15 apply for those funds, then we could hopefully be able to
16 get awarded of the 2136 and complete the program. That
17 was kind of the process that we went through.
18 CHAIRPERSON MOULTON-PATTERSON: If I might
19 interrupt for one moment, Mr. Eaton. Please let the
20 record reflect Senator Roberti is here. And I know you
21 wanted to speak Senator Roberti. Did you have any ex
22 partes before?
23 BOARD MEMBER ROBERTI: No, I'm up to date on ex
24 partes.
25 CHAIRPERSON MOULTON-PATTERSON: Did you want to

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



1 finish?
2 BOARD MEMBER EATON: Yes. I have a few more
3 questions.
4 CHAIRPERSON MOULTON-PATTERSON: You're next,
5 Senator Roberti.
6 Excuse me.
7 MR. JONES: I don't know if I answered your
8 question, but that was the process that we went through.
9 BOARD MEMBER EATON: Right. And I'm asking in
10 terms of what you have available that you were able to
11 qualify for the loan totaling 450, correct?
12 MR. JONES: Right. You know, we turned in an
13 application and filled out all the requested items and we
14 were told that we were accepted for that loan program.
15 BOARD MEMBER EATON: Thank you. I guess the
16 issue also for program staff is what about the others who
17 applied for loans who have to pay back the money. I mean,
18 are those public entities as well? Should we be giving
19 them under the compliance program?
20 I guess the other question that I have is would
21 we ever be able to provide these 2136 dollars to private
22 entities that found themselves in the same position?
23 And that's a fairness and an equity issue, is it
24 not, under the statute?
25 MR. WALKER: I think the second question is if

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



1 you have a private entity, would they qualify for 2136
2 funding? And while we have seen private entities gain
3 2136 funding, primarily through partnerships with local
4 government, so they do have the ability to obtain funding.
5 BOARD MEMBER EATON: So in other words, are you
6 saying from a programmatic standpoint that any landfill
7 could come in and apply for those funds?
8 MR. WALKER: No.
9 BOARD MEMBER EATON: Okay.
10 CHAIRPERSON MOULTON-PATTERSON: Was that -- were
11 you finished, Mr. Eaton?
12 BOARD MEMBER EATON: No. I have a couple of --
13 just one more. Would you say that the responsible party
14 in this situation was the landfill itself for the problems
15 with erosion?
16 MR. WALKER: Under the definition from our
17 standpoint, the county is the responsible party, since
18 they own and operate the landfill now. But the
19 circumstances have been beyond their control in the sense
20 that this is a legacy practice. It's not a new practice
21 where they knew better, and also the natural meandering of
22 the river has impinged on the landfill footprint as of
23 these local natural processes.
24 But I'm quoting the definition in the
25 regulations, they would meet the definition under

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



1 responsible party.

2 BOARD MEMBER EATON: And so this is a responsible

3 party under 2136. I think we've established that they are

4 able to pay because they can apply for a loan and repay

5 it. So therefore, they may not be able to pay for all of

6 it, but I'm saying there's other mechanisms out there.

7 DEPUTY DIRECTOR NAUMAN: And I think that is an

8 important distinction, that the loan program is capped at

9 $500,000. They've applied for $450,000 and it is a no

10 interest loan.

11 BOARD MEMBER EATON: Correct. And that was set

12 up by the Legislature to deal with just these types of

13 situations, where as the 2136 dealt with abandoned,

14 illegal and kind of orphan sites. And that's why the

15 concern about how we fund this project, and it is a

16 project that I want to see funded, becomes extremely

17 important.

18 But I want to make sure that we do it in a way

19 that we have the option in the future not to have our

20 hands tied.

21 DEPUTY DIRECTOR NAUMAN: And Mr. Eaton, let me

22 just say --

23 BOARD MEMBER EATON: Especially when we have a

24 debate between the program staff and at least some

25 indication from the author of this legislation that the

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



1 very purpose that they were trying to avoid, i.e.
2 subsidizing the public landfill, we seem to find ourselves
3 necessarily confronted with today.
4 DEPUTY DIRECTOR NAUMAN: Mr. Eaton, just let me
5 say, as the Deputy Director in charge of both of these
6 programs, staff is not, in any way, attempting or
7 otherwise wanting to put the Board in a position where, as
8 you've said, your hands are tied. We've brought both of
9 these to you with our separate recommendations on the
10 program.
11 We think this is a worthy project. We have
12 recommended that they receive funding under the loan
13 program. So while we're not on that item, when we get
14 there you will see that the staff is in agreement with you
15 that it is an appropriate facility to fund through the
16 loan program.
17 The question that we are raising to the Board and
18 one we talked about at the briefing, is given the
19 evolution of the 2136 program, we're presenting to you
20 kind of our dilemma as well, as do you think that this
21 project fits the 2136 program. We're taking the position
22 that based on the evolution of the program and the
23 projects that you funded in the past, that we think it
24 does cross that line on the appropriate side as opposed to
25 the inappropriate side, but it's a very close call.

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



1 BOARD MEMBER EATON: Yeah. I'm just trying to
2 find out why you think that way based upon the statute.
3 DEPUTY DIRECTOR NAUMAN: Well, Mr. Eaton, I think
4 that Scott Walker has reflected, you know, my thinking on
5 it as well. I think you can read the statute to have this
6 project fit. I think it does get more cumbersome when you
7 go back a number of years to the letter from Delaine
8 Easton and try and mesh that with the Board's discussions
9 about this program and the Board's past actions to approve
10 projects.
11 It's not -- the line is not that bright and
12 that's why we're looking to the Board. We chose to bring
13 these forward. And I'll tell you that we actually -- I
14 held this project off for a month, because I wanted the
15 Board to have the opportunity to consider it under the
16 loan program, which we did in December.
17 And your action in December was to continue
18 consideration of the loan projects. You didn't consider
19 Brawley in your deliberations last month. So we now have
20 the unfortunate situation where we have both of these
21 before you. But it had been my intent in trying to manage
22 these two items to give you the opportunity to consider
23 this under the loan program first and then to consider
24 whether or not you wanted to provide any additional
25 assistance either in the short term or the long term to

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



1 this particular project.
2 But circumstances, you know, such that it worked
3 out that you've got both of them in front. I apologize
4 for that inconvenience to you, but I also think it does
5 provide an opportunity for us to grapple with the very
6 question that's at the root of this.
7 BOARD MEMBER EATON: But from a policy
8 standpoint, you're asking us to grapple with a policy
9 issue and then fund it at the same time, by putting the
10 funding mechanism before us first. We should have had the
11 discussion as to whether it's appropriate, as we have done
12 in the past, should we fund public entities or public
13 loans like we did in Cloverdale, what have you. We had a
14 policy discussion about whether or not that was a good
15 mechanism to do it, and then later on we took the action.
16 Here, we're trying to force taking the action and
17 then go back and revisit the policy. What I'm trying to
18 get at is the fact that we should give them the loan and
19 then revisit the policy, check out and get some clarity
20 due to your impressions of the line of where it is. And
21 then thereafter, we would be able to assist them in a
22 situation where if that were the case, we might be able to
23 provide them some additional dollars under one or more of
24 the programs we have here.
25 DEPUTY DIRECTOR NAUMAN: And that is a very --

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



1 BOARD MEMBER EATON: And that, I think, is a much
2 more prudent way to proceed.
3 CHAIRPERSON MOULTON-PATTERSON: Senator Roberti
4 is next and Mr. Medina and Mr. Jones.
5 BOARD MEMBER ROBERTI: Yeah. Madam Chair, I just
6 have some observations. I don't think that 2136 normally
7 should be used for closure or post-closure. It's not an
8 assistance program. Nevertheless, we're here to make a
9 judgment call, as was said, a close judgment call. And in
10 this case, I don't think the problems of the New River
11 should be visited only on one county.
12 In my mind, it isn't an issue as to whether
13 Brawley can or cannot afford to pay for it. Although, the
14 pollution problems of the New River are so great that if
15 we only give a loan instead of a 2136 grant, their ability
16 to remediate what is a statewide and international problem
17 is going to be severely constricted.
18 Statewide and international problems of a severe
19 polluting potential that the New River has is just
20 something not for Imperial or the City of Brawley to have
21 to deal with by themselves. That's why we, as a Board,
22 are here to make judgment calls.
23 When the strict statutory reading might imply
24 another outcome, the intent of the statute dealing with
25 orphan sites, and what is more of an orphan than something

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



1 that's subject to the weakness of international control,
2 is a heavily polluted stream, one which has meandered, not
3 due to the fault of either Brawley or Imperial, and one
4 which is of such well-known pollution potential in reality
5 that it is something which we, as a Board, on a statewide
6 basis have to deal with. These are the statewide
7 pollution issues that we are compelled to deal with.
8 And that's why the Board is established rather
9 than say, you know, Brawley should cough up the money. In
10 my mind, it's within the purview of the Board to deal with
11 this. And it's one of these things why we as a Board are
12 established to deal with things on a statewide basis when
13 they come before us, and, you know, that's why we are
14 here, to make these judgment calls.
15 So I very much intend to vote for this, mainly
16 because through my own personal history knowing about the
17 New River, it is something that is way beyond Brawley's
18 control and something which they never anticipated, I
19 think, when they put the landfill near it. And it is
20 something which we, as a Board, on a statewide basis have
21 a duty to remediate. It's our duty. And it's one which
22 the orphan site definition contemplates, not because
23 they're a local government, but because it's an orphan
24 site, because nobody, certainly within the area of
25 California is responsible for the meandering of the New

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



1 River or its huge pollution impact on the State and on the
2 country.
3 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina.
4 BOARD MEMBER MEDINA: Thank you, Madam Chair. I
5 think that all of the points that Board Member Eaton
6 raised were all well taken and I'm glad that he raised
7 them, because it helps me, as a new Board member, to
8 clarify a lot of these issues. However, as Board Member
9 Roberti stated it, this is a very serious situation. And
10 then Assemblywoman Delaine Easton in her correspondence to
11 this Board made it clear that whereas 2136 dollars were
12 not to be spent on routine closures of landfills, this is
13 certainly not a routine closure, but rather a remediation
14 that's needed to protect the public health, safety or the
15 environment, which she made very clear in her letter that
16 she would support the use of 2136 dollars for those
17 purposes.
18 She also recognized that because of tighter
19 federal requirements, that a number of sites would
20 eventually close and that they would eventually seek
21 assistance under AB 2136, and she was certainly not
22 opposed to that. I am prepared to move this item after
23 first hearing from Board Member Jones and since I know
24 that they wanted to speak on this, but I am prepared to
25 move this item forward.

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



1 CHAIRPERSON MOULTON-PATTERSON: I think Mr. Jones
2 wanted to speak, and then we'll come back to for your
3 motion.
4 BOARD MEMBER JONES: Just real quickly. I
5 absolutely believe that this is a remediation program and
6 I think it fits within the existing statute. I don't view
7 this as a judgment call or a twist of the statute. I
8 think the statute is clear. And if there was ever a
9 poster child for the 2136 program, it's this one. We've
10 got waste sloughing into a river that is creating an
11 environmental hazard.
12 Nobody ever intended 2136 to be the funding
13 mechanism of closure for local governments. And if that
14 was what I thought this would be I would not vote for it.
15 But it is a remediation of a project. It is consistent
16 with -- when we do matching funds where a jurisdiction has
17 got to either get a waiver of tip fees or reduce the tip
18 fees to be part of the matching grant, this is no
19 different. We're not taking anything other than sloughing
20 solid waste that would otherwise slough into a river and
21 removing it and rebuilding that side so that there is no
22 more environmental damage.
23 This is not, in my view, a twist on the statute.
24 This is exactly what the statute called for. And I think
25 that I want to commend program staff for bringing this

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



1 forward and I'm going support Mr. Medina's motion.
2 CHAIRPERSON MOULTON-PATTERSON: Okay. We have a
3 motion by Mr. Medina, seconded by Mr. Jones. And Mr.
4 Paparian didn't want to speak, so we're going to call the
5 roll please.
6 SECRETARY VILLA: Eaton?
7 BOARD MEMBER EATON: No.
8 SECRETARY VILLA: Jones?
9 BOARD MEMBER JONES: Aye.
10 SECRETARY VILLA: Medina?
11 BOARD MEMBER MEDINA: Aye.
12 SECRETARY VILLA: Paparian?
13 BOARD MEMBER PAPARIAN: Aye.
14 SECRETARY VILLA: Roberti?
15 BOARD MEMBER ROBERTI: Aye.
16 SECRETARY VILLA: Moulton-Patterson?
17 CHAIRPERSON MOULTON-PATTERSON: Aye.
18 Motion passes.
19 Now we'll go back to -- I had a request that we
20 hear item number 27 at 10:30 and we are late, but we'll go
21 ahead and move to that item right now.
22 And we have Ms. Packard. And I have a number of
23 speaker's slips. Okay, Ms. Packard Item 27.
24 DEPUTY DIRECTOR PACKARD: Thank you. Good
25 morning, Madam Chair and Board members. My name is Rubia

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



1 Packard with the Policy and Analysis Office. We're here
2 today to present Agenda item 27, consideration of a report
3 to the Legislature on the duplication or overlap between
4 California Integrated Waste Management Board and the
5 Department of Conservation Programs.
6 Senate Bill 332, from the statutes of 1999,
7 requires the Board in consultation with the Department of
8 Conservation to prepare and submit a report to the
9 Legislature by December 1st of 2000. The purpose of the
10 report is to identify any duplication or overlap between
11 the Board and the Department of Conservation in three
12 distinct program areas, public information and education
13 programs, local government review and assistance programs,
14 and recycled materials market development programs.
15 The law further requires the report to include
16 but not be limited to suggested legislation, budget
17 actions or administrative actions that can be taken to
18 eliminate any duplication or overlap between the two
19 agencies and programs.
20 The Board has not previously taken formal action
21 on this report, although this item was brought before the
22 Board at the October 2000 Board meeting. At that time,
23 the Board gave staff direction to provide Department of
24 Conservation staff with additional time to provide input
25 into the report.

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



1 As directed by the Board, we have obtained
2 additional input and extensive comment from the DOC and
3 have prepared a revised draft for your consideration
4 today. We have met several times since October with DOC
5 staff and have incorporated many of their suggestions and
6 comments into the revised report.
7 As Tracey Harper, of our office, will cover in
8 more detail in her presentation, we have included
9 administrative and legislative options to address
10 duplications or overlap in the report that were not
11 included in the original draft. As we cover each area of
12 duplication and overlap, we will note for you the
13 potential actions now included that were not in the
14 October draft of the report.
15 MS. HARPER: Good morning, as Rubia talked about,
16 we looked at the areas required by statute and found that
17 duplication and overlap or areas of potential
18 collaboration exist in each. While the previous report
19 recommended that duplication or overlap be addressed
20 solely through program consolidation, the report has been
21 revised to include administrative and legislative
22 approaches.
23 In my presentation, I'll review each area of
24 overlap and duplication and describe the recommended
25 administrative or legislative remedy. The report findings

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



have not changed. The first finding, overlap and duplication of public education campaigns, has resulted in the public receiving a mixed message.

The second finding, overlap and duplication and local government review and assistance, has resulted in decreased program efficiencies.

And the third finding, overlap and duplication of market development, has resulted in lost opportunities for sharing expertise that would maximize program effectiveness. Specifically, the report identifies duplication and overlap in nine areas.

Previously, the one other area identified included hot lines. However, upon further exploration with the Department of Conservation staff, we determined that it wasn't significant.

The first area is promotions at expositions, fairs, sporting events and conventions. The second, Interactions with Educators. The third, market development. The fourth, plastics clearinghouse, business assistance, rigid plastics packaging containers, media campaigns and events, local government grants and curbside recycling information.

Again, I'll cover the recommendations now. And again, please note that all these recommendations are new.

With regards to promotions at expositions, fairs

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



1 and conferences, in order to address duplication and
2 overlap in areas for potential collaboration, the report
3 recommends that a formal process be created to coordinate
4 attendance at these events.
5 Media campaigns, events and market surveys. This
6 report recommends that a committee be established to
7 oversee management of the statewide contract. However, we
8 have agreed in discussions with the Department of
9 Conservation that it would be very difficult to jointly
10 manage a contract in this way, and that this language
11 should be revised.
12 We overlooked it in making our revisions, our
13 additional revisions to this report. Therefore, we'd like
14 to amend the report to say that the Board and the
15 Department of Conservation should work together on
16 contracts like this and to perhaps jointly develop the
17 focus or scope of work in the future however, but not
18 jointly manage this contract, but keep the additional
19 recommendation, and that whenever practical the Board and
20 DOC jointly manage and develop and manage surveys, market
21 research and public campaigns.
22 With regards to interactions with educators, the
23 report recommends that an MOA be developed and
24 implemented, which would delineate the roles and
25 responsibilities of each agency.

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



1 In grant availability, the report recommends that
2 a committee be created to oversee the development of a
3 formal process to ensure collaboration and coordination of
4 this. Whenever an agreement is reached it could be
5 memorialized through an MOA. However, if this process
6 weren't successful, these changes could be accomplished
7 through statutory changes.
8 Curbside recycling information. The report
9 recommends that the Board and DOR create a committee to
10 oversee the development of a formal process to ensure
11 necessary data is collected and provide to each agency.
12 This process could be memorialized through the use of an
13 MOA. If this process weren't successful, these changes
14 could also be accomplished through a statutory change.
15 Market development. The report recommends that
16 an MOA be developed to formally delineate activities
17 related to market development so that collaboration and
18 support of each others efforts occurs.
19 Plastics clearinghouse. The report recommends
20 that rules and responsibilities be clarified through a
21 statutory change. However, as an interim measure, the
22 report also recommends that an MOU be developed and
23 implemented to delineate the roles and responsibilities
24 for communicating what types of plastics are recyclable
25 and where, as well as where companies can locate plastics

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



1 for feed stock.
2 Business assistance. The report recommends the
3 development and implementation of an MOA to delineate
4 roles and responsibilities for assisting businesses.
5 Rigid plastic package containers. The report
6 recommends that the Board and DOR create a committee to
7 explore the development of a mechanism to ensure the Board
8 receives critical data consistently. The agreement
9 reached through this process could be memorialized through
10 an MOA. Clarification of the roles and responsibilities
11 of each agency could also be accomplished through a
12 statutory change. All of the administrative actions
13 should be further developed and implemented as quickly as
14 possible.
15 It should however be noted that significant
16 challenges and obstacles exist to effectively address
17 these areas through these recommended administrative
18 actions. Excellent communication and cooperation at
19 various levels of both organizations must exist. The
20 impact of developing this structure for these
21 administrative approaches on staff resources and workload
22 will be substantial.
23 It may be necessary to increase resources through
24 a budget change proposal to implement these approaches.
25 Both agencies must be truly committed to making these

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



1 approaches a success regardless of changes in leadership.
2 Because of the impact on staff resources and the
3 need to efficiently and effectively eliminate duplication
4 overlap, the report recommends that within two years of
5 submittal of this report to the Legislature, DOC and the
6 Board should jointly prepare a report to each agency's
7 Secretary examining the effectiveness of these
8 administrative solutions.
9 Finally, the report concludes that to take no
10 action and continue the duplication and overlap of
11 services would continue a needless expenditure of funds.
12 It would also result in a lost opportunity to maximize
13 existing resources within both agencies, eliminate
14 conflicting policies and recycling of waste, provide a
15 clear State policy on recycling of waste, reduce program
16 costs and increase and enhance the services provided to
17 all Californians.
18 If a more permanent solution is desired that
19 addresses cost effectiveness and program efficiency and
20 more directly, consolidating all of the recycling
21 functions discussed in this report into an agency, it
22 should be further explained by the Administration and the
23 Legislature.
24 As indicated in the agenda item, the Board has a
25 number of options. The first option is the Board can

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



1 approve the report as prepared by staff for submission to
2 the Legislature or the Board can direct staff to make
3 changes to the report and bring it back before the Board
4 at the next Board meeting, or thirdly the Board could
5 disapprove this report as prepared by staff.
6 And staff recommends Option 1, that the Board
7 approve the report as prepared by staff for submission to
8 the Legislature.
9 CHAIRPERSON MOULTON-PATTERSON: Thank you very
10 much. Before we go to our speakers, do Board members have
11 any questions or comments?
12 Okay. Senator Roberti.
13 BOARD MEMBER ROBERTI: Yeah, just the one point
14 I'd like to make, I think two years for the report is too
15 lengthy. The Legislature obviously wants to, we hope,
16 wants to glean some benefit from the report and it
17 probably should be the legislators who are bound at the
18 time the initial request was made. And the and limits as
19 such things have to be on faster tracks. So I was
20 assuming it's one year.
21 CHAIRPERSON MOULTON-PATTERSON: Okay.
22 Mr. Ferguson.
23 MR. FERGUSON: Madam Chair, members of the Board.
24 I'm Jim Ferguson from the Department of Conservation. We
25 have worked very hard with Board staff on this report and

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



1 come a long ways. We have some concerns that remain about
2 the administrative processes, for instance, but we think
3 we can work those out with Board staff and are committed
4 to making those processes work.
5 We have one area of concern in the report as
6 written that Board staff has indicated was an oversight on
7 their part. And that dealt with the management of the
8 media contract. We think it's inappropriate for a
9 Committee to manage the contract, but we certainly have no
10 objection to coordinating and advising some other form of
11 working with the Board on seeing that we don't have mixed
12 media messages.
13 We are still concerned somewhat about the
14 consolidation recommendation, but I think we can move on
15 with that. We would like to see that our response to the
16 December 11th response to Board staff is included in the
17 public record. Are there any questions?
18 CHAIRPERSON MOULTON-PATTERSON: Any questions for
19 Mr. Ferguson?
20 Mr. Paparian.
21 BOARD MEMBER PAPARIAN: Yeah. Probably a
22 combination of Mr. Ferguson and our staff, later today or
23 possibly tomorrow we're going to be dealing with some
24 issues involving the Recycling Market Development Zones,
25 the RMDZs. And among other things through the RMDZ

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



1 program, we have funded the facilities that recycle
2 materials including CRV materials.
3 Is it possible through your programs to augment
4 the funding we have available for our RMDZ's or are you
5 somehow restricted through your funding mechanisms?
6 MR. FERGUSON: We could work with the Board on
7 RMDZs with our unrestricted grant funds, for instance.
8 But that has been reduced by the Legislature from
9 approximately $2 million a year to $500,000. And those
10 are the only funds we really have available for grant type
11 projects.
12 However, we would certainly be willing to work
13 with the Board. There's another area that the Legislature
14 may wish to consider and that's the ten and a half million
15 dollars that we have in city/county money for instance.
16 They may want to restructure that from a formula-driven
17 allocation to something that can be targeted to specific
18 projects that the Board has sufficient resources to feel
19 are more productive.
20 BOARD MEMBER PAPARIAN: Again, this is -- I'm not
21 looking for a redrafting of the report, but I think this
22 is an area where presumably we continue the RMDZ program.
23 I think it is one that I want to follow-up on assuring
24 that there is opportunities for more collaboration for
25 possible additional funding.

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



1 MR. FERGUSON: Well, I think the Department would
2 certainly be more than willing to work with the Board on
3 not only collaboration but on trying to develop sources of
4 funding for projects that would benefit recycling.
5 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
6 Ferguson. We have no more questions at this time. We
7 have another speaker, however, Nathan Benjamin.
8 MR. BENJAMIN: Good morning, Madam Chair, members
9 of the Board. Last night or yesterday afternoon we
10 attempted to fax to the Board a letter. But given my
11 ongoing confusion about the right phone numbers, I'm sure
12 we faxed them to somewhere in the new building, but I do
13 have copies of a letter from Tim Gormley, President of
14 Earth's 911. I only have 12 copies, realizing belatedly I
15 should have brought 15. I'd be glad to supply more if it
16 is necessary to complete the record.
17 We agree with the report's ultimate conclusion
18 that Californians are better served by collaboration.
19 However, we must strongly disagree with the conclusion
20 that significant savings would not result from the
21 combined use and promotion of the Board's public
22 information hot line, the 1-800 cleanup internet and
23 telephone platform.
24 The public deserves a uniform message and
25 information regarding recycling and waste reduction,

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



1 especially in California's saturated media environment.
2 This is a common sense approach governing our mission of
3 consolidating redundant hot lines and web sites.
4 Providing the public with one point of access for
5 community specific environmental information is a far more
6 effective effort and saves taxpayer money.
7 As was appropriately stated in our opinion in a
8 previous draft version of the report and I quote, "Earth's
9 911 includes information about the locations of certified
10 redemption and recycling centers as well as locations
11 where the other 97 percent of materials may be recycled or
12 disposed.
13 "A number of benefits could be realized if the
14 public had one hot line to contact. Among these benefits
15 are cost savings, better use of resources and the
16 elimination of public confusion," end quote.
17 This cost effective promotion and outreach can be
18 undermined by a message that only addresses the more
19 narrow issue of beverage container recycling and ignores
20 the larger waste reduction and recycling message. We
21 strongly urge the Board to recognize that there are, in
22 fact, significant savings, and perhaps more importantly,
23 effective communications strategies that can be realized.
24 It would simply be inaccurate and perhaps unfair
25 for the duplication report to state on behalf of the Board

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



1 that there is no value to be achieved through both the
2 Board and Department of Conservation utilizing Earth's 911
3 in a uniform and collaborative manner.
4 For this reason, we would urge the Board to adopt
5 language more appropriately described in the extensive
6 substantial benefits that can result from a uniform public
7 outreach and education strategy utilizing the Earth's 911
8 public service.
9 Members of the Board, it simply makes sense in
10 our opinion that the State's waste reduction and recycling
11 programs should speak with one uniform voice. And towards
12 that end, we continue to be available to answer any
13 questions or to otherwise assist the Board or staff in
14 preparing this report or in addressing any other matters
15 involving Earth's 911.
16 Thank you.
17 CHAIRPERSON MOULTON-PATTERSON: Thank you.
18 DEPUTY DIRECTOR PACKARD: Chairman, I have a
19 question.
20 Mr. Ferguson had indicated that he was requesting
21 that a document that was provided by DOC to staff that was
22 basically all of their comments and strikeovers and
23 additional language and basically was a rewritten report
24 of the first draft, be incorporated to go into the record.
25 I'm not sure how we do that. I'm not sure if we can do

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



1 that at this point. But I just wanted to make sure that
2 we receive guidance from the Board on whether or not that
3 was what you wanted to do and then how we would actually
4 do that, given that we're well past the deadline for
5 putting these materials out to the public.
6 It was staff comments that we utilized when we
7 went through and made revisions to our draft of the
8 report. I believe that's what he's asking be somehow
9 incorporated into the record.
10 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you.
11 I just want to say, at this time, that I think our staff
12 has done a fine job in working with the DOC. And the DOC
13 has really come a long ways in sitting down and working
14 together, we got off to a little rocky start, but I think
15 you've all done a fine job. I think that there's going to
16 be sincere working together after this.
17 As far as this being part of the report, I don't
18 quite understand how this can be part of the report. But
19 the Board has been provided that information. We
20 haven't -- I've seen it and it was mainly their reaction
21 to the report and then you've had subsequent meetings to
22 discuss it with them, so it was taken into consideration.
23 DEPUTY DIRECTOR PACKARD: That's correct. A lot
24 of the comments that they made were edits, corrections of
25 misstatements on our part of descriptions of their

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



1 programs, et cetera. And then there were the areas where
2 they disagreed with us as far as findings and
3 recommendations. That was all done in one document that
4 they marked up, which was our original report.
5 CHAIRPERSON MOULTON-PATTERSON: Okay. Well, it's
6 my understanding that would not be part of our report. If
7 they certainly want to submit it, that's their right.
8 Did we have any other discussion before we go to
9 a motion on this? And, Senator, I know you had one change
10 and I believe -- I just want to make sure that that is a
11 change from like an Oversight Committee, it's more of an
12 advisory, and staff has made that change; is that correct?
13 DEPUTY DIRECTOR PACKARD: We will make that
14 change, and we will make the change as well in the
15 resolution.
16 BOARD MEMBER ROBERTI: That's fine. Thank you.
17 CHAIRPERSON MOULTON-PATTERSON: Did you wish
18 to --
19 BOARD MEMBER ROBERTI: I'll make the motion.
20 CHAIRPERSON MOULTON-PATTERSON: -- make the
21 motion to approve the report with the change?
22 BOARD MEMBER ROBERTI: With the change to approve
23 the report.
24 CHAIRPERSON MOULTON-PATTERSON: Two years to one
25 year.

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



1 BOARD MEMBER ROBERTI: Yes.
2 CHAIRPERSON MOULTON-PATTERSON: Okay. Do we have
3 a second?
4 BOARD MEMBER MEDINA: Second.
5 CHAIRPERSON MOULTON-PATTERSON: Okay, we have a
6 motion by Senator Roberti, seconded by Mr. Medina to --
7 yes.
8 CHIEF COUNSEL TOBIAS: May I just ask what the
9 one year, what's that measured from, did you specify that,
10 I may not have been listening, so I apologize.
11 CHAIRPERSON MOULTON-PATTERSON: It's the part,
12 "Within two years of submittal of this report to the
13 Legislature, DOC and the Board should jointly prepare a
14 report to each Agency Secretary." It's on page 27-33.
15 CHIEF COUNSEL TOBIAS: One year.
16 DEPUTY DIRECTOR PACKARD: Excuse me, Madam Chair,
17 the resolution actually says from approval of the report,
18 which would be today. So we need a clarification on
19 which -- how you would like us to do that.
20 BOARD MEMBER ROBERTI: Very good, that's even
21 better.
22 CHAIRPERSON MOULTON-PATTERSON: From today?
23 DEPUTY DIRECTOR PACKARD: From today, or if the
24 Board approves it. Okay, thank you.
25 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones, did

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



you have anything?

BOARD MEMBER JONES: No.

CHAIRPERSON MOULTON-PATTERSON: Okay.

SECRETARY VILLA: Eaton?

BOARD MEMBER EATON: Aye.

SECRETARY VILLA: Jones?

BOARD MEMBER JONES: Aye.

SECRETARY VILLA: Medina?

BOARD MEMBER MEDINA: Aye.

SECRETARY VILLA: Paparian?

BOARD MEMBER PAPARIAN: Aye.

SECRETARY VILLA: Roberti?

BOARD MEMBER ROBERTI: Aye.

SECRETARY VILLA: Moulton-Patterson?

CHAIRPERSON MOULTON-PATTERSON: Aye.

And, again, I sincerely thank our staff and the DOC staff for really a job well done.

Okay, at this time, we'll take a ten minute break.

(Thereupon a brief recess was taken.)

CHAIRPERSON MOULTON-PATTERSON: I'd like to call the meeting back to order, please.

Thank you.

This takes us to Item number 1, consideration of approval of fiscal year 1999/2000 State Agency and Large

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



1 State Facility Waste Diversion and Recycling Grant
2 Applications. At this item our staff is recommending that
3 one of the colleges in the Orange County Community College
4 District receive a grant. Two others in the district
5 applied as well. As some of you may know, my husband is
6 an elected trustee for that district. As a result, under
7 provisions of Government Code Sections 1090 and 1091, I
8 might be considered to have a remote interest in this
9 decision. Therefore, in order to avoid a possibility of a
10 conflict of interest, I've been abstaining from
11 participating in and will be abstaining from voting on
12 this decision. I ask that my statement be noted in the
13 Board's official -- the Board's official record for this
14 meeting. I will be leaving.
15 DEPUTY DIRECTOR SCHIAVO: Good morning. For the
16 record I'm Pat Schiavo of the Diversion Planning Local
17 Assistance Division. And Phil Moralez, who is manager of
18 the AB 75 program will be making this presentation.
19 MR. MORALEZ: Members of the Board, consideration
20 of agenda item I number, consideration of approval for the
21 State Agency Large Recycling Facility Waste Diversion and
22 Recycling Grants is an item continuation from the last
23 Board meeting.
24 For the members of the audience just briefly
25 noting on the item, the item provides that the -- there

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



1 were 58 applications and submitted requests for grants.
2 The item is recommending $55,555 be awarded in grants to
3 25 applicants. There are questions that were raised that
4 staff went back and look at regarding the process.
5 Staff and legal reviewed the grant process to
6 determine to make sure that all the areas were followed
7 appropriately. They were in regards to the question that
8 came up from the Resources Agency that they had submitted
9 a grant covering multiple BDOs.
10 In reviewing the grant process and grant
11 proposal, it didn't distinguish the individual BDOs but
12 rather was treated as one grant which seemed to be
13 appropriate, given the instructions and guidelines in the
14 grant process.
15 The second question that was raised had to do
16 with the funds available. Under the grant program, there
17 are $570,000 in funds available. Staff is recommending
18 $555,000. A balance of $15,000 has not been encumbered.
19 In discussions with the legal office, because the
20 NOFA specifically established a cap, which was approved by
21 the Board of $25,000 per grantee, it is staff's
22 recommendation and legal's advice that the $15,000 cannot
23 be awarded to a grantee in excess of the $25,000
24 originally proposed, and that money would go back into the
25 RMDZ fund to be reallocated out to future Board meetings

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



1 for whatever appropriate uses the Board deemed.
2 Staff's recommendation is that we adopt
3 Resolution 2001-33 Revised, awarding $555,000 in grants to
4 25 of the applicants that had submitted proposals. That
5 concludes staff's presentation. If there's any questions,
6 I'd be glad to answer them for you.
7 BOARD MEMBER MEDINA: Any questions, Board
8 members?
9 BOARD MEMBER JONES: Mr. Medina?
10 BOARD MEMBER MEDINA: Board Member Jones.
11 BOARD MEMBER JONES: I'll move adoption of
12 Resolution 2001-33 Revised for $555,000.
13 BOARD MEMBER PAPARIAN: I'll second it.
14 BOARD MEMBER MEDINA: Resolution 2001-33 Revised
15 has been moved and seconded.
16 Roll call.
17 SECRETARY VILLA: Eaton?
18 BOARD MEMBER EATON: Aye.
19 SECRETARY VILLA: Jones?
20 BOARD MEMBER JONES: Aye.
21 SECRETARY VILLA: Medina?
22 BOARD MEMBER MEDINA: Aye.
23 SECRETARY VILLA: Paparian?
24 BOARD MEMBER PAPARIAN: Aye.
25 SECRETARY VILLA: Roberti?

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



1 BOARD MEMBER ROBERTI: Aye.
2 SECRETARY VILLA: Moulton-Patterson?
3 BOARD MEMBER MEDINA: She's excused.
4 The resolution has passed.
5 With that, we'll move on to item number 2. Can
6 we have the staff report and we're waiting for the Chair
7 to return.
8 CHIEF COUNSEL TOBIAS: We're actually looking for
9 her, so we think she went out to the parking lot. So you
10 can either start the item or you can just wait for a
11 couple of minutes.
12 BOARD MEMBER MEDINA: Let's wait for a couple of
13 minutes.
14 CHAIRPERSON MOULTON-PATTERSON: Well, that was
15 fast.
16 Thank you, Mr. Medina.
17 BOARD MEMBER MEDINA: I've called Item 2 and
18 staff is now giving the report.
19 CHAIRPERSON MOULTON-PATTERSON: Okay, so we're on
20 Item 2.
21 Ms. Williams.
22 STAFF COUNSEL WILLIAMS: Good morning, Madam
23 Chair and Board members I'm Linda Williams, staff counsel,
24 legal office.
25 Last spring, the legal office brought an item

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



1 before the Board to review hearing procedures employed by
2 each of the Board's programs. Our presentation included a
3 summary of waste tire hearing procedures. This is a
4 follow-up item.
5 Our purpose is to address some questions that
6 have been raised since and to present more detailed
7 information regarding the nature of these hearings as they
8 are conducted through the Office of Administrative
9 Hearings.
10 Let me begin by reviewing the authority to
11 conduct these hearings through OAH. The Public Resources
12 Code provides that primary authority to impose penalties
13 for waste tire violations is a civil penalty through the
14 superior courts. However, because this process can be
15 tedious, costly and too slow for effective enforcement,
16 the courts have allowed agencies to conduct penalty
17 hearings themselves.
18 Based on this precedent, the California
19 Legislature provided that penalties for violations of
20 waste tire provisions, may be pursued administratively
21 through OAH. This is the original provision of the
22 statute passed as part of the Waste Tire Recycling Act of
23 1993.
24 As described in the item, the authority to
25 conduct hearings administratively is then derived from the

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



1 Superior Courts' willingness to divert these matters from
2 their clogged calendars with one significant caveat, that
3 is as long as comparable hearing procedures and
4 appropriate due process are provided.
5 Hearings held through OAH are very similar
6 therefore, and as formal as those conducted in civil
7 proceedings, with two significant differences, they are
8 speedier and less costly. While a Superior Court case
9 usually takes years to complete, an administrative hearing
10 process can reach the same outcome in as few as a few
11 months.
12 ALJs and Superior Court judges require the same
13 objective criteria in reaching their decisions, but with
14 about one-tenth the cost of pursuing a civil action. So
15 with that background, I'd like to define the nature of
16 these hearings a bit more. And I'll refer to this
17 overhead.
18 (Thereupon an overhead presentation was
19 presented as follows.)
20 STAFF COUNSEL WILLIAMS: As stated in the item,
21 really the primary objective of the administrative hearing
22 is to create the administrative record. This is because
23 of the Superior Court's view of the administrative hearing
24 purely, quite frankly, as creating their record. They are
25 the trial court or the trial court level for the purposes

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



1 of the penalties.

2 These cases, as a result, are document intensive

3 and lengthy. They are rarely shorter than four hours, and

4 this past year has revealed that at least half of the

5 cases that I personally proceeded with in administrative

6 court, most of them were one to two days in length, two

7 were three days in length.

8 And the nature of these is a great deal of

9 directed evidence, cross examination and documentary

10 acceptance by the ALJ. Pre-hearing conferences are common

11 also as a result of the document intensive nature of these

12 cases.

13 Also, the closing arguments tend to be lengthy,

14 several hours. And where you do have a case that is one

15 or two days in length, it is the common accepted standard

16 that closing arguments are submitted as written, standard

17 also having two weeks in between each submission of

18 arguments, which there are three. The State has the

19 burden, therefore we have two opportunities to present

20 closing.

21 The ALJ then has statutorily 30 days to consider

22 these arguments in addition to the administrative record

23 before issuing his or her decision. These decisions are

24 typically quite lengthy, and they often are as long as 20

25 pages in length to accommodate all of the statutory

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



1 requirements under the Public Resources Code that must be
2 considered in order to substantiate penalties.
3 When you consider that while we file in the
4 neighborhood of 30 to 40 complaints annually for just the
5 waste tire penalty cases, between 15 and 20 of these
6 actually proceed to an administrative hearing.
7 If the Board chooses to hear these cases, this
8 will then mean that a minimum of 15 to 20 meeting days
9 annually will be added to the Board's calendar. These
10 dates must be coordinated for purposes of due process with
11 opposing counsel at the convenience of their schedule.
12 This is difficult enough even through the Office of
13 Administrative Hearings who have ALJs who are available
14 five days a week, every weekday of the year.
15 Only through that availability are we able to
16 even get decisions within as few as six months, and it is
17 not unusual that it could take up to a year to come to a
18 decision.
19 Half of these cases, additionally, are conducted
20 outside of Sacramento, with the majority being in Los
21 Angeles, but a significant number of them being also in
22 Redding and Fresno. This also is to accommodate the
23 notions of procedural due process, in and the hearing
24 needs to be held in the jurisdiction where the offense
25 occurred.

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



1 Further, in order to use --
2 CHAIRPERSON MOULTON-PATTERSON: Excuse me.
3 Mr. Jones.
4 BOARD MEMBER JONES: Linda, do we have any -- I
5 mean, this is real hard to read. You couldn't even read
6 this thing on our screens.
7 STAFF COUNSEL WILLIAMS: It is smaller than I
8 thought. I apologize for that.
9 BOARD MEMBER JONES: Do we have any copies of
10 those that we can see?
11 If not, it just --
12 CHIEF COUNSEL TOBIAS: Is there a way to turn up
13 the monitor?
14 CHIEF DEPUTY DIRECTOR FISH: Can you zoom it?
15 STAFF COUNSEL WILLIAMS: Is there a copy
16 available? Is there any ability to zoom on that?
17 CHAIRPERSON MOULTON-PATTERSON: While we're doing
18 that, I apologize, I forgot to ask for ex partes after the
19 break.
20 Mr. Eaton, be have any?
21 BOARD MEMBER EATON: None to report.
22 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones?
23 BOARD MEMBER JONES: Just briefly with Tim Jones.
24 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina?
25 BOARD MEMBER MEDINA: None to report.

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



1 CHAIRPERSON MOULTON-PATTERSON: Mr. Paparian?
2 BOARD MEMBER PAPARIAN: None.
3 CHAIRPERSON MOULTON-PATTERSON: Senator Roberti?
4 BOARD MEMBER ROBERTI: No ex partes.
5 CHAIRPERSON MOULTON-PATTERSON: And I had none.
6 So, excuse me, Linda -- Ms. Williams.
7 STAFF COUNSEL WILLIAMS: We're still struggling
8 to see if we can somehow enlarge the print.
9 CHIEF COUNSEL TOBIAS: That's a little better.
10 Can you darken it at all?
11 CHAIRPERSON MOULTON-PATTERSON: That's better,
12 yeah.
13 Thank you.
14 STAFF COUNSEL WILLIAMS: Is there any part of my
15 presentation then you'd like me to go back over?
16 BOARD MEMBER JONES: No.
17 CHAIRPERSON MOULTON-PATTERSON: Thank you.
18 STAFF COUNSEL WILLIAMS: In order then to
19 participate in the decision at the close of evidence, each
20 member must hear the entire case and all the evidence as
21 it is presented during the course of the hearing. As I
22 mentioned earlier, these decisions must be well
23 documented, often requiring 20 pages to address all of the
24 concerns.
25 And in the unlikely event of an appeal, a

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



1 Superior Court Judge reviews that decision. As I said, at
2 that point they are the trial court level, which means
3 they can be a little more censurious than they might be if
4 it was a direct appeal.
5 If a remand is ordered, then the entire case must
6 be reheard, especially as it may be directed by the
7 Superior Court. It's well also to note that, at this
8 stage, the Superior Courts do tend to be very critical of
9 the administrative record. And if there are, maybe,
10 even -- perhaps even minor omissions, it is well regarded
11 that it is their tendency to remand the case to the
12 administrative agency or the administrative hearing judge
13 for rehearing.
14 To sort of recap how the Office of Administrative
15 Hearings has really helped to bolster and recreate our
16 successful enforcement program, the Office of
17 Administrative Hearings has existing offices throughout
18 the state to accommodate the venue requirements. The OAH
19 judges, as I stated, are available every working day of
20 the year. And Board members are free to attend these
21 hearings as observers and can review hearing transcripts
22 to ascertain compliance with Board issued policy.
23 The ALJ hears document-intensive and lengthy
24 cases and applies the same objective criteria in arriving
25 at the penalties. The Board has to spread the difficulty

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



1 of calendaring and coordinating 15 to 20 hearings,
2 pre-hearing conferences in addition to regular Board
3 meetings.
4 Finally, in the event of appeal, a Superior Court
5 Judge reviews the ALJ's decision. And if the remand is
6 ordered, they handle the difficult procedures, because
7 they have already implemented many of these through their
8 interior regulations process.
9 Which brings us to the point if the Board does
10 decide that they prefer the option of hearing these cases,
11 it would require a statutory change. In addition, it
12 would require significant changes to our existing
13 regulations to create a sufficient process that already
14 exists throughout the Office of Administrative Hearings.
15 One of our sister agencies, the Air Resources
16 Board recently went through this process, and found the
17 only way to really get that done appropriately was to hire
18 an Administrative Law Judge who worked full time for two
19 years in order to write the appropriate regulations, and
20 get them successfully through the entire regs process
21 through the Office of Administrative Law.
22 Finally, there was a question during the
23 briefing, and -- do you know how to turn on -- and I hope
24 that that's a little bit easier to read than the slide
25 show.

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



1 There was a question during the briefings
2 regarding the costs of doing our existing process, which
3 is our penalty hearings through the Office of
4 Administrative Hearings. So in the first column you'll
5 see that there's a breakdown. We have a contract with the
6 Office of Administrative Hearings currently to do these
7 for the Board.
8 And essentially, that is a range so that there's
9 a monthly billing. Annually, the costs have averaged
10 about $45,000 for the Office of Administrative Hearings to
11 conduct these hearings for us.
12 There are other constant costs including the
13 process server. We also have a contract with the Attorney
14 General to assist us with any appeals for the filing of
15 liens, et cetera. There's also the costs of the two
16 attornies and the paralegal who consistently work on the
17 cases.
18 If the Board were to take all of these procedures
19 in-house, and as I mentioned earlier, the most effective
20 way to do that would be to hire an administrative law
21 judge, as these cases, because they are contested and all
22 involve fines of over $5,000, would all need to be
23 presided over by an administrative law judge. In
24 addition, that administrative law judge would be required
25 to assist us in creating a proper hearing structure

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



1 through regulations.
2 And that ALJ would also require the assistance of
3 a legal secretary. And so you'll see that the bottom line
4 in comparison with the addition of an ALJ and the
5 secretary to do these procedures in-house would be a
6 difference of -- would cost us $415,000 as opposed to the
7 annual costs now of $265,000.
8 So for this reason, the legal office recommends
9 in the item that is listed as Option 1 the existing
10 process of doing these penalty hearings through the Office
11 of Administrative Hearings be maintained.
12 Thank you.
13 CHAIRPERSON MOULTON-PATTERSON: Okay.
14 STAFF COUNSEL WILLIAMS: Are there any questions?
15 CHAIRPERSON MOULTON-PATTERSON: Mr. Paparian.
16 BOARD MEMBER PAPARIAN: You said, the Air
17 Resources Board has opted to go in-house with this?
18 STAFF COUNSEL WILLIAMS: And I'm not clear on how
19 many of those penalty procedures they're doing in-house,
20 because they do continue to do some of their litigation
21 through the Office Administrative Hearings, but they are
22 doing some penalty procedures internally.
23 BOARD MEMBER PAPARIAN: And internally as the
24 Board or with their own ALJ?
25 STAFF COUNSEL WILLIAMS: They have their own

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



1 administrative law judge who issues final decisions.
2 BOARD MEMBER PAPARIAN: Are their hearings held
3 with their Board or does the ALJ just do it on their own?
4 STAFF COUNSEL WILLIAMS: The ALJ does it on his
5 own, with one caveat also, they only recently completed
6 their regulations process, so I believe this calendar year
7 of 2001 ceased the initiation of this new process.
8 BOARD MEMBER PAPARIAN: Do they have a full-time
9 ALJ on the ARB staff?
10 STAFF COUNSEL WILLIAMS: As I understand it, it
11 is now a half-time ALJ --
12 BOARD MEMBER PAPARIAN: So something like --
13 STAFF COUNSEL WILLIAMS: -- that they have
14 dedicated to this.
15 BOARD MEMBER PAPARIAN: So something like that
16 could be an option for us, because as I add this up, it
17 seems like the OAH folks, you add up their time, it's
18 about a third time of an individual.
19 STAFF COUNSEL WILLIAMS: Of an individual ALJ.
20 However, I don't think there would be anyway to get around
21 having a full-time legal secretary to administer the
22 number of complaints that we annually initiate whether --
23 and those complaints have to be handled through the Office
24 of Administrative Hearings regardless of whether they
25 actually proceed to hearing. Once we initiate the

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



1 complaint process, we pass the complaints regularly
2 through the Office of Administrative Hearings and they
3 keep track of calendaring requirements, which are actually
4 very demanding, which I haven't really had the opportunity
5 to really describe for you adequately.
6 BOARD MEMBER PAPARIAN: Do you know why the ARB
7 decided to go in this direction?
8 STAFF COUNSEL WILLIAMS: I don't honestly. It
9 would be --
10 CHIEF COUNSEL TOBIAS: I think that's a good
11 question. Linda, are the ARB's hearings required to be
12 held where the complaint arises or my impression, but I
13 won't say I'm certain of this, is those are being held in
14 Sacramento, but I don't know, but that's just an
15 impression.
16 STAFF COUNSEL WILLIAMS: That is my basic
17 impression. Although, I did have a discussion with that
18 ALJ about the necessity of accommodating venue. And he
19 just, in the course of the discussion, recognized that
20 that is something that he did consider in making the
21 regulations.
22 CHIEF COUNSEL TOBIAS: I think in the amount that
23 we'd be moving around, we could, you know, if the Board
24 wanted to do, we could certainly try a part-time person or
25 whatever. But I'm not sure that that's going to work

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



1 given the fact that these hearings are going to move
2 around the state, but that's, you know, a possibility.
3 CHAIRPERSON MOULTON-PATTERSON: Just following up
4 on Mr. Paparian's question. Could it be that the ARB
5 wanted this, so that they're more familiar -- so that the
6 same one is hearing it. If you have a -- so they're more
7 familiar with your cases? Is that the reason?
8 CHIEF COUNSEL TOBIAS: You know, I think because
9 it's still new, I don't know why they decided to do it.
10 We actually have worked with the Office of Administrative
11 Law in asking that the same ALJs be assigned, because in
12 the early part of the program, we were getting, you know,
13 a new judge in some circumstances, which made it hard, so
14 we've basically been talking to the presiding judges of
15 the different OAL offices to ask that somebody get
16 familiar with our programs, and so that we clearly do have
17 that kind of clarity on applying the penalties.
18 CHAIRPERSON MOULTON-PATTERSON: Thank you.
19 Mr. Jones.
20 BOARD MEMBER JONES: Madam Chair, this has been
21 an item that I've probably brought up three or four times,
22 because it seems to me that we needed to take a more
23 active role in the actual hearings as a policy setting
24 body.
25 I guess I have just a couple of comments. Under

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



1 the existing statute, if we were to have an ALJ join us in
2 a hearing, would that statute -- I mean, would we have to
3 change the statute or is it an option that's available to
4 this Board today under those rules?
5 STAFF COUNSEL WILLIAMS: Under the waste tire
6 facility penalty procedures, we'd have to change the
7 statute.
8 BOARD MEMBER JONES: To say that the Board could
9 sit.
10 STAFF COUNSEL WILLIAMS: At a minimum.
11 BOARD MEMBER JONES: With the ALJ?
12 STAFF COUNSEL WILLIAMS: Yes.
13 BOARD MEMBER JONES: Two things concern me in
14 this program. One is that when we were briefed on all of
15 the different administrative penalties and hearings, it
16 was put on the record that this Board could feel
17 comfortable with its mechanism that's in place, having it
18 just go to an ALJ or somebody else and that was very
19 similar to what Fish and Game does.
20 The fact is that when the Board got
21 responsibility for different programs where they needed
22 a -- where they needed to sit as a quasi-judicial type
23 Board, it was a part-time Board. They did not have the
24 people here to be able to do that, so they looked around
25 for a program to look at and see what was available. And

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



1 it happened to be Fish and Game.
2 And so it bothered me when I was, you know, when
3 it was kind of like, it's okay. There's other agencies
4 that do this, you know, Fish and Game is a great example.
5 It' who we patterned ourselves after, and it's because we
6 didn't have a full-time Board. And that always kind of
7 makes me nervous, you know, having just a little bit of
8 the historical background of this place.
9 And the first, you know, components of a hearing
10 where we looked at we have to establish a record, I think
11 I understand that. And I think there's three really
12 capable lawyers on this Board that are Board members that
13 do a pretty good job of asking every question that's
14 imaginable. I usually do pretty good asking a few myself.
15 So I'm not too worried about us having the ability to
16 establish a record.
17 Then the other four of the six bullets dealt with
18 time, how much time it was going to take out of our day.
19 And while I think that's something really important, we're
20 a full-time Board. I mean, that's what we get paid to do,
21 we are a full-time Board. And if there's 15 hearings a
22 year or 20 hearings a year, while it's more than we do
23 today, it puts us right in the middle of what the issues
24 are that are coming forward.
25 And while an ALJ would be conducting the hearing

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



1 and we would be sitting in that panel, taking testimony
2 and listening and having something to do with the end
3 decision, I can't help but believe that that doesn't make
4 us a better Board.
5 Although, I haven't seen the numbers until just
6 now. And I mean, I think Bonnie said today that our
7 budget is 15 percent less than it was last year, I don't
8 know if we have those kinds of discretionary funds to be
9 able to do those things.
10 I wish we would have had those numbers earlier,
11 so that we would have been able to judge just what it is,
12 what we're willing to spend to get more control over this
13 system. Is there a way so that we're aware, as Board
14 members, of when there are ALJ hearings when there are --
15 when things are happening, what's the issues around them.
16 Because part of my problem has always been that
17 this has always been after the fact. You know, it's
18 always after somebody has gone to an ALJ and an issue has
19 been dealt with, and, you know, quite frankly as a body
20 and as, you know, representing the Administration and
21 others representing the Legislature, I think it's
22 incumbent on us to know what's going to hit the front page
23 of the newspaper, especially when we're dealing with some
24 of the tire issues that we've had the pleasure of dealing
25 with here in the last three years, which included tire

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



1 fires and lots of illegal hauling and having to shut down
2 facilities, and trying to see how that's going to play
3 out, we've made those decisions. We've done our job.
4 But the one piece that we're never, you know, not
5 as clued into is the ultimate disposition of the issue.
6 So I hate that I've just seen these numbers that put me in
7 a position of not being able to wholeheartedly support the
8 Board taking over this activity. And maybe we need to
9 work on the exchange of information for a period of a year
10 and continue with the process and then get a better handle
11 on what it is we're doing, because this Board, these six
12 Board members, are ultimately responsible for this place.
13 And, you know, because it's going to take some time,
14 doesn't bother me. I don't think it bothers any of the
15 six -- other five Board members.
16 But I do have a problem when I'm looking at the
17 numbers that we haven't budgeted to start a project that
18 may cost us a heck of a lot more than this and not knowing
19 how that's going to fit in the budget, that it might be
20 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones, would
21 you be speaking -- I understand what you said, but perhaps
22 on number two to hear some or all of the hearings?
23 BOARD MEMBER JONES: When we tried to put some
24 legislative language through on our last tire bill, we
25 were -- it seemed to me that that would make sense and if

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



1 the executive director or somebody decided which hearings
2 we should hear, which ones we shouldn't, so that the Board
3 Members weren't picking and choosing, so that it was not
4 predisposed, so that there was an arm's length distance
5 between the actual issue and coming in front of this
6 Board.
7 I think that would satisfy me. That was one of
8 the things we'd talked about. But we have to figure out
9 our mechanism, so that we're not picking and choosing the
10 cases that come forward, because it's going to be -- be's
11 going to be an appearance that they could be -- that we
12 might be -- be have made up our mind before we actually
13 heard the item. So that we'd have to be able to have a
14 mechanism in place that -- where we weren't in control of
15 what was coming forward. We'd have to hope that, you
16 know --
17 CHAIRPERSON MOULTON-PATTERSON: Other comments?
18 CHIEF COUNSEL TOBIAS: Madam Chair, I think what
19 we could do is up till this time we have been letting some
20 Board members know when hearings were in their particular
21 areas that they had indicated interest. For example,
22 we've, I think, fairly regularly notified Senator Roberti
23 and yourself about hearings in the Los Angeles area so
24 that -- because of the proximity they're pretty close in
25 letting you know when those occur. We could certainly

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



1 send out a regular, just, listing of the cases that are
2 taking place in any jurisdiction as soon as they're set.
3 And I think that's not a problem.
4 We could also certainly -- we have a report on
5 these cases, we could certainly provide something to the
6 Board members that says what the issue is or what we've
7 asked for in terms of the fines.
8 I do want to point out, though, that to a great
9 extent where the Board has their real legislative
10 discretion is where the penalties are set, and how and
11 what penalties are set for what types of violations.
12 The hearings that take place, because of the
13 nature and not so much of the tire haulers, but of the
14 waste tires, are really, to a great extent, a strict, what
15 we call, strict liability. That's not exactly legally
16 correct, but in the sense of it's a nuisance per se
17 situation.
18 If you have tires on your property, you have
19 violated the law and you are now dealing with a fine.
20 There's no discretion being talked about. It's not a
21 normal nuisance vein, where you talk about the comparison
22 of the nuisance that's maintained on the property,
23 compared to, yeah, the problems that somebody might have
24 if they had to take that nuisance off their property.
25 So where you have a weighing situation with

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



1 nuisance, when you get to the Superior Courts, you don't
2 have that with waste tires. Essentially, if you have
3 tires on the property, you are liable and we are now
4 talking about a fine. So where the Board has its true
5 discretion is how much we ask for in terms of the
6 different fines.
7 You know, we can say for somebody who violates
8 the first time and doesn't have a permit, et cetera, the
9 fine is one amount. If it happens again there's a chronic
10 violator, there's a differential between whether you have
11 a permit and whether you don't have a permit.
12 When the Board basically sets that out, and that
13 really should come back to the Board on a yearly basis,
14 with a report saying how many violations have been handled
15 under each of those types of categories, that's really
16 where the Board has its legislative discretion to say
17 should there be a higher cost, which there is right now,
18 or a higher fine when you have a permit. And if you
19 violate that, we consider that to be a higher, bigger
20 problem, and thus you are charged a higher fine than
21 somebody who doesn't have a permit and who may not have
22 known they needed a permit, although that's hard to
23 believe at this point in time.
24 So that's really where the Board's discretion is.
25 When you get to these hearings, really what the ALJ is

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



1 looking at is did we fairly investigate it and do we have
2 the evidence to look at that. And so that's why we call
3 them evidentiary hearings. There's not a lot, in fact,
4 there's very little discretion to be exercised at that
5 time.
6 And I hope that kind of helps. I don't want
7 to -- I'm not trying to be argumentative. I'm just trying
8 to basically point out the difference, but perhaps that
9 report and a prenotice of the items that are coming up in
10 the different locations would help.
11 BOARD MEMBER JONES: Just one question, Madam
12 Chair?
13 CHAIRPERSON MOULTON-PATTERSON: Okay. Mr. Jones.
14 BOARD MEMBER JONES: Go ahead.
15 CHAIRPERSON MOULTON-PATTERSON: Mr. Paparian, did
16 you have something before Mr. Jones?
17 BOARD MEMBER PAPARIAN: Either way. I just
18 wanted follow up. I think I heard our counsel suggest
19 three things. One, notify us when the hearings are going
20 to be. Secondly, providing us a summary of the issues
21 that are happening in the hearings. And, thirdly, an
22 annual report on, kind of, where we're at --
23 CHIEF COUNSEL TOBIAS: I have that for you.
24 BOARD MEMBER PAPARIAN: -- before actual Board
25 review and possible action. I think all three of those

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



1 would be great. I'd also like to consider revisiting this
2 issue maybe late this year or maybe about a year from now
3 after we have a chance to review this information
4 regularly and possibly also after we have an opportunity
5 to see how the Air Resources Board system is working,
6 whether that's something we would want to adopt here.
7 CHIEF COUNSEL TOBIAS: We could certainly bring
8 it back for next January or December.
9 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.
10 BOARD MEMBER JONES: Madam Chair, just one quick
11 question. We had talked about the range. There was an
12 item that came forward to the Board a year ago, I want to
13 say, year and a half ago, that had ranges in it that was
14 not approved by this Board. So we need to have an agenda
15 item, and if that's the cases, that brings that forward
16 now with explanations as to -- if memory serves those,
17 there was, the ranges were probably appropriate in most
18 situations, but there was a lot of just anecdotal
19 commentary on them without any real definity of facts
20 about the numbers or why we think this was appropriate.
21 So if that could come forward, then I'd go ahead
22 and agree that we'd leave it like it is with the
23 notification of where these hearings are going to be, what
24 they're going to be the annual report.
25 CHIEF COUNSEL TOBIAS: We're actually going to

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



1 give you a report every six months.
2 BOARD MEMBER JONES: That would actually make me
3 feel better. Since we've got that charge in SB 876, I
4 think that we need to know how our enforcement arm is or
5 how the penalty part of that is working out, so every six
6 months.
7 CHIEF COUNSEL TOBIAS: We'd like to see that
8 penalty, what we're calling penalty box, brought back as
9 soon as possible.
10 BOARD MEMBER JONES: I think you need to bring it
11 back in the next couple of months. Whatever works, the
12 next two to three months, however long it takes you to get
13 it together.
14 STAFF COUNSEL WILLIAMS: Actually, I can.
15 BOARD MEMBER PAPARIAN: There were three things.
16 You've got the three things.
17 BOARD MEMBER JONES: Did I hit them all?
18 CHAIRPERSON MOULTON-PATTERSON: And you'll let us
19 know, as soon as you know or as timely as it can be, so we
20 can, if we wanted to attend one, we could make
21 arrangements.
22 CHIEF COUNSEL TOBIAS: I think what we'll try to
23 do is just set up a regular calendar that shows, you know,
24 each of the ones going through. So as soon as we notice
25 it to the respondents, we will notice it to the Board.

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



1 And I think what we can do is try to, you know, after a
2 month or so, you'll see all the names on it, then we'll
3 try to flag on it who's ever near, because there are
4 sometimes going to be people inserted back into, you know,
5 a month that's already got some people into it.
6 CHIEF DEPUTY DIRECTOR FISH: One other thing. I
7 had worked with Board Member Jones on the language
8 relative to allow the Board the option if they decided to
9 sit with the ALJ. If we have the opportunity in either an
10 enforcement related piece of legislation or in cleanup
11 legislation subsequent to the tire program, would the
12 Board like us to proceed with that?
13 BOARD MEMBER JONES: To look at that as an
14 option?
15 I think you ought to put together what it would
16 look like. You know, does that make sense to take a look
17 at it and see what it would look like?
18 Because clearly we're going down a road at the
19 request of six Board members.
20 CHIEF COUNSEL TOBIAS: I would say the legal
21 office would like, you know, a year that Mr. Paparian was
22 talking about, with the ability to look at the Air
23 Board's, since we have got an example right there, you
24 know, before we proceed with something else, but that's
25 our request.

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



1 BOARD MEMBER PAPARIAN: If I heard Ms. Fish
2 correctly, I think what she was suggesting is providing
3 some language that would give us the option should we
4 decide we want to do that at a future date. So it
5 wouldn't be mandatory in legislation, but would give the
6 Board the flexibility so we'd then have to wait another
7 year or two to seek legislation. So I think that's a fine
8 way to do it.
9 BOARD MEMBER JONES: And that was the fourth
10 point of my motion.
11 CHAIRPERSON MOULTON-PATTERSON: Before we vote on
12 this, Mr. Medina.
13 BOARD MEMBER MEDINA: I'd like the suggestions
14 that have been made and I, myself, will be looking at this
15 very carefully, because having sat as a member of the San
16 Francisco Police Commission, where we had oversight over
17 the police department, we also sat as hearing officers in
18 regard to police misconduct cases and police disciplinary
19 cases.
20 And, initially, we heard those cases as a full
21 commission and then later, because of the number of cases
22 that we had, each police commissioner became a hearing
23 officer. And that aspect of our duties overtook anything
24 else that we did as Police Commissioners, because the
25 number of cases tended to fluctuate. We got behind when

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



1 we heard them as a full police commission. And so we
2 broke up into each police commissioner becoming a hearing
3 officer.
4 And as was noted here these hearings are usually
5 a minimum of four hours. And you never know how long a
6 particular case or issue will take place. So I'm going to
7 be looking at this very carefully. I do appreciate the
8 report that the staff prepared for us.
9 CHAIRPERSON MOULTON-PATTERSON: Thank you.
10 BOARD MEMBER EATON: I would just share Mr.
11 Medina's views and I would caution our fellow Board
12 members about proceeding too far with legislative action,
13 given the fact that in 876 one of the reasons for it was
14 to increase the enforcement efforts. So while today we
15 may be hearing 15 or 20, if we do a local grant program
16 and we do a program that steps up enforcement, that will
17 surely go from 15 to probably 70 or 80 in all the
18 different locales.
19 And I don't mind having lunch with an ALJ from
20 time to time as some of us have experienced here. I don't
21 think it's something we want to do full time and take away
22 from our activities. So I would share that pretty soon
23 the problem consumes us and I think there's other ways to
24 handle it, based upon that.
25 But the key would be as how do we handle those

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



1 that are done by a local enforcement agency as well that
2 would have to be worked into it, was to that program which
3 we haven't done right now. But I guess we could do a
4 traveling road show, if we had enough tires.
5 CHAIRPERSON MOULTON-PATTERSON: Okay. So we have
6 your motion on the floor, Mr. Jones, seconded by Mr.
7 Paparian.
8 Please call the roll.
9 SECRETARY VILLA: Eaton?
10 BOARD MEMBER EATON: Do we have motion or is it
11 direction?
12 CHAIRPERSON MOULTON-PATTERSON: Well, do you want
13 it --
14 BOARD MEMBER EATON: I mean I don't know. Is it
15 motion or direction?
16 CHAIRPERSON MOULTON-PATTERSON: I guess it's just
17 direction then. Do you have it?
18 BOARD MEMBER EATON: It doesn't matter to me.
19 CHAIRPERSON MOULTON-PATTERSON: I thought it was
20 option one with the direction, but if we don't need to
21 take a vote, we won't. You have our direction.
22 CHIEF COUNSEL TOBIAS: Yes.
23 CHAIRPERSON MOULTON-PATTERSON: Okay, thanks, Ms.
24 Tobias.
25 BOARD MEMBER EATON: If you want to take a vote,

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



1 that's fine with me.
2 CHAIRPERSON MOULTON-PATTERSON: No, no. That's
3 fine. Okay. Thank you, Ms. Williams. I'm going to ask
4 what my fellow Board members would like. We don't want to
5 go into item 3, there's a number of speakers, before
6 lunch. Do you want to try and do the consent calendar and
7 do DPLA before lunch, so those people can leave or are you
8 ready for lunch?
9 BOARD MEMBER JONES: That's fine with me.
10 CHAIRPERSON MOULTON-PATTERSON: Let's see how far
11 we can go. We're going to not take continued items 3 and
12 4 right now and we're going to go to Item 6, consent
13 agenda. Items number 5, 7, 9, 11, 12, 14, 15, 28 have
14 been placed on the consent agenda. Would any Board member
15 wish to pull any of these items?
16 Mr. Paparian.
17 BOARD MEMBER PAPARIAN: I'd like to pull Item 28
18 off the consent agenda.
19 CHAIRPERSON MOULTON-PATTERSON: Any other?
20 BOARD MEMBER EATON: I'd like to pull items 9, 11
21 and 12 off the consent calendar.
22 CHAIRPERSON MOULTON-PATTERSON: Okay. So that
23 leaves us with consent items number 5, 7, 14, and 15 on
24 consent.
25 BOARD MEMBER JONES: Madam Chair?

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



1 CHAIRPERSON MOULTON-PATTERSON: Yes, Mr. Jones.
2 BOARD MEMBER JONES: I'll move adoption of
3 consent calendar 5, 7, 14 and 15.
4 BOARD MEMBER MEDINA: Second.
5 CHAIRPERSON MOULTON-PATTERSON: Motion by Mr.
6 Jones seconded by Mr. Medina. Please call the roll?
7 SECRETARY VILLA: Eaton?
8 BOARD MEMBER EATON: Aye.
9 SECRETARY VILLA: Jones?
10 BOARD MEMBER JONES: Aye.
11 SECRETARY VILLA: Medina?
12 BOARD MEMBER MEDINA: Aye.
13 SECRETARY VILLA: Paparian?
14 BOARD MEMBER PAPARIAN: Aye.
15 SECRETARY VILLA: Roberti?
16 BOARD MEMBER ROBERTI: Aye.
17 SECRETARY VILLA: Moulton-Patterson?
18 CHAIRPERSON MOULTON-PATTERSON: Aye.
19 Could we have Mr. Schiavo's group, please and
20 we'll go to item number 6.
21 Mr. Schiavo.
22 DEPUTY DIRECTOR SCHIAVO: Item number 6 will be
23 presented by Tricia Broddrick.
24 MS. BRODDRICK: Good morning. I'm Tricia
25 Broddrick and I'm the manager of the Education Section.

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



1 And agenda item number 6 is related to number 5. Agenda
2 item number 6 is a consideration of approval of contractor
3 for the development of a web site. And this particular
4 contract would be sent to the Department of General
5 Services as a sole-source agreement.
6 It is a contract with the California Science
7 Teacher's Association. And the scope of work would
8 require teacher writers, curriculum writers who are
9 affiliated with the California Science Teacher's
10 Association to draft a couple of units targeting middle
11 school students in science.
12 And the focus behind these particular units is to
13 develop technical case studies on environmental issues.
14 In this case it would be, of course, integrated waste
15 management. That would relate to some sort of literary
16 works of a technical background.
17 What we bring to this partnership is the fact
18 that the California Science Teacher's Association is
19 looking for specific technical documents that would have
20 visual organizers such as graphs and charts, the types of
21 materials that typically our middle school students do not
22 work with and that the Science Association has targeted as
23 a deficiency or a gap.
24 What we bring to this group then would be the
25 technical expertise, so it would be a model partnership of

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



1 an educational nature, developing case studies in a
2 partnership and would be bringing these case studies on to
3 the web so they could be down loaded by middle school
4 science teachers and would be used by the students in
5 actually being able to use these technical documentations
6 to do research and to come up with some sort of solutions
7 to some major integrated waste management problems.
8 So the staff, for this reason, recommends
9 approval of Resolution Number 2001-11.
10 If you have any questions on this item, I'd be
11 happy to answer them.
12 CHAIRPERSON MOULTON-PATTERSON: Thank you, Ms.
13 Broddrick.
14 Any questions?
15 Okay, I'll certainly move approval of Resolution
16 20001-11, consideration of approval of contractor for the
17 development of a web site and environmental education unit
18 contract.
19 BOARD MEMBER MEDINA: Second.
20 CHAIRPERSON MOULTON-PATTERSON: Moved by
21 Moulton-Patterson, seconded by Mr. Medina.
22 Please call the roll.
23 SECRETARY VILLA: Eaton?
24 BOARD MEMBER EATON: Aye.
25 SECRETARY VILLA: Jones?

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



1 BOARD MEMBER JONES: Aye.
2 SECRETARY VILLA: Medina?
3 BOARD MEMBER MEDINA: Aye.
4 SECRETARY VILLA: Paparian?
5 BOARD MEMBER PAPARIAN: Aye.
6 SECRETARY VILLA: Roberti?
7 BOARD MEMBER ROBERTI: Aye.
8 SECRETARY VILLA: Moulton-Patterson?
9 CHAIRPERSON MOULTON-PATTERSON: Aye.
10 Item number 8.
11 MS. BRODDRICK: Okay, number 8 is also associated
12 with our education program.
13 Item 8 relates to Item number 7, which is scope
14 of work. And Item number 8 would be the approval for
15 contractor for the Earth Resources Curriculum Training
16 Program. This is to market our high school curriculum,
17 which is targeting used oil. This is, I think, just a
18 model opportunity for -- and a wonderful opportunity for
19 the Waste Board to promote its program.
20 The K-12 Alliance would be the contractor. K-12
21 Alliance is funded by the National Science Foundation.
22 They are affiliated with WestED laboratories, which is a
23 federal regional education laboratory that is associated
24 with the United States Department of Education.
25 K-12 Alliance is responsible for science reform

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



1 in California. They're taking what they call an
2 integrated science approach. They're trying to blend
3 life, physical and earth sciences. And as it turns out
4 our curriculum, Earth Resources is an integrated science
5 program.
6 So it's a perfect model partnership. It helps
7 the K-12 Alliance to achieve its goals. And then it helps
8 us to achieve our goals which is to market our education
9 program throughout the State. In addition, K-12 Alliance
10 is broken down into a network. They have regional
11 directors in 11 different regions around the State.
12 And these regional directors have a cadre of
13 trained facilitators who are mentor teachers and actually
14 goes out to the schools and trains the teachers in their
15 programs.
16 So through this contract what we would achieve is
17 the training of 54 trainers statewide. And each one of
18 these trainers then would, in turn, be responsible for
19 conducting workshops on Earth Resources in their regions.
20 So for this reason, staff approves -- recommends
21 approval of Resolution Number 2001-12. And if you have
22 any questions on this one, I would be happy to answer
23 them.
24 CHAIRPERSON MOULTON-PATTERSON: Any questions?
25 Mr. Paparian.

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



1 BOARD MEMBER PAPARIAN: I'll just say what I said
2 in the briefings, so it's on the record. I think it's
3 going to be important to look at the information that is
4 gleaned from the focus group information that the rest of
5 the oil program is working on, so that we can consider
6 targeting some of the schools in the areas where the
7 demographics match the demographics of our target audience
8 and develop elsewhere in the oil program.
9 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you.
10 MS. BRODDRICK: That would be fine.
11 CHAIRPERSON MOULTON-PATTERSON: Do you wish to
12 make a motion.
13 BOARD MEMBER PAPARIAN: I'll move adoption of
14 Resolution 2001-12, approval of Contractor for the Earth
15 Resources Curriculum Training Program contract.
16 CHAIRPERSON MOULTON-PATTERSON: Thank you. I'll
17 second that. A motion by Mr. Paparian, seconded by
18 Moulton-Patterson to approve Resolution 2001-12.
19 Please call the roll.
20 Substitute the previous roll call without
21 objection.
22 Okay, number 9.
23 DEPUTY DIRECTOR SCHIAVO: Okay. Item number 9
24 will be presented by Gregory Dick, staff of the Office of
25 Local Assistance.

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



1 MR. DICK: Good morning Madam Chair, members of
2 the Board. Again Greg Dick, Office of Local Assistance.
3 Number 9 includes a request from the consolidated Waste
4 Management Authority of Tulare County to change their base
5 year to 1997. Diversion in this request was calculated
6 from data from waste slips from the haulers, from material
7 recovery facility, the compost facility, Division of
8 Recycling reports and as well as commercial sector
9 generators using phone and mail questionnaires, as well as
10 site visits.
11 No extrapolation was used to calculate diversion.
12 And the amount of source reduction is less than six
13 percent of generation. This request is well documented
14 and generally consistent with Board standards for
15 accuracy. Therefore, staff recommends the Board approve
16 this request to change the base year to 1997.
17 Also, staff conducted the 1997/98 biennial
18 authority review for the Authority's source reduction and
19 recycling element and household hazardous waste elements
20 using Board approved processes.
21 The Authority reports the successful implemented
22 source reduction of programs and household hazardous waste
23 collection programs. Therefore, staff recommends the
24 Board accept the 1997/98 biennial review findings for the
25 Consolidated Waste Management Authority.

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



1 This concludes my presentation. Representatives
2 from the Authority are present to answer any questions.
3 CHAIRPERSON MOULTON-PATTERSON: Thank you.
4 Mr. Eaton.
5 BOARD MEMBER EATON: Yes. A couple of questions.
6 As we were going through the material. And of the reasons
7 why I pulled the item was because the Diversion Study
8 Group is working on some of the very issues of which we
9 are now giving credit to. So I was wondering with regard
10 to pallets continue to show up, and while there may not be
11 an extrapolation, I'm very much interested in, for
12 instance, on page 9-21 the chart, The Top 10 Businesses,
13 where we have retail general merchandise stores, we have
14 pallets again and toner cartridges making up 4,004 tons.
15 Now I know toner cartridges weigh a lot, but I
16 don't think they way 4,004, so do we have a policy with
17 regard to pallets or are we allowing pallets. I thought
18 that was going to be the subject of the diversion study
19 group to come back and make some recommendation and yet
20 we're presented with the jurisdiction that is including it
21 in, and if so how is it broken out?
22 DEPUTY DIRECTOR SCHIAVO: Yeah, the use of
23 pallets was calculated on a one per one basis. We felt
24 that we would leave it because it was a very conservative
25 approach. Some of the things --

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



BOARD MEMBER EATON: Where is that, the one to one?

DEPUTY DIRECTOR SCHIAVO: Knowledge from conversations with the contractor.

Is Mark --

BOARD MEMBER EATON: Well, while he's coming up, some of the explanations you have. We have included 765 tons of wood and 149 tons of other recycling from the county landfills. Part of the wood was sent to a biomass facility. Where did the other part of the wood go?

CHAIRPERSON MOULTON-PATTERSON: Mr. White.

MR. WHITE: Mark White, Pacific Waste Consulting Group. We worked out of the diversion studies of the cities, with the exception of the Porterville study and the Porterville representative is here for those questions.

The wood in that situation was separated to the county's landfill. A portion of it went back to a mulching project. The larger portion went to the biomass facility.

BOARD MEMBER EATON: And what was the mulching project for each of the cities?

MR. WHITE: For each of the cities?

BOARD MEMBER EATON: Well, You say for each of the cities at least, you have that kind of explanation.

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



1 In one part you count it as 3071 tons of wood. How much
2 of that went to mulching and how much of it went to the
3 biomass for the city of Visalia?
4 MR. WHITE: This is the City of Visalia.
5 BOARD MEMBER EATON: See, my point is as you go
6 through the chart, you look here, the diversion program,
7 while it's nice to say that it's only six percent of
8 generation. If you look through and you look in the City
9 of Tulare, City recycling only amounted to 1,162 tons of
10 diversion. And yet source reduction amounts to 31,494
11 tons.
12 So they must have a pretty extensive program for
13 source reduction. Even so, the last time I was down there
14 and I'm down there quite a bit, it's pretty much
15 agricultural, it even far exceeds the fruit culls. So
16 what businesses are generating this kind of source
17 reduction.
18 MR. WHITE: Well, let me back up to the first
19 question you had with respect to Visalia's wood. In that
20 situation, the way we entered the wood into the chart is
21 we, frankly, don't agree with the fact that the wood that
22 goes to a biomass facility isn't disposal or diversion.
23 So we included it on the chart, and then we separated --
24 or we subtracted it out entirely.
25 So that material we had, as I recall now that

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



1 you've asked the question, we had some trouble with the
2 county trying to identify exactly how much we could count
3 that didn't go to a biomass facility, so we subtracted it.
4 We didn't try to count any of it.
5 In the case of Tulare, they have a lot of things
6 going on there in their businesses. They have some pretty
7 good sized businesses. And I don't have the breakdown
8 right in front me of the source reduction from Tulare, but
9 we would have been happy to share that with you. I think
10 I shared it with the staff of where that came from.
11 BOARD MEMBER EATON: Well, that's -- but we
12 ultimately make the decision. And that's part of what I'm
13 trying to get at with the source reduction. As you well
14 know in our study diversion group, it came to light that
15 in the Los Angeles Unified School District, they used to
16 serve their children green beans. And the fact that kids
17 didn't like the green beans and they wouldn't eat them,
18 they stopped serving them. And then that was claimed as
19 credit for source reduction, because they didn't any
20 longer buy green beans.
21 (Laughter.)
22 BOARD MEMBER EATON: And so, I mean, as we go
23 into these little games here, and I'm not singling out the
24 LA Unified School District, because they probably had to
25 substitute some other lousy food for them, but it's that

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



1 kind of game here and we don't have to get there.
2 BOARD MEMBER ROBERTI: You can single them out.
3 It doesn't hurt my feelings.
4 (Laughter.)
5 BOARD MEMBER EATON: But it's that kind of
6 situation here. And I think that, you know, based on what
7 the Chair reported this morning, 42 percent -- none of us
8 have anything to be ashamed of. That's a tremendous
9 amount of activity in ten years without the gamesmanship
10 that's kind of going on, as we know, through our source
11 diversion study group, as what we see, green beans just
12 being one example, and they got a tremendous amount of
13 credit in their source reduction.
14 So as these things start coming up, I want to get
15 an idea of what things are being claimed and how they're
16 being used. And that's simply to help us as well as
17 trying to set some framework. So I know these
18 jurisdictions work very hard. The fruit culls was a very,
19 very important aspect to them. They have a very, very
20 important community activity with the food banks down
21 there. But some of these tonnages are tremendous amounts
22 of tonnage.
23 MR. WHITE: I think maybe there's an error in the
24 way I've been reading the report perhaps. The source
25 reduction you mentioned, that 30 some thousand tons,

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



1 really is only 8,000. On page 18 of our report for the
2 City of Tulare, we broke it out there at that page into
3 source reduction and into recycling. And the source
4 reduction is significantly smaller than that. And we
5 didn't count green beans, because I don't like them
6 either.
7 BOARD MEMBER EATON: Yeah. But what I have in
8 front of me, and that's all I have to go on, Mr. White, is
9 that 9-15 I've got 31,494 tons versus a city recycling of
10 1,162 in green waste. And green waste, again we're seeing
11 a tremendous amount of diversion based upon source
12 reduction and recycling. And I don't know what that
13 amounts to, because it's not the CND, so the city is about
14 800 tons.
15 MR. WHITE: And I'm sorry to say that with this
16 piece of information and the piece of information that I'm
17 reading from, I'm having a little trouble coordinating
18 them. Okay, well, everyone's stomachs are hungry. Maybe
19 we do it over the lunch and get together since staff has
20 kind of an idea. And I have the same kind of questions
21 when it comes to --
22 CHAIRPERSON MOULTON-PATTERSON: Ten.
23 BOARD MEMBER EATON: Eleven, Capitola.
24 CHAIRPERSON MOULTON-PATTERSON: So, we'll pull --
25 I mean, we'll continue 9 and 11 till after lunch.

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



Do you want to go ahead and start 10 and 13 or just break?

Let's just break for lunch, because you're going to have to come back anyway. We're going to take a lunch break until 1:45 or 2:00.

Well, I have differing opinions here.

Majority rules, 2:00.

(Thereupon a lunch recess was taken.)

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



AFTERNOON SESSION

CHAIRPERSON MOULTON-PATTERSON: I'd like to call the meeting back to order, please.

Mr. Paparian, do you have any ex partes?

BOARD MEMBER PAPARIAN: Just a brief discussion.

CHAIRPERSON MOULTON-PATTERSON: Mr. Medina.

BOARD MEMBER MEDINA: Yvonne Hunter.

CHAIRPERSON MOULTON-PATTERSON: I also Spoke to Yvonne Hunter.

Mr. Jones?

BOARD MEMBER JONES: No.

CHAIRPERSON MOULTON-PATTERSON: Mr. Eaton?

BOARD MEMBER EATON: I just talked to Jim Grecco briefly at the end of the session this morning and also the representative from the community of Porterville whose name I can't remember.

CHAIRPERSON MOULTON-PATTERSON: Thank you. Okay, we were on number 9. And I believe that staff was going to get back to us with some Information.

DEPUTY DIRECTOR SCHIAVO: Yeah. We talked a little bit at lunch and one thing I want to clear up is initially there's discussion of 31,000 source reduction. The actual number is 19,503. The 31,000 represents both recycling and source reduction.

Of the 19,503 tons, about 7,000 tons of that is

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



1 pallets for the -- primarily representing ten major
2 distribution facilities that serve the west coast. And
3 that breaks down to about I think 35,000 pallets per
4 distribution center, which is pretty reasonable.
5 There's about 5,000 tons of grass cycling in the
6 community. Again, this is all the communities, not just
7 one. And then the other, about 7,000, represents some
8 construction demolition debris, office equipment, paper
9 programs. We are also told that the recycling
10 representatives throughout the region were also very
11 proactive in working with their businesses to try to get
12 activities implemented.
13 CHAIRPERSON MOULTON-PATTERSON: Okay.
14 BOARD MEMBER EATON: Could you help me then,
15 because on 9-15, I've got 86 -- I've got 8,640 tons of
16 green waste, which you just said that's a combined figure.
17 And so I've got 31,494 just alone in the City of Tulare on
18 9-15. Then on 9-13, I've got 10,568. And then on 9-11,
19 I've got 1,440 tons and then I've got green waste as a
20 separate category, so what are you combining to get that
21 number? I'm just going by what they submitted here.
22 DEPUTY DIRECTOR SCHIAVO: The green waste would
23 not be considered source reduction. It would be
24 considered composting.
25 BOARD MEMBER EATON: Right, but you just got

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



done saying --

DEPUTY DIRECTOR SCHIAVO: Grass cycling, grass cycling is independent of that.

BOARD MEMBER JONES: As part of the source reduction?

DEPUTY DIRECTOR SCHIAVO: As source reduction.

CHAIRPERSON MOULTON-PATTERSON: We do have a speaker from Tulare County, too. Are you ready to hear from the speaker?

BOARD MEMBER EATON: Absolutely.

CHAIRPERSON MOULTON-PATTERSON: Lori Thomas.

MS. THOMAS: Thank you. Good afternoon. My name is Lori Thomas. I'm the staff member for the Consolidated Waste Management Authority. I'm also the recycling coordinator for the city of Porterville and I conducted the on-site surveys for the City of Porterville to support our base year revision request.

First of all, I'd really like to thank our local assistance staff members Greg Dick, Rebecca Brown, back to Diane Shimizu and Heidi Sanborn when they came in and worked very closely with us, also Cara and Pat. We've appreciated the support we get from them. We enjoy working very closely with them and the relationship that we have with them.

I'd also like to make note of the fact that the

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



1 Consolidated Waste Management Authority feels that it's
2 important to be very proactive in our AB 939 programs. We
3 work closely with the Board. Each of the jurisdictions
4 have entered into voluntary assistance plans with our
5 local assistance staff members, and have met every
6 requirement of those plans, including consolidating into a
7 region.
8 We also attend workshops whenever available and
9 we're very aware of the Board's concerns about diversion
10 study guides and the potential for misuse of that tool
11 where we were very conservative in conducting our surveys
12 with that in mind and knowing what the Board was concerned
13 with.
14 We have no extrapolation. As far as source
15 reduction, again, I personally handled the on-site visits
16 and I was very careful and aware of what could be counted
17 versus pulling numbers out of the air. And if I couldn't
18 support a number, I didn't use that number.
19 We also were very committed as an agency to
20 continuing programs to implement further programs. This
21 is not a substitute for any kind of program
22 implementation. It's important to note that this is a
23 1997 base year. And since 1997, each of the cities in the
24 agency has implemented additional residential and curbside
25 programs and we continue to implement those programs,

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



especially as an agency. We work cooperatively with the Conservation Corps in our area to implement programs.

We work with State agencies within our jurisdictions to implement new recycling and reuse programs. We've applied as an agency for grant funds to implement new programs. We have a very unique situation in that we are in a rural area. We have high unemployment. The per capita income is not very high so that gives us really large challenges in dealing with waste reduction issues, but we're proud of the fact that our pounds per person per day is right at the State average. We work very hard on our programs and we've worked very hard on this study to make sure that it is fair and accurate to all of us.

We do understand and agree that there can be situations where jurisdictions do abuse this tool. However, we don't want to be painted with the same brush as jurisdictions who do that. We're very proud of our programs and the implementation of them.

Thank you.

Any questions?

CHAIRPERSON MOULTON-PATTERSON: Mr. Jones. In every one of the reports it says that there aren't going to be any programs left off and we're going to continue. And you can take a message back to those folks when they

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



1 were arguing about the fruit cull, and just what that
2 would bebe I think there was representatives from every
3 city in that region here, when we said that the fruit
4 culls were not going to get them the 50 percent they need
5 to do the program. And they have and I appreciate that.
6 And I think, I'm not going to speak for any other
7 member, but I think that the discussion is really a good
8 discussion because it's taking us in a path that has
9 confounded a lot of us when we look at these reports from
10 the dais and we can't see how -- what part of source
11 reduction is grass cycling, where there's golf courses,
12 where there are other activities, big school grounds. How
13 much is pallets? How did you come up with the pallets?
14 That's part of the stuff that we're working on in the
15 working group to try to, in the cert form, give us a
16 description, not the detail. I mean, not lengthy, but
17 details so that we can have these.
18 These are real concerns that Mr. Eaton is talking
19 about and other Board members are worried about as to how
20 did we get to this number. And that's one of the big
21 things that's going to come out of the new diversion
22 guide, I think, is a real explanation of how this
23 information gets to us.
24 Because while you may discuss it with staff all
25 day long, we're on the hook to make that decision. But I

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



do want you to take back that I appreciated the programs that are being done, because that was the spirit that we approved the last one.

MS. THOMAS: Thank you.

Any other questions?

CHAIRPERSON MOULTON-PATTERSON: That's it for now.

Thank you.

CHAIRPERSON MOULTON-PATTERSON: Okay. Any other comments, Mr. Eaton or --

BOARD MEMBER EATON: No, I'm just trying to figure out when I add up source reduction recycling off of the worksheets that were handed in by the jurisdictions, I come up with far more than 19,530 or 47,792. If you added those two figures, you'll come up with 67,000. I'm up into the seventies or eighties. So what are we leaving out here from our staff.

MS. MORGAN: I'm not sure, Mr. Eaton, if we can answer your question, but we think part of the confusion is on the certification form. The tonnages that are there are source reduction and recycling combined. So if you look, for example, on page 9-17, that 23,071 is source reduction and recycling tonnages.

What we did is prepared a separate spreadsheet which is what you see on 9-22, which broke out those

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



tonnages so that you can clearly see what was source reduction versus recycling.

BOARD MEMBER EATON: Include business recycling on the form, right, and you include that as part of pallets as well?

MS. MORGAN: That's correct.

BOARD MEMBER EATON: So is that source reduction?

MS. MORGAN: The pallets, the tonnages listed under business source reduction.

BOARD MEMBER EATON: But your -- what are they doing with the -- when you put it under business recycling, what are they doing with the pallets?

MS. MORGAN: If there was any pallets, under business recycling, which when we looked at the spreadsheets submitted by the consultant, I don't believe that pallets were listed under business recycling. All the pallets showed up under source reduction. The pallets were being reused, repaired and refurbished. If any pallets were chipped or mulched that was showing up under composting.

BOARD MEMBER EATON: Well, on 9-20 you have pallets under business recycling, so it does show up.

MS. MORGAN: Yeah, maybe Mark can speak to that.

BOARD MEMBER EATON: That's our write-up. That's not Mark's write-up. That's our staff's. I'm just --

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



what I'm trying to get is information that you guys, as Mr. Jones said, you get what we don't get clarified here. Because I look at sheets and I'm basing my analysis and my questioning on sheets. And then I come here and I see it in a different set of facts and figures then you tell me it's not part of business recycling and yet I look at page 19-20 and it has pallets, and then I look right below it at be source reduction and you've got pallets again.

So there is a distinction. I'm just trying to find out how we're defining stuff.

BOARD MEMBER JONES: And as you were explaining, I think I want to ask a question. Under business source reduction that would be the inventory of pallets and we're giving it a one to one weight. We're not sure how we're going the do that in the future, but right now that's legit. It beats some of them that give 20 times, take 800 pounds of credit for every pallet they get.

Is business recycling those pallets that could not be reused, or being mulched or used as hog fuel or in the composts or something like that? Is that what we're getting, both --

MR. WHITE: We had a small percentage of those pallets that people told us they took over in Tulare County composting or they took out the line ground up. So there was a small component on the street and they were

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



1 recycling. The vast majority of the pallets are source
2 reduction, one to one.
3 BOARD MEMBER JONES: Now, we list citywide
4 programs that show organics, would those things be double
5 counted? If they got taken to a landfill or to a
6 composting facility from a business, and got credit from
7 the business audit, would they also show credit as being
8 the total for the amount of waste that was being composted
9 or mulched?
10 MR. WHITE: No. What we asked the businesses,
11 what do you do that isn't done either by your hauler or
12 by, for example in this case, the county? So we very
13 carefully subdivide those things so that we don't double
14 count.
15 BOARD MEMBER JONES: I got it.
16 BOARD MEMBER EATON: One other question then, and
17 this is probably more appropriate for staff, I notice
18 under business source reduction, we have electronic
19 communications, I assume that means E-mail.
20 MS. MORGAN: Yes.
21 BOARD MEMBER EATON: Well, we have
22 incontrovertible testimony on the paper report about
23 electronic communications that it probably, in all
24 likelihood, generates more paper than less paper. So why
25 are we giving credit or saying that that's part of source

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



1 reduction from a policy standpoint, because we have
2 nothing else other than that report, which is clearly on
3 the record and clearly justified the only study, and now
4 we're putting it as E-mail as somehow source reduction.
5 It sounds like green beans to me.
6 (Laughter.)
7 MS. THOMAS: Can I speak to that? Again as the
8 person who conducted the on-site surveys for the city of
9 Porterville, I was very specific with E-mails. And
10 electronic is not just E-mails, it's new computer systems,
11 it's file accessing, so that they don't have to be
12 printed. It was not printing large volumes of forms, but
13 printing them individually as you needed them and I was
14 very careful and specific to say, in addition to how many
15 E-mails do you send and receive in a day or a week or
16 whatever amount of time, how many of those are you not
17 printing, would you never print and was very specific to
18 exclude the amount that gets sent but printed and creates
19 more.
20 BOARD MEMBER EATON: And what would they tell
21 you?
22 MS. THOMAS: They would give me --
23 BOARD MEMBER EATON: Tons back?
24 MS. THOMAS: No, they would give me a percentage.
25 You know, for example if they sent 50 E-mails in a week

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



1 and they felt that perhaps two percent of those were not
2 printed, then that would be what we'd look at as a sheet
3 of paper versus the 98 percent that were printed. We
4 didn't count those. We completely didn't count them. And
5 we were very specific to do that.
6 Again, the same thing with document imaging.
7 There were many situations where I spoke to businesses
8 that had implemented a program and it looked wonderful on
9 the surface, but when I looked closer at it, I really
10 couldn't find a way that that counted as source reduction,
11 because it wasn't necessarily reducing the amount of
12 paper.
13 BOARD MEMBER EATON: How would you get the
14 tonnage then?
15 MS. THOMAS: A sheet of paper -- a ream of paper
16 equals a certain weight.
17 BOARD MEMBER EATON: And you did it for ten
18 businesses right, 20 businesses?
19 MS. THOMAS: I personally visited more businesses
20 than that.
21 BOARD MEMBER EATON: I know, but for purposes of
22 what you submitted here, we understand that this was only
23 based upon 20 businesses. Maybe I'm mistaken.
24 MS. THOMAS: No, that's not at all the case.
25 BOARD MEMBER EATON: Okay. So how many

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



1 businesses were surveyed then?
2 MR. WHITE: The one I remember best is we
3 surveyed 80 in Visalia. I think about 35 in Dinuba. Some
4 40 or 50 in Tulare and about 15 in Lindsey, which is
5 almost a hundred percent surveyed in Lindsey.
6 The one thing I wanted to comment on, the E-mail,
7 we did have one, Mr. Eaton, that we thought was amazing.
8 It was a distribution center with 4,000 E-mails per day.
9 We calculated that out, six days a week, six tons of paper
10 out of, I think we have 160,000 thousand tons of
11 diversion, why even bother counting it?
12 So I don't know if -- it probably got included in
13 there, but easily could not have been included. We don't
14 even bother for the reason you say, sometimes they're
15 printed, I don't want to waste the time to try to figure
16 it out. Just forget it.
17 MS. THOMAS: I'll finish answering your question.
18 The City of Porterville, we conducted 25 to 30 on-site
19 visits. Again, I agree with Mr. White in that we always
20 ask -- I always ask the E-mail question. I always ask the
21 computer document imaging question, it very rarely
22 amounted to much more than a few pounds.
23 At many businesses that would have a substantial
24 number, it was only a few pounds. We asked the question
25 just to know what was going on so that we had a broader

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



1 idea of what our business community was doing.
2 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina.
3 BOARD MEMBER MEDINA: Madam Chair, I'm prepared
4 to move Resolution 2001-2, consideration of Staff
5 recommendation to change the base year to 1997 for the
6 previously approved source reduction and recycling
7 elements consideration of the 1997/98 biennial review
8 finding for the source reduction and recycling element and
9 household hazardous waste element for the Consolidated
10 Waste Management Authority of Tulare County.
11 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
12 Medina.
13 BOARD MEMBER JONES: Second.
14 CHAIRPERSON MOULTON-PATTERSON: We have a motion
15 by Mr. Medina, seconded by Mr. Jones to approve Resolution
16 2001-2.
17 Please call the roll.
18 SECRETARY VILLA: Eaton?
19 Jones?
20 BOARD MEMBER EATON: As I mentioned before on
21 previous occasions, until such time as we have a parameter
22 set on what constitutes source reduction in that, that
23 these types of activities -- I thought we had an
24 understanding that these wouldn't be brought forward, but
25 apparently that's not the case. So it's now coming

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



1 forward with these jurisdictions, so I will be abstaining
2 from this vote.
3 BOARD MEMBER JONES: Aye.
4 SECRETARY VILLA: Medina?
5 BOARD MEMBER MEDINA: Aye.
6 SECRETARY VILLA: Paparian?
7 BOARD MEMBER PAPARIAN: Aye.
8 SECRETARY VILLA: Roberti?
9 Moulton-Patterson?
10 CHAIRPERSON MOULTON-PATTERSON: Aye.
11 Okay. At this time, Mr. Schiavo, did you wish to
12 bring number 12 forth?
13 DEPUTY DIRECTOR SCHIAVO: Correct.
14 CHAIRPERSON MOULTON-PATTERSON: So we're on Item
15 number 12.
16 DEPUTY DIRECTOR SCHIAVO: And this will be
17 presented by Yasman Satter.
18 MS. SATTER: Good afternoon Chairman and members.
19 My name is Yasmin Satter representing the Office of Local
20 Assistance. Item number 12 is staff recommendation on
21 completion of compliance order and recommendation on 97/98
22 biennial review finding for the source reduction in
23 recycling and household hazardous waste element for the
24 City of East Palo Alto in San Mateo county.
25 Staff had conducted the biennial review for 97

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



1 and 98. And based on that biennial review, the city's
2 diversion rate is measured to be 31 for '97 and 25 percent
3 for '98.
4 Since the city had not implemented several of the
5 key source reduction and recycling programs until 1999,
6 the new program did not impact the diversion rate for '97
7 and '98. Since then, the city has implemented,
8 successfully implemented, and especially the city is
9 targeting C&D programs and the city believes that these
10 new programs will -- the city will continue to make
11 progress to achieve 50 percent diversion mandates based on
12 these new programs.
13 Staff recommendation is the approval of 97/98
14 biennial review findings and recommend the city should be
15 taken off from the compliance order.
16 CHAIRPERSON MOULTON-PATTERSON: Okay.
17 Mr. Eaton.
18 BOARD MEMBER EATON: The reason why I took this
19 off of consent is because I figure if we go through the
20 time and as someone has said make a black mark by putting
21 someone on the compliance order, we ought to have the
22 courtesy then to hear how well they have progressed in an
23 open hearing and not on a consent calendar as regarded to
24 the compliance. I think that's only fair.
25 If we sort of quote unquote maybe put a black

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



mark on the community, then we ought to have enough to hear what they have. I think that the city of East Palo Alto is one of those examples, wherein they have taken it upon themselves in recognizing the waste stream C&D and actually gone beyond most jurisdictions by requiring waste diversion as a condition of approval for a new development.

I think this is real important as we go into the 2202 discussion that we actually understand what communities are doing out there and how hard they've tried. Now, they've probably, the City of East Palo Alto had to do it under some duress because of a compliance order. But when we have jurisdictions who come before us and say you may not be able to do something and not doing something, we can see the communities are out there, once they have the ability to have some assistance and some help, that the compliance order is not the big bad black mark, but rather a helping tool, and that we ought to have the courtesy to actually have them come through and explain how they have done it, so that we can help other jurisdictions and make helpful suggestions.

So that was my intent on basically pulling it off. It was not really that I wasn't going to vote for it, but actually for us to be able to have a discussion as to what kind of constructive things have been done. And I

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



1 think giving them short shrift on the consent calendar is
2 not keeping with what they have been told originally.
3 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
4 Eaton.
5 BOARD MEMBER JONES: Madam Chair.
6 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.
7 BOARD MEMBER JONES: I would like to move
8 adoption of resolution 2001-5, consideration of staff
9 recommendation regarding the successful completion of
10 compliance order IWMA BR99-24, consideration of staff
11 recommendation on the 97/98 biennial review for the SRE
12 and household hazardous elements for the city of East Palo
13 Alto.
14 BOARD MEMBER EATON: I'll second that.
15 CHAIRPERSON MOULTON-PATTERSON: Moved by Mr.
16 Jones, seconded by Mr. Eaton.
17 Please call the roll.
18 SECRETARY VILLA: Eaton?
19 BOARD MEMBER EATON: Aye.
20 SECRETARY VILLA: Jones?
21 BOARD MEMBER JONES: Aye.
22 SECRETARY VILLA: Medina?
23 BOARD MEMBER MEDINA: Aye.
24 SECRETARY VILLA: Paparian?
25 BOARD MEMBER PAPARIAN: Aye.

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



1 SECRETARY VILLA: Roberti?
2 Moulton-Patterson?
3 CHAIRPERSON MOULTON-PATTERSON: Aye.
4 Okay, well go back to item number 10.
5 DEPUTY DIRECTOR SCHIAVO: Out of order there.
6 Item number 10 will be presented by Zane Poulson.
7 MS. POULSON: Good morning Chair and members of
8 the Board. Actually good afternoon, sorry.
9 I'm Zane Poulson with the Office of Local
10 Assistance. On January 27th, 1999 the Board issued the
11 city of Hawthorne a compliance order for failure to
12 satisfactorily implement programs listed in the city
13 source reduction and recycling element. The city of
14 Hawthorne and Board staff and the Office of Local
15 Assistance have worked together to develop an assistance
16 plan and work plan with specific programs and goals to
17 meet the conditions of the compliance order.
18 In a report submitted to the Board on November
19 10th, 2000 the city has reported to the Board that they
20 have successfully met all conditions of the compliance
21 order. Therefore staff recommends the Board end the
22 city's compliance order.
23 In addition, Board staff have concluded their
24 biennial review of the City of Hawthorne's 1997 and 1998
25 annual reports and recommend that the Board accept the

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



1997/1998 biennial review findings. Charles Herbertson from the City of Hawthorne is available if the Board has any questions for the City.

This concludes staff presentation.

Are there any questions for staff?

CHAIRPERSON MOULTON-PATTERSON: Any questions?

Mr. Medina.

BOARD MEMBER MEDINA: I did have a question. What was Hawthorne's diversion rate for the year 2000?

MR. POULSON: We don't have 2000 data yet. For 1999 the default diversion rate hasn't been approved yet, but it was 46 percent.

CHAIRPERSON MOULTON-PATTERSON: Any other questions?

BOARD MEMBER JONES: Madam Chair.

CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.

BOARD MEMBER JONES: The long, long issue of Hawthorne and all of its interested parties, it would be my honor to move Resolution 2001-3, consideration of staff recommendation on the successful completion of the compliance order IWMA BR98-001 and consideration of 97/98 biennial review findings for the SRRE household hazardous waste element for the City of Hawthorne.

CHAIRPERSON MOULTON-PATTERSON: I'll second. Please substitute the previous roll call.

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



1 Okay, number 11, consideration of changing base
2 year 99/97 for Capitola.
3 DEPUTY DIRECTOR SCHIAVO: This item will be
4 presented by Terri Edwards.
5 MS. EDWARDS: Good afternoon, Madam Chair and
6 members of the Board. My name is Terri Edwards
7 representing the Office of Local Assistance. Item 11
8 includes a request from the City of Capitola in Santa Cruz
9 County to change their base year to 1999, recommend
10 biennial review findings and complete the compliance
11 record. No extrapolation was used to calculate diversion
12 and the amount of source reduction was approximately one
13 percent of generation.
14 This request is well documented and is generally
15 consistent with Board standards for accuracy. Therefore,
16 staff recommends the Board approve the request to change
17 the base year to 1999. Also, staff conducted the 1997/98
18 biennial review of the city's source reduction and
19 recycling element and household hazardous element using
20 the Board approved process.
21 The city reports that it has successfully
22 implemented source reduction and recycling programs and
23 household as hazardous waste collection programs.
24 Therefore, staff recommends that the Board accept the
25 1997/98 biennial review findings for the city of Capitola.

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



1 Finally the city has successfully completed all
2 requirements identified in its compliance order.
3 Therefore staff recommends adoption of Resolution number
4 2001-4.
5 This concludes my presentation. A representative
6 for the City is present to answer any questions.
7 CHAIRPERSON MOULTON-PATTERSON: Okay, thank you.
8 BOARD MEMBER EATON: I just have one question
9 that sparked my interest, because it was part of the
10 diversion group study group as well. For diversion,
11 again, we have, going back to material sent back to the
12 company headquarters distribution center or to another
13 party and that's somehow is source reduction, so I wish
14 that the city representative or consultant could explain
15 to me how when you get material from a company that's
16 franchised and you send it back that that's somehow source
17 reduction.
18 MR. WHITE: Mark White. I have to find that
19 spot.
20 BOARD MEMBER EATON: 11-14 of the last sentence.
21 MR. WHITE: Then I'll have to chase it back to
22 the number. Terri, do you have --
23 BOARD MEMBER EATON: The company identified the
24 material that was sent to be diverted or sent to one of
25 the recyclers listed in the study. It was not counted.

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



1 Most often the material was sent back to the company
2 headquarters or the distribution center or to another
3 party. Remember that's a loop about like pallets or other
4 material that when you have the larger chain stores and
5 they send material out, they were counting material that
6 was sent back either because it didn't sell or it was
7 damaged or whatnot, and creative individuals are using
8 that as source reduction. Is that what's happening here?
9 MR. WHITE: Mr. Eaton, I do not have a direct
10 recollection of the specific item that we're talking
11 about, unfortunately. I'm sorry that I cannot answer your
12 question.
13 BOARD MEMBER EATON: Perhaps staff can, they
14 worked it up.
15 CHAIRPERSON MOULTON-PATTERSON: While we're
16 waiting, Senator Roberti, do you have any ex partes?
17 BOARD MEMBER ROBERTI: No.
18 CHAIRPERSON MOULTON-PATTERSON: Please let the
19 record reflect that.
20 MS. WILLMON: Mr. Eaton, in reviewing all of the
21 different source reduction and business recycling
22 components that were in here, we were referring to the
23 foodbanks where the food was either sent back to a
24 distribution center and used in a food bank or it was --
25 well, actually it was food donations or food banks, which

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



in that aspect would be the distribution center where it would go to, something similar to loaves and fishes not necessarily Loaves and Fishes, but in that jurisdiction it would be something similar to that.

BOARD MEMBER EATON: Where would that show up on the worksheet that was submitted by the consultants?

MR. WHITE: I believe that was probably in one of the restaurants.

BOARD MEMBER EATON: I know we have weight tickets on rubber. I'm trying to figure out what came into the survey, because again as we look at Sheet 11-10 and we look at the diversion programs, we show that commercial and residential programs of the diversion accounted for 1,239 tons. And when we get to business, that's all it says, business and location of data consultant, we have 4,438. We're roughly, you know, four times the amount.

MS. WILLMON: On page 11-16, you have a listing of all the different businesses where the commercial source reduction and recycle was taken from. If you go down the SIC group number, you will have food store and I'm sorry that they're not identified better, but that was due to proprietary information, SIC code 27 is a food store. They have some food donations and reuse. Also the general merchandising, for example, has 35.9 tons.

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



1 Actually, I'm sorry, that wasn't general
2 merchandise. It was the food store again.
3 BOARD MEMBER EATON: Thirty-seven or 27?
4 MS. WILLMON: It's SIC Code 27, which the
5 category is a food store. You can look over --
6 BOARD MEMBER EATON: And I have .01 for total
7 recycling, total diversion 0.1. And then I have 117.19.
8 And I only have one, two, three, four of those SIC codes.
9 That doesn't seem to add up to 4,400.
10 MS. WILLMON: No, it doesn't. And I would have
11 to say that the statement in the staff's analysis was just
12 one example of all of the different -- we didn't list
13 every single thing in the staff analysis.
14 If you'll look on the opposite page --
15 BOARD MEMBER EATON: You know what I'm trying to
16 get at. It seems to me then when you take that amount,
17 and I can't find the backup material, you know, what was
18 submitted by the consultants or what's in the staff, it's
19 either got to be extrapolated, which I'm told, at least
20 that it wasn't.
21 So I'm trying to find out where it is, because
22 there's got to be some backup data for when we make a vote
23 on these items that we have, so that we can make an
24 informed decision. So I'm just trying the figure out is
25 it the process? I'm not trying to be critical of you.

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



1 I'm just trying to figure out each one of these as it
2 comes at us like, you know -- it's like we're going from
3 the American League to the National league in the way of
4 pitching, you know, they always have different strike
5 zones.
6 MS. WILLMON: You know what, also on this page
7 the end of it got cut off and so the opposite side is the
8 rest of the column, which I think would probably, if it
9 were matched up, on page 11-17 -- for the record my name
10 is Tabetha Willmon. I'm with the Office of Local
11 Assistance.
12 So on the following page it does list that it is
13 food donation and reuse. It should have been on the one
14 page. And as you can tell, we did try and make it as
15 small as possible to the point where it's hard to read,
16 but we ended up having to put it on the next page.
17 BOARD MEMBER EATON: I know that wasn't
18 malicious. Madam Chair, I've taken enough time. You know
19 how I feel, so I'm -- I know Capitola does have a good
20 Recycling program, but I just thought that this is being
21 presented -- I don't have any backup in terms of what was
22 being presented.
23 MR. WHITE: We do not extrapolate anything.
24 CHAIRPERSON MOULTON-PATTERSON: Thank you.
25 Okay Mr. Paparian, you had a question.

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



1 BOARD MEMBER PAPARIAN: Just a quick item. I
2 noticed on this one that staff did include the pounds
3 generated per person per day in the community. I wanted
4 to compliment you on that. I appreciate that information.
5 I hope that on some of the things in the future, we can
6 see that kind of breakdown. It helps me to kind of put in
7 perspective what their generation is and if it's at all
8 possible to do that with per person recycling as it will
9 at some point be possible to.
10 Thanks.
11 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina.
12 BOARD MEMBER MEDINA: Madam Chair, again Board
13 members, Mr. Eaton's questions were all well taken and I
14 want to continue to look into that. I would, at this
15 time, like to move Resolution 2001-4, staff recommendation
16 to change the base year to 1999 for the previously
17 approved source reduction and recycling element in
18 consideration of the 97/98 biennial review findings for
19 the source reduction and recycling element of the
20 household hazardous waste element, and consideration of
21 completion of compliance order IWMA BR99-37 for the city
22 of Capitola, Santa Cruz County.
23 BOARD MEMBER JONES: I'll second.
24 CHAIRPERSON MOULTON-PATTERSON: Motion by Mr.
25 Medina, seconded by Mr. Jones.

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



1 Call the roll.
2 SECRETARY VILLA: Eaton?
3 JONES?
4 BOARD MEMBER JONES: Aye.
5 SECRETARY VILLA: Medina?
6 BOARD MEMBER MEDINA: Aye.
7 SECRETARY VILLA: Paparian?
8 BOARD MEMBER PAPARIAN: Aye.
9 SECRETARY VILLA: Roberti?
10 BOARD MEMBER ROBERTI: --
11 Moulton-Patterson?
12 CHAIRPERSON MOULTON-PATTERSON: Aye.
13 Agenda Item number 13, Consideration of
14 Procedures for Annual Reports and Proposed Compliance
15 Orders, SB 2202.
16 DEPUTY DIRECTOR SCHIAVO: SB 2202 includes a lot
17 of language that proposes potential changes to SB 939 --
18 AB 939, sorry, I'm tired. It includes language that
19 maintains the 50 percent goal essentially forever, at this
20 point in time, where before it would have terminated at
21 the year 2000 or after the SB 1066 program would have
22 terminated. It includes language that requires the Board
23 to develop a study for the Legislature that's due January
24 1st, 2002.
25 And as such, the Board staff is going to be

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



1 conducting some initial workshops, one in Sacramento on
2 the 25th of this month and then another one in Diamond Bar
3 in Southern California on the 31st of the month. And
4 we'll be giving the Board updates as we progress through
5 that process.
6 In addition, SB 2202 contains language for
7 notifying jurisdictions on the progress and implementing,
8 you know, their biennial review reports and the status of
9 those reports and additional information the Board needs
10 as well as process information regarding the compliance
11 order process itself.
12 And Cara Morgan will go ahead and make the
13 presentation on that.
14 MS. MORGAN: Cara Morgan, Office of Local
15 Assistance. The purpose of this agenda item is for the
16 Board to consider proposed procedures relating to the
17 implementation of SB 2202. PRC Section 41821 was amended
18 to require the Board to develop procedures for requiring
19 additional information from a jurisdiction concerning its
20 annual report.
21 Statute now requires the Board to notify a
22 jurisdiction of any additional information required no
23 later than 120 days after the Board receives the annual
24 report from the jurisdiction.
25 The Board is also required to adopt procedures

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



1 for conferring with a jurisdiction regarding the
2 implementation of the diversion program or changes to a
3 jurisdiction's calculation of its annual disposal
4 reduction rate.
5 Within 120 days upon receiving jurisdictions
6 annual reports, the Board will send written notification
7 to the jurisdictions to indicate receipt and complete of
8 the report, which will include detailed instructions on
9 what additional information or corrected information is
10 needed to complete the review of the annual report. Staff
11 anticipates that there will be a number of jurisdiction
12 specific issues which cannot cease or quickly be resolved.
13 In those cases, staff may need to confer with the
14 jurisdiction regarding the implementation of a diversion
15 program or changes to a jurisdiction's calculation of its
16 annual disposal reduction.
17 In these instances, staff will contact the
18 jurisdiction to schedule a site visit to collaborate with
19 the jurisdiction on providing any necessary technical
20 assistance. Upon completing the initial annual report
21 review, staff will send a final letter discussing the
22 results of the calculation of the jurisdiction's annual
23 disposal reduction rate, as well as the report on program
24 implementation recorded in the Board's Planning Annual
25 Report Information System or PARIS.

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



1 The jurisdiction will be asked to verify and
2 confirm that the information is correct and to respond to
3 staff in a timely manner. The Board is currently also
4 working on improving the annual reporting system to
5 increase efficiency for both staff and jurisdictions. The
6 Board is planning on implementing an on-line filing system
7 for annual reports for the year 2000, which we believe
8 will significantly reduce both staff and jurisdiction's
9 time spent on developing the annual report.
10 These procedures are intended to ensure timely
11 review and response to each jurisdiction that submits its
12 required annual report to the Board. By receiving a
13 timely response from the Board to an annual report, a
14 jurisdiction will be able to address any issues and have
15 adequate opportunity to request assistance from the Board
16 prior to the Board's completion of the corresponding
17 biennial review.
18 SB 2202 also amended PRC Section 41825 by
19 requiring the Board to confer with the jurisdiction
20 regarding conditions relating to a proposed order of
21 consent with the first meeting occurring not less than 60
22 days before issuing a notice of intent to issue an order
23 of compliance and to issue a notice of intent to issue an
24 order of compliance not less than 30 days before the Board
25 holds a hearing to issue that notice.

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



1 In response to these new statutory mandates, the
2 proposed procedures for issuing a compliance order will
3 address the initial communication with each jurisdiction
4 to identify issues and the notice of intent to issue that
5 compliance order.
6 If after conducting a biennial review, staff
7 determines a jurisdiction has not made adequate progress
8 in implementing its SRRE and HHWE, staff will send a
9 letter to the jurisdiction identifying specific
10 deficiencies regarding the jurisdiction's implementation
11 of their plan. Staff will include in the letter a request
12 to meet with the jurisdiction to discuss conditions
13 relating to a proposed Order of Compliance and to identify
14 potential solutions.
15 The purpose of the meeting with the jurisdiction
16 will also be to identify any need for technical assistance
17 and to identify and agree upon the time needed by the
18 jurisdiction to address the deficiency.
19 Staff will work collaboratively with the
20 jurisdiction to provide needed technical assistance and
21 will monitor the jurisdiction's progress in addressing the
22 deficiency. That first meeting with the jurisdiction
23 shall occur not less than 60 days before issuing a Notice
24 of Intent.
25 If after the meeting with the jurisdiction, staff

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



still believes that an Order of Compliance is necessary, a letter will be sent at least 30 days prior to the Board meeting to notify the noncomplying jurisdiction of the Board's intent to issue a compliance order.

Staff is proposing that the Notice of Intent contain several Components. First of all, the Notice of Intent will include proposed actions that Board staff recommends as necessary for the jurisdiction to complete or implement their plan, and it will also include the proposed staff recommendations to the Board. It will also include the Board's staff person contact information so that the jurisdiction can contact Board staff to resolve any deficiencies prior the Board meeting.

The notice will also request the jurisdiction to identify any need for technical assistance and the steps that they can do to resolve any outstanding issues. There will also be included basic information which will be information about the right of the jurisdiction to appear at the hearing and to submit information into the record.

Also included, will be the opportunity for the jurisdiction to provide an explanation as to why the jurisdiction thinks the compliance order is not merited, and steps that the jurisdiction will take to resolve the issue.

Staff is proposing to serve the Notice of Intent

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



1 upon the Mayor or the Chairman of the Board of Supervisors
2 for the noncomplying jurisdiction. Also, the Integrated
3 Waste Management program staff contact for the
4 jurisdiction will receive a copy of the Notice of Intent.
5 Regarding fulfilling the compliance order, upon
6 issuance of a compliance order, staff will continue to
7 work closely with the jurisdiction to assist them in
8 coming into compliance. Continuing the stepwise approach
9 for compliance demonstrates the Board's commitment to
10 supporting compliance with the Integrated Waste Management
11 Act.
12 Staff is recommending the Board approve the
13 proposed procedures. And in conclusion, I would like to
14 say that in developing these procedures we did seek
15 feedback from local jurisdictions and also the League of
16 Cities.
17 That concludes staff's presentation.
18 CHAIRPERSON MOULTON-PATTERSON: Thank you. Any
19 questions before our speakers?
20 Yvonne Hunter.
21 MS. HUNTER: Madam Chair and members, Yvonne
22 Hunter with the League of California Cities. We were the
23 sponsor of SB 2202. We want to thank the Board members
24 for dealing with this issue so quickly, and implementing
25 it.

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



1 I did work with Board staff to tinker with their
2 draft proposals so that they were clear and reflected the
3 spirit and the intent of the law. I think they did a
4 great job and I'm just here to say thank you.
5 CHAIRPERSON MOULTON-PATTERSON: Thank you, Ms.
6 Hunter.
7 Mike Mohajer.
8 MR. MOHAJER: Good afternoon, Madam Chair. My
9 name is Mike Mohajer and I'm representing the Los Angeles
10 County Integrated Waste Management Task Force.
11 I'd also like, as Yvonne mentioned, I want to
12 thank the staff for putting the report together, but one
13 item I was not, as far as seeking input from the local
14 government, I wasn't -- I did not know anybody that is
15 involved with our task force and myself being contacted
16 about putting the proposed procedures together.
17 I basically have the three items that I'd like to
18 discuss. The first one of them goes back to the intent of
19 the -- and the justification and the reasoning for why the
20 120 days was placed into the law. If you would recall for
21 some of the previous Board members, the annual report for
22 1995 was -- really didn't get reviewed till '97 and part
23 of '98. And that developed a difficulty for the city and
24 the county where the staff -- raised for the staff because
25 of certain information which was too late and we could not

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



1 prepare those records because of it being such a late
2 date.
3 So this legislation, that's why we're here
4 specifically. Now, it says that the Board shall adopt
5 procedures for requiring additional information in a
6 jurisdiction's annual report. It shall require the Board
7 to notify a jurisdiction of any additional required
8 information, any additional required information no later
9 than 120 days after the Board receives the report.
10 This is the specific language of the law that I
11 am reading, that's for 41821E. But the staff report on
12 page 13-3, the first paragraph under proposed procedures,
13 the first sentence reads, "Within 120 days upon receiving
14 the jurisdiction's annual report, the Board shall send
15 written notification to the jurisdictions to indicate
16 receipt and completeness of the report."
17 This is where our local task force had a
18 difficulty to understand. Now, Ms. Morgan, as a part of
19 her presentation, she specifically indicated that this
20 notice will include detailed analysis and additional
21 information that is required. That is not in this, but if
22 the record shows that that's what the intent is, and it
23 will be included then that issue will be resolved.
24 There's no problem with that.
25 The second item that I want to discuss, it goes

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



1 into the -- on page 13-4 under the item Notice of Intent
2 to issue a compliance order. Now, legislation is
3 required. This is a new paragraph under the SB 2202, and
4 that's Section 41825 small c, capital C parenthesis 3.
5 This says, "Before the Board issues a Notice of Order of
6 Compliance, the Board shall consider any information
7 provided pursuant to subdivision C of section 41821 with
8 the proposed assurance of an Order of Compliance involving
9 changes to a jurisdiction of annual disposal reduction."
10 And if you go back to that Section 41821C, it has
11 a list of the additional items that the jurisdiction may
12 provide to the Board. And now this particular subsection
13 that I was referring, I just read, requires the Board to
14 consider those items as a part of their consideration
15 prior to the issuance of the Compliance Order.
16 So I would like to see that they add a staff
17 report as a part of their review and discussion with the
18 city or the county that it is going to be placed under a
19 Notice of Compliance to also consider those. So that was
20 the second item.
21 The third item, when we make a reference
22 notifying the Board of Supervisors the Chair of the Board
23 of Supervisors or the City Mayor is applicable and also
24 the Staff, I would expand one more person to be listed,
25 and that would be the City Managers or the Chief

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



1 Administrative Officer of the appropriate counties as it
2 may be.
3 So with that mention, I would appreciate it if
4 you would consider the promise of a task force and the
5 letter from the task force provided. You should have a
6 copy that was provided a little while ago.
7 I'll be more than happy to answer questions,
8 otherwise I'll go back to my seat.
9 CHAIRPERSON MOULTON-PATTERSON: I just have one
10 question just for clarification. So you want in addition
11 to each Mayor, you want the City Manager also?
12 MR. MOHAJER: Right, because, for example, I'm
13 just looking in Los Angeles County, you sent a notice to
14 the Chair of the Board of Supervisors. In this case now
15 he is the Mayor of the Board of Supervisors. It's, by the
16 time it goes through the chain of command, if it ever
17 makes it, it really doesn't get that far.
18 So it would be Chief Administrative Officer would
19 be like executive director of your Board. It really --
20 this is the bureaucrat that makes the movement -- so I'm
21 just adding in addition to add that person also, so it
22 would be in charge. Any comments from staff?
23 DEPUTY DIRECTOR SCHIAVO: Yeah, that would be
24 fine.
25 CHAIRPERSON MOULTON-PATTERSON: I don't think we

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



1 have any problems with your suggestions.
2 Okay. Any comments from Board members?
3 Questions?
4 Motions?
5 BOARD MEMBER JONES: Madam Chair?
6 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.
7 BOARD MEMBER JONES: I will move adoption of
8 Resolution 2001-7, consideration of procedures for annual
9 reports and proposed compliance orders SB 2202 to include
10 adding in City Managers and add officers. I think that
11 was the only addition, right.
12 CHAIRPERSON MOULTON-PATTERSON: Okay.
13 BOARD MEMBER MEDINA: Second.
14 CHAIRPERSON MOULTON-PATTERSON: Motion by Mr.
15 Jones, seconded by bid Mr. Medina.
16 Please call the roll.
17 SECRETARY VILLA: Eaton?
18 BOARD MEMBER EATON: Aye.
19 SECRETARY VILLA: Jones?
20 BOARD MEMBER JONES: Aye.
21 SECRETARY VILLA: Medina?
22 BOARD MEMBER MEDINA: Aye.
23 SECRETARY VILLA: Paparian?
24 BOARD MEMBER PAPARIAN: Aye.
25 SECRETARY VILLA: Roberti?

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



1 BOARD MEMBER ROBERTI: Aye.
2 SECRETARY VILLA: Moulton-Patterson?
3 CHAIRPERSON MOULTON-PATTERSON: Aye.
4 Thank you.
5 At this time, we'll now go back to our continued
6 items. Number 3, consideration of the revised solid waste
7 facility permit for the Highway 59 disposal site, Merced
8 County.
9 DEPUTY DIRECTOR NAUMAN: Good afternoon, Madam
10 Chair and Board members, Julie Nauman, permitting and
11 enforcement division. You will recall this item was on
12 your agenda at your December 12th meeting and at that time
13 was continued to this meeting. You have, I believe,
14 delivered to you a couple of days ago a revised agenda
15 item. And I believe there are copies in the back for the
16 public.
17 And in that, we've indicated, via strikeout and
18 underlining, changes in the item from what you saw at the
19 December meeting. And maybe the changes is to reflect our
20 receipt of a revised permit on December 11th of last year.
21 With that introduction, I'll turn it over to
22 Jennifer Kiger to make the presentation.
23 MS. KIGER: Item 3 regards the consideration of
24 the revised solid waste facility permit, the Highway 59,
25 just Merced County. With your permission, I'll quickly go

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



through the proposed changes. The Highway 59 disposal site is owned by the county of Merced and operated by Merced County, Department of Public Works. The revised permit is for the operation that will be existing in a class three landfill located on 174.97 acres.

The proposed permit will include the following changes, the addition of 434.73 acres for lateral expansion and construction of a new waste management unit. This will increase the permitted disposal footprint from 115 acres to 255 acres.

The total acreage will increase from 174.97 acres to 609.7 acres. The permit designates a maximum elevation of 36 mean sea level, a maximum elevation. And that's a maximum depth of 175 feet mean sea level for basics of the new expansion area.

The elevation of depth for the existing waste management unit will not change. This represents an increase in design capacity from 6.5 million cubic yards to 30,012,352 cubic yards. The proposed permit will increase the permitted daily tonnage of 900 tons per day to a peak 1,500 tons per day with a maximum daily average not to exceed 900 tons per day based on the monthly average.

An increase in the permitted vehicles from 200 vehicles per day to 554 vehicles and an increase in the

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



1 permit operating hours from 7:00 a.m. to 4:00 p.m., and
2 11:00 p.m. to 7:00 a.m. the following day to 24 hours per
3 day, excluding Thanksgiving, Christmas, New Years day.
4 And the closure date will change from 2010 to 2030.
5 Staff reviewed the proposed permits supporting
6 documentation and have found it meets most of the
7 following requirements listed on page four of this item.
8 First, conformance. Highway 59 disposal site new
9 property boundaries were identified in the Merced County
10 siting element. Therefore the facility is in conformance
11 with PRC 50001 At the time that the item was originally
12 prepared, staff had not analyzed the environmental
13 documentation. Staff has since conducted the analysis,
14 requested clarifying and additional information from the
15 LEA and the operator and you found that the CEQA
16 documentation is adequate.
17 The closure, post-closure maintenance plan has
18 been -- funding for the closure, post-closure maintenance
19 has been found adequate by The Board's Financial
20 Assurance's Section. The county has also demonstrated
21 acceptable evidence of operating liability coverage.
22 At the time that the agenda item was prepared,
23 the adequacy of the report disposal site information was
24 yet to be determined. Staff has since conducted a review,
25 requested additional and clarifying information from the

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



1 LEA and the operator and have now found the RD site
2 complete.
3 Staff conducted a pre-permit inspection of the
4 facility, consistent with the statement of minimum
5 standards, on December 6th, 2000. Staff found one
6 violation of statement of standards, which is Title 27,
7 section 2919.5, explosive gases. Staff was also concerned
8 with an area of inadequate intermediate cover found during
9 the inspection. The operator has since corrected the
10 intermediate cover problem, which was verified --
11 BOARD MEMBER ROBERTI: I just didn't understand.
12 MS. KIGER: It was the concern with an area of
13 intermediate cover.
14 BOARD MEMBER ROBERTI: Intermediate cover, okay.
15 MS. KIGER: The operator has since corrected the
16 intermediate cover problem, which was verified with a
17 follow-up visit to the site by Board staff on December
18 11th, 2000.
19 The facility is currently listed on the inventory
20 for facilities that violate statement of standards for
21 explosive gas violations. The corrective action ordered
22 was issued by the LEA on October 27th, 2000, that states
23 that the landfill must achieve compliance by April 1st,
24 2001.
25 In conclusion, if the Board finds the facility to

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



be consistent with State minimum standards, the Board staff will recommend concurrence and the Adoption of Resolution 2001-29 and the issuance of Solid Waste Facility Permit number 24-AA-0001.

Mr. Jeff Palsgaard representing the Local Enforcement Agency and Mr. Scott Johnston representing the operator are present to answer any questions you may have. That concludes staff presentation.

Do you have any questions?

CHAIRPERSON MOULTON-PATTERSON: Thank you. We have a number of speakers. Any questions from the Board before I begin calling speakers?

Seeing none, Jeff Palsgaard, did you wish to speak or were you just available for questions?

MR. PALSGAARD: Just very briefly. As the Board members are aware, my name is Jeff Palsgaard, Merced County Environmental Health, the LEA for Merced County.

The Court issue with this application is the correction of the explosive gas violation notice that we have given the operator. The operator has chosen to correct the problem by the expansion of landfill gas, the landfill boundaries and the construction of a gas collection system.

The operator has applied to the air pollution control district for the authority to construct for the

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



gas collection system and compliance with all the air quality rules and regulations that the air district regulates the landfill.

The operator has also met the requirements of the US Fish and Wildlife Service for the expansion of the landfill site and has established an area for protection that the US Fish and Wildlife Service has agreed to and reviewed.

BOARD MEMBER ROBERTI: Madam Chair?

CHAIRPERSON MOULTON-PATTERSON: Senator Roberti.

BOARD MEMBER ROBERTI: You have a proposal for, I guess, burning off the gas, mitigating the gas. Is that reflected in the request for the use permit?

MR. PALSGAARD: It's reflected the Notice and Order.

BOARD MEMBER ROBERTI: I don't quite understand that.

MR. PALSGAARD: No, it's not reflected in the permit.

BOARD MEMBER ROBERTI: It's not reflected in the permit. So you're saying we should just sort of take notice of it or what?

MR. PALSGAARD: I'm saying that's what's happening, that the operator has applied for an authority to construct, for the south property line to correct the

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



1 landfill gas problem.
2 BOARD MEMBER ROBERTI: I understand that. Now,
3 why isn't it in the permit request?
4 MR. de BIE: Senator, Roberti, maybe I can help.
5 Mark de Bie with the permitting and inspection branch.
6 Information such as what kinds of control systems they
7 have, be it for leachate or gas or drainage are typically
8 found in the technical document that supports the permit
9 itself.
10 A narrow view of the permit is just, you know,
11 the four or five pages that contain the description of the
12 facility, the terms and conditions of the findings. But
13 there is a whole other document, the Report of Disposal
14 Site Information that supports that, and is linked to the
15 permit by a reference in the permit.
16 That is the document that contains a description
17 of the proposed control system. So not directly in the
18 permit will you find description of the gas control system
19 that's being proposed, but it would be in the supporting
20 documentation.
21 BOARD MEMBER ROBERTI: Thank you.
22 MR. PALSGAARD: And in conclusion, the Notice of
23 Order has been issued as the staff indicated. The
24 compliance date for that Notice and Order is April 1st.
25 And we hope by the concurrence of the Board with this

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



1 permit that the operator and landfill will be in
2 compliance with all the State minimum standards.
3 Thank you.
4 CHAIRPERSON MOULTON-PATTERSON: Thank you.
5 BOARD MEMBER PAPARIAN: May I ask a couple of
6 questions?
7 CHAIRPERSON MOULTON-PATTERSON: Certainly, Mr.
8 Paparian.
9 BOARD MEMBER PAPARIAN: Could you help refresh my
10 memory. Last month we went over and we had maps of the
11 facility. I believe there were landfill gas problems on
12 three of the four sides of the facilities, if I remember,
13 was the south and east sides of the facility.
14 MR. PALSGAARD: That's correct. And the
15 operator's consultant does have those maps and possibly
16 could refresh better with the maps, better than I could
17 explain them to you.
18 BOARD MEMBER PAPARIAN: Let me get to my next
19 question. I think you just said that the mitigation is on
20 the south side. I thought last month it was on the north
21 side or am I mistaken?
22 MR. PALSGAARD: It is the south side. The
23 expansion area is to the north.
24 BOARD MEMBER PAPARIAN: The expansion area is to
25 the north, but the mitigation is on the south. The east

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



and north where there are landfill gas problems then would not have any mitigation associated with it other than the expansion of the boundaries.

MR. PALSGAARD: That's correct.

BOARD MEMBER PAPARIAN: What type of readings are you getting on the east and north sides?

DEPUTY DIRECTOR NAUMAN: Do you have that information, the most recent landfill gas?

MR. LAWRIE: We've gone as high as seventy percent on the north side, Jerry Lawrie, waste manager, and 70 percent on south side.

BOARD MEMBER PAPARIAN: And then on the east side?

MR. LAWRIE: None of the east side wells have shown gas.

BOARD MEMBER PAPARIAN: I seem to recollect there was some issue on the east side or is there no issue on the east side.

MR. PALSGAARD: The landfill boundaries are increasing on the east side.

BOARD MEMBER PAPARIAN: Right. And I thought there was a landfill gas issue or is it just up near the corner by the east side?

MR. LAWRIE: It's the northeast corner.

BOARD MEMBER PAPARIAN: Okay.

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



1 MR. LAWRIE: But none of the eastside wells are
2 positive for methane.
3 BOARD MEMBER PAPARIAN: And how many wells on the
4 north side are showing, was it one well showing 70 percent
5 or were several wells showing readings?
6 MR. LAWRIE: Three.
7 CHAIRPERSON MOULTON-PATTERSON: Could you speak
8 into the microphone for our court reporter.
9 Thank you.
10 MR. LAWRIE: Three wells on the north side.
11 BOARD MEMBER PAPARIAN: And were the -- oh, the
12 LEA stepped down. But are you planning any action to deal
13 with the 70 percent or with the landfill gas on the north
14 side?
15 MR. PALSGAARD: Not at the present time.
16 BOARD MEMBER PAPARIAN: Are there any options you
17 might have available to deal with that do you think or no?
18 MR. PALSGAARD: I believe, and you'd have to
19 confirm this with the operator, but I believe at some
20 point in the future there will be a gas collection system
21 on the north boundary property line. There are no
22 immediate plans for that.
23 BOARD MEMBER PAPARIAN: Would that be as a result
24 of an order from you or as a result of voluntary action of
25 the operator?

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



1 MR. PALSGAARD: I don't believe it would be an
2 order from us unless there was a five percent methane gas
3 explosive violation at the property line to the north.
4 BOARD MEMBER PAPARIAN: By moving the property
5 line, you are not -- presumably there would not be.
6 MR. PALSGAARD: That's correct.
7 MR. de BIE: Mr. Paparian, it's our understanding
8 that the Air District has an interest in Highway 59
9 because of the Clean Air Act requirements. And so I
10 believe eventually, because of the Clean Air requirements,
11 the site will be required to put in a more comprehensive
12 gas control system because of those indications.
13 So the LEA is, again, dealing with landfill
14 migration, sub-surface migration. And Mr. Palsgaard is
15 indicating that they don't plan to take any action
16 relative to the sub-surface migration because they're,
17 with this permit, expanding the boundary, and the
18 sub-surface migration issues would go away.
19 But the Air District has an interest in this site
20 for direct air emissions. And because of that, there will
21 be requirements in the future to put in a more
22 comprehensive control system.
23 BOARD MEMBER PAPARIAN: So at some point, the Air
24 District requirements kick in is what you're saying. Are
25 there air emissions right now?

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



1 MR. de BIE: Most landfills have some level of
2 gas air emissions. And I don't have -- and I know there's
3 the operator's consultants in the room and they can give
4 you the details. But basically the Air District's rules
5 are based on calculations of capacity and volume at the
6 site.
7 And when you reach a certain threshold, certain
8 things are required. So it's how much waste is in place
9 is a factor. And I think that is related to the potential
10 for X amount of emissions to the atmosphere.
11 BOARD MEMBER PAPARIAN: Are you aware of any
12 other situations elsewhere in the state where either the
13 LEA or the Waste Board have sought additional mitigation
14 of landfill gas problems before an and district steps in?
15 MR. de BIE: Whenever a situation includes
16 sub-surface gas migration beyond the boundary, the
17 permitted boundary of the facility, the LEA, with the
18 assistance of Board staff, have stepped in in that
19 situation.
20 We have not, in the past, stepped in when there
21 was just an air emission issue. It's only when there's a
22 sub-surface migration issue, and that's because of the
23 regulatory structure from Subtitle D incorporated in our
24 regulations speak to five percent at the boundary.
25 BOARD MEMBER PAPARIAN: Okay. Other than the

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



1 permit that we voted on last month, the Billy Wright
2 permit, it's my recollection that we were told by staff
3 that there had never been, before that permit, an
4 expansion of a boundary to deal with landfill gas problems
5 without associated mitigation.
6 MR. dE BIE: That's staff's assessment is that
7 there's always been -- if there has been an expansion of
8 the boundary, there's always been a control system
9 involved. The one that is on our matrix is the long-term
10 violation policy and it's I believe is the one in -- I'm
11 floundering now, Madera county now, I believe it was,
12 where there was an expansion of the landfill boundary, but
13 that was not the control mechanism, the corrective action
14 for landfill gas. There was an actual control system that
15 was being designed to mitigate that.
16 BOARD MEMBER PAPARIAN: So, again, other than the
17 permit we voted on last month, if we voted on this one,
18 we're in the interesting situation where there are
19 violations on two sides of the facility, the north side
20 and the south side. And if we presume that the south side
21 mitigation is somehow enforceable with the description
22 that the LEA has given us, we still have the situation
23 where we would be voting on an expansion on the north side
24 without associated mitigation of that problem.
25 MR. de BIE: That's a key difference between

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



1 permits that the Board has voted on in the past, is that
2 there's no direct mitigation for gas migration on the
3 north side. The only solution that's being proposed is
4 this permit within the expanded boundary.
5 BOARD MEMBER PAPARIAN: Now, back to the LEA, did
6 you consider requiring some mitigation on the north side
7 as part of the permit requirements or did you feel that
8 that just wasn't necessary?
9 MR. PALSGAARD: We did not feel that was
10 necessary because this is the area that landfill is going
11 to be expanding into. The county would be owning the
12 property, but there were no issues that we were aware of
13 that this would be impacting. The five percent methane
14 gas and the boundary would not be an issue, because the
15 boundary was changing, there were no explicit gas issues
16 involved.
17 Eventually we knew that the landfill operator
18 would have to be putting in the gas collection system in
19 order to comply with subtitle D requirement. So at this
20 present time, we did not feel it necessary to require a
21 gas collection system to the north, nor did we have the
22 authority to require that.
23 BOARD MEMBER PAPARIAN: I'm sorry you --
24 MR. PALSGAARD: Nor did we have the authority to
25 require that.

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



1 BOARD MEMBER PAPARIAN: Let me just ask our
2 staff, is that right, you believe they didn't have the
3 authority to require mitigation on the north side?
4 MR. de BIE: I believe they had the authority to
5 require that, yes. I want to make --
6 BOARD MEMBER JONES: To require what?
7 MR. de BIE: To require some sort of mitigation
8 for gas on the other side.
9 BOARD MEMBER JONES: As opposed to the expansion
10 that there was a Board approved mechanism?
11 MR. de BIE: I think the LEA has the capability
12 to approve or disapprove a proposed mitigation plan that's
13 submitted to them by the operator based on their
14 assessment.
15 BOARD MEMBER JONES: Right, and they approved the
16 expansion of the landfill.
17 MR. de BIE: Right, but they could have
18 disapproved that and required something different. They
19 could have.
20 BOARD MEMBER JONES: They could have, but they
21 didn't.
22 MR. de BIE: The question was could they and I
23 said yes, they could have.
24 BOARD MEMBER PAPARIAN: That was my question.
25 MR. de BIE: I do want to point out, though, that

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



in this case with Highway 59 as Mr. Palsgaard indicated, there is landfill operations to occur in the north, so they're not buying a buffer and it's just going the sit there. They will be putting in cells and placing in waste in that. So it will become a disturbed landfill operational area. It's not a true buffer for landfill gas, so they will be utilizing that area.

BOARD MEMBER ROBERTI: Just to make that clear to follow on Mr. Paparian's comments, the gas can migrate into the north. It can be in excess of five percent, which is there to protect against gas migration explosions. And there's no mitigation on the north end.

MR. dE BIE: That's correct, but keep in mind, again, that they will be putting waste there. It's not --

BOARD MEMBER ROBERTI: Why should that be a conflict?

MR. de BIE: For example, if there had not been gas at the boundary prior to this and they came in for a permit revision to expand their permitted disposal area, that may have been acted on by the Board and approved, perhaps. Later, there might have been gas noted at the current, the old boundary, but since it was just migrating within the permitted boundary active landfill, the regulations would not have kicked in unless there was gas noted on an on-site structure, and there's always gas

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



1 within waste.
2 BOARD MEMBER ROBERTI: But the -- even with that,
3 we could be -- we are in violation or could be in
4 violation of the five percent limitation at the north
5 boundary.
6 MR. dE BRIE: With this permit, the boundary
7 would be redrawn and the proposed boundary would not have
8 five percent at that boundary.
9 BOARD MEMBER ROBERTI: Even at the north?
10 MR. de BIE: At the new north end. It would not
11 have dispersed between the old boundary and the new
12 boundary, there's proposals to put in new waste calls.
13 CHAIRPERSON MOULTON-PATTERSON: John Boss.
14 If you want these in a particular order, you have
15 to let me know.
16 Scott Johnston, would you like to be next?
17 MR. JOHNSTON: Yes, if I could, please. Madam
18 Chairman, members of the Board, Scott Johnston. I'm
19 Deputy Director of Public Works. And I'd like to maybe
20 clarify a few issues regarding this particular
21 application.
22 One of the things that, you know, needs to be
23 clarified, I believe, is that when we began this journey
24 to expand the landfill boundaries, this happened, you
25 know, discussions started in 1989. When AB 939 came out,

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



1 you needed 15 years worth of landfill capacity. We needed
2 it to gain capacity.
3 We started a program in '93. A study was
4 completed to determine which approach was necessary. It
5 was decided by that report that expanding the Highway 59
6 facility was in the best interests of Merced county.
7 At that point in time an Environmental Impact
8 Report was undertaken and in July of 1996 that
9 Environmental Impact Report was completed. The Notice of
10 Violation of Landfill Gas on the north side didn't occur
11 until May of 1996.
12 So we had already started the process to expand
13 the boundaries. It's kind of hard to see, maybe Jerry
14 will point it out, but the boundaries go all the way up to
15 a green area, follow along the state highway, coming
16 across parallel to a canal. And then it follows the
17 yellow boundaries on the outside.
18 Everything within the yellow boundaries has kind
19 of been changed around, because of requirements to
20 mitigate wetland and endangered species, the problems that
21 we've had on that site. So the county has undergone a
22 process, again, for certainly seven years, if not ten
23 years to get to this point to expand our landfill, to give
24 us in excess of the 15 years required by law to have
25 landfill capacity.

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



1 When this gas violation occurred, and the LEA
2 issued the first corrective action order in 1998, there
3 was a lot of discussion in between there, because there is
4 a provision in law that says, okay, if the landfill gas,
5 under the ground. If it doesn't constitute a health and
6 safety problem and the LEA determines that, then really
7 you don't have to do anything about it.
8 Now that discussion went on back and forth
9 between the LEA and Waste Board staff. And Waste Board
10 staff basically changed their mind, if you will, but
11 something had to be done.
12 But with regards to the northern boundary, it was
13 discussed with the Waste Board staff at that time that we
14 were in the process of expanding our landfill. And if we
15 kept moving forward to expand our landfill, and we created
16 new boundaries, if there wasn't landfill gas at those new
17 boundaries, we would no longer be in violation of the 5
18 percent rule. So we proceeded along that. And the order
19 that was given to us by the LEA, gave us the option of
20 either acquiring property and expanding their landfill
21 boundaries or putting in some other control system.
22 And we made that decision back then that we were
23 going to continue on with the process that we had been
24 following along for a number of years to expand the
25 facility to the north. It wasn't until after that, back

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



in, I think it was, 1999 that we started seeing gas at the southern boundary, 1998. And so we -- and in that existing cell, we have --

BOARD MEMBER ROBERTI: What existing cell?

MR. JOHNSTON: If Jerry could point to the bottom of where we're having our landfill gas problem, just right in that one area, that's the southern portion of the unlined cell that was permitted back in the early seventies, started collecting waste in '73.

Again, with this one, it was state of the art at the time, which we started placing waste too close to the property boundary. We don't have a lot of buffer there, so we were intending and we went through the process of going through an environmental document to add 35 acres and that's kind of green area there, to the landfill boundary at the southern side, both for buffer area and some additional stockpiling of compost and a few other things that were identified in the environmental document.

So we've gone through that process and we've determined that and that initially it was our intent just to buy that 35 acres and not put a gas control system in on there either. Again, that was part of what seemed to be an acceptable approach to take care of this, both written and the corrective action ordered from the LEA, which the Waste Board had copies of.

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



1 No one ever said you can't do that, so we
2 proceeded along that line. We put in additional gas
3 monitoring wells along that southern boundary as we --
4 BOARD MEMBER ROBERTI: Well, there is a statute
5 that says you can't create a nuisance. The issue is of
6 whether this is a nuisance or not.
7 MR. JOHNSTON: That's true.
8 BOARD MEMBER ROBERTI: The migration of gas into
9 the atmosphere.
10 MR. JOHNSTON: And the migration of gas into the
11 atmosphere is the responsibility of the Air District
12 Board. And we have -- our gas consultant is here, he can
13 talk a little bit further on that.
14 BOARD MEMBER ROBERTI: I believe that's our
15 authority too, am I right or am I wrong?
16 MR. JOHNSTON: I'm not an expert on what your
17 authority is. I think from what I can understand, is the
18 authority has a five percent at the boundary, okay, is the
19 responsibility of the Waste Board.
20 BOARD MEMBER ROBERTI: No, our authority extends
21 to prohibiting a hazard or a nuisance as well.
22 MR. JOHNSTON: Well, and where is the hazard or
23 the nuisance of the hazard? The hazard would be if you
24 have five percent and if you look at the definition, it's
25 five percent of methane in air that becomes explosive.

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



1 When you have 20, 30, 40 percent methane under
2 the ground without contact with air, it's not explosive.
3 So we've gone the extra mile. We've had our consultants
4 go out on the property both to the south and to the north
5 to take surface testing that's been far less --
6 BOARD MEMBER ROBERTI: I hear what you're saying.
7 I don't agree, because that, in my humble layman's
8 estimation, is a micro analysis of what our authority is.
9 Prevention of nuisance also deals with things such as
10 global warming, danger to the environment in general.
11 One of the greatest contributors to global
12 warming is methane. And one of the major causes of
13 methane into the atmosphere is landfills. That has to
14 come within our jurisdiction.
15 Section 20819 doesn't restrict. It talks about
16 nuisance, hazard and specifically designates the CIWB the
17 authority.
18 So I am just saying that maybe the time has come
19 for the Board, along the lines of what the audit proposed,
20 on this specific proposal to start looking in terms of
21 something somewhat larger than the possibility that Mr.
22 and Mrs. Jones house might explode tomorrow. If that's
23 all we look at, we might as well do nothing.
24 And I understand you're representing the county,
25 you're representing the LEA, and you are representing

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



them, you are taking a micro analysis of what our authority is. But I submit that we have too long failed to look at the statutes, Section 20919, which are where we have the regulation 20919, which gives us much broader, much broader authority in this area, that has been on the books and which the Board, I submit according to the audit and I agree with that audit on this, has ignored.

MR. JOHNSTON: Well, and I'm not, again, the authority on what the Integrated Waste Management Board needs to be responsible for.

BOARD MEMBER ROBERTI: I understand.

MR. JOHNSTON: I go back to we've been under an order to do certain things. We have done certain things. We've gotten to this point. We have worked with US Fish and Wildlife. We have an agreement with US Fish and Wildlife to take care of the endangered species aspect, which is no easy task. We've got a permit in hand from the US Army Corps of Engineers to deal with wetlands.

We're dealing with the air district requirements, who have responsibility over air emission guidelines for landfills. We are in compliance with their rules and regulations at this point in time. The only thing that we are in violation of is five percent methane at the boundary. That's been the only violation that we have been placed on this long-term violators list since 1998

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



1 and it's been what we have pursued to get off of that list
2 in a manner like you see today in our application.
3 And it's been a considerable expense to the
4 county, time and effort involved in environmental
5 processes, land acquisition, hiring outside consultants to
6 develop the plans. This has been going on for quite some
7 time. And now we come up to the Board, who has again
8 never said that the approach that we're proposing to take
9 is incorrect. And we find this problematic situation
10 where what is the cure.
11 You say put him in the system. We've had
12 testimony that we put in the system, that the air
13 emissions from a flare actually causes more damage to the
14 environment than letting methane go. And our gas expert
15 will testify to that.
16 BOARD MEMBER PAPARIAN: But we had testimony that
17 on the merit side, there was an expectation that there
18 won't be a system eventually.
19 MR. JOHNSTON: There is a requirement. Right now
20 we've gone through the testing required by the Air
21 District. They have given us, essentially, a five year
22 exemption from putting in the comprehensive system. At
23 the end of that five years, we have to go through that
24 process again.
25 The other -- sooner or later we'll have to, but

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



we feel that we're going to be in a position where we'll have to close that cell area within the next seven or eight years. And at closure, we have to put a system in. We know sooner or later that the law will require us to put a system in. Right now to put a system in throughout the entire --

BOARD MEMBER ROBERTI: If the system is going to create a greater problem as you indicated, then why do they want to require us to put it in?

MR. JOHNSTON: Because the Law requires you, when you close a cell, to put in a gas system. And at this time right now, because of the fact the emissions are so low, what they're basically saying is to put a flare in you have to add extra propellants, this sort of thing.

BOARD MEMBER ROBERTI: Let me ask staff, because I'm a little confused here.

Do we have two options here and that's all we have? One is expansion and emission for whatever percent, five percent or ten percent into the atmosphere. And I'm not talking about boundary. I'm just talking about vertical expansion into the atmosphere of a flare.

And in that case, if a flare comes we have an even greater environmental problem. If that's the case, then it strikes me that we just should let methane escape, because flares cause problems.

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



1 I thought that was a standard way that we
2 eliminated methane, by burning flares. Most of the lands
3 files I have visited, I visited more than I ever care to
4 recount, have flares.
5 CHAIRPERSON MOULTON-PATTERSON: Senator Roberti,
6 Mr. Jones wanted to ask a question.
7 BOARD MEMBER JONES: I want to address your
8 question because I think where part of the confusion is,
9 the five percent is in a well. The five percent is not in
10 the air. It is in the well.
11 BOARD MEMBER PAPARIAN: 70 percent.
12 BOARD MEMBER JONES: Well, 70 in one and then
13 five percent at the other, but the 70 percent is not
14 ignitable, five to fifteen percent is ignitable, 70
15 percent is not ignitable.
16 And It's in the Ground. It's in a tube. It is
17 in a casing where they take that. It's not going into the
18 air. But I think the other thing is and I agree --
19 BOARD MEMBER ROBERTI: I remember -- let me -- I
20 want to --
21 BOARD MEMBER JONES: It was actually five parts
22 per million instead of 50,000 parts per million.
23 BOARD MEMBER ROBERTI: I remember at last month's
24 testimony that one of the witnesses indicated that
25 eventually that horizontal, these are my words, that

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



1 horizontal migration does become vertical. Eventually, it
2 goes up and out.
3 BOARD MEMBER JONES: Right. But that's all
4 predicated on the geology. That's not an automatic. And
5 I think that the one thing, you're in violation of
6 20919.5, correct?
7 MR. JOHNSTON: Correct.
8 BOARD MEMBER JONES: Not 20919?
9 MR. JOHNSTON: Correct.
10 BOARD MEMBER JONES: So the violation and what
11 you're stating are two different things. He's in
12 violation of 20919.5 not 919. So there is a difference.
13 And 20919.5 requires that they notify the LEA and they put
14 a plan together and they've done that. And they are doing
15 the plan.
16 But I think that we are, when we talk about --
17 BOARD MEMBER ROBERTI: Let me ask the question
18 and if you want to answer it or staff wants to answer it,
19 what violations have we ever -- do we fine specific
20 violations and how often, if so, of 20919?
21 BOARD MEMBER JONES: Well, that's an imminent
22 health risk.
23 MS KIGER: Historically it's been 20 -- I mean --
24 it's the .5.
25 BOARD MEMBER ROBERTI: That's right. I don't

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



1 think we even pay any attention to this regulation.
2 MS. KIGER: Well, in this facility --
3 BOARD MEMBER ROBERTI: I think that's the
4 problem. That's why it's confusing, because it's not part
5 of our history to even pay attention to it. And it's our
6 broadest authority.
7 BOARD MEMBER JONES: It's a different threshold.
8 The threshold is what's the imminent threat to health,
9 safety and the environment.
10 BOARD MEMBER ROBERTI: No, no, no, no, no.
11 Hazard or nuisance.
12 BOARD MEMBER JONES: Exactly.
13 BOARD MEMBER ROBERTI: Nuisance. And I submit
14 that escape into the atmosphere is a nuisance if it's of
15 significance and not measured here.
16 BOARD MEMBER JONES: Well, they did. Well, I
17 don't know if they measured here. They measured at the
18 other one. It was five parts per million as opposed to
19 five percent, which would be 50,000 parts per million.
20 BOARD MEMBER ROBERTI: I think, Mr. Jones, 20919
21 by this Board has been rendered, over the past few years,
22 a nonentity, a nonentity. And instead of being our
23 muscle, which I think it is written to be, it's been
24 considered a nonentity, which where the standard can't be
25 met instead of something where the standard is so health

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



1 consciously liberal that it can be met if there is a
2 problem.
3 BOARD MEMBER JONES: 20919 would have been --
4 BOARD MEMBER ROBERTI: We have just turned it
5 around on its head.
6 BOARD MEMBER JONES: That would have been what
7 they would have stated at the BKK landfill, Senator.
8 BOARD MEMBER ROBERTI: BKK?
9 BOARD MEMBER JONES: BKK is a closed landfill in
10 southern California where gas is migrating into homes.
11 They shut the facility down that day. They started to
12 do -- they evacuated the people and they started to
13 remediate the gas immediately. And if the statute was on
14 the book, I'd be willing to bet dollars to doughnuts that
15 that's the statute that was used at BKK at that boundary.
16 Because there was an eminent threat to the public health.
17 The Homes were right next to the toe of the landfill.
18 BOARD MEMBER ROBERTI: With all due respect I
19 don't see the word imminent in here. I don't see the word
20 imminent in here. And I might say that the auditor, who I
21 know you're not a fan of, the auditor --
22 BOARD MEMBER JONES: Actually, I'm a fan of the
23 auditor. I just wish that whoever gave him --
24 BOARD MEMBER ROBERTI: Or the auditor, indicates
25 very much that we have not been respecting this

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



1 regulation.
2 BOARD MEMBER JONES: But did he understand the
3 regulations?
4 BOARD MEMBER ROBERTI: Well, I think they do. I
5 think they do. I think they do.
6 BOARD MEMBER JONES: That the auditor understands
7 20919.
8 BOARD MEMBER ROBERTI: I think so.
9 BOARD MEMBER JONES: Base on what?
10 BOARD MEMBER ROBERTI: Not everybody has to be in
11 the landfill business to understand environmental needs?
12 CHAIRPERSON MOULTON-PATTERSON: Excuse me,
13 Senator Roberti, you had asked a question of staff and I
14 interrupted from Mr. Jones. Did you get that answered?
15 BOARD MEMBER ROBERTI: No, no. My question, if I
16 recall my own question, was --
17 MR. JOHNSTON: I think I can answer your
18 question.
19 (Laughter.)
20 BOARD MEMBER ROBERTI: Let me rephrase it, so we
21 all remember. Do we only have two options?
22 MR. JOHNSTON: No.
23 BOARD MEMBER ROBERTI: Option number one is
24 expansion and vertical or vertical to horizontal emission
25 or burning it off with the flare.

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



1 MR. JOHNSTON: Well, there are other systems that
2 are out there. I will not try to lead you down a path
3 that says there aren't any other systems. In fact, the
4 system to the south, we're going to put in wells to
5 extract the landfill gas. And our first attempt is to run
6 those through carbon filters.
7 If the carbon filters work out, then we will
8 leave the carbon filters. If they are not effective, then
9 we have to go to a flare. So there's other options. But
10 in this particular case our guest consultant has suggested
11 that we try that approach, first, because it is much
12 better for the air.
13 As soon as you add additional propellants and
14 flare it out, then its worse for the air. And we thought
15 that -- we've argued that point, you know, in front of the
16 air district Board, so we've opted to go the other route
17 to try to be better for the environment.
18 BOARD MEMBER ROBERTI: I had a hunch there was
19 probably something else that was more acceptable.
20 Although, it is hard for me, and I could be a hundred
21 percent wrong, to believe that a flare is always worse
22 than vertical emission into the atmosphere, because then I
23 ask why is it almost the universal methodology that's used
24 in order to protect the air, and that is to flare it off.
25 It can't be that everybody is so benighted that

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



we, you know, we think that active intervention is worse than just like benign neglect and let's let the stuff go up into the air.

MR. JOHNSTON: I think it depends on the volume and quality of the gas that you're going to get and sufficient volume and quality to burn it directly.

BOARD MEMBER ROBERTI: You're probably right.

MR. JOHNSTON: Then it's probably better.

BOARD MEMBER ROBERTI: You're probably right, but I think it's incorrect to leave the Board with the impression, as fairly as you have tried to deduce that, and that is that well, flares are just the worst problems and so just don't do it. That's not all I can recall.

MR. JOHNSTON: I don't really know that I said that.

BOARD MEMBER ROBERTI: Well, then that's the implication, if it was worse on the environment, then don't do it. I would think that would be an automatic.

MR. JOHNSTON: In our specific situation. I'm here to talk about --

BOARD MEMBER ROBERTI: No, you didn't say in your specific situation, you said flares in general are worse. Yes, you did.

MR. JOHNSTON: No, I don't know that I said that. If I did, I apologize.

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



CHAIRPERSON MOULTON-PATTERSON: Mr. Johnston, you had mentioned that you had an expert consultant that you wanted to speak to this. I have Mr. Boss, Patrick Sullivan and Mike Remy. Was there any particular order or are they just here for questions?

MR. JOHNSTON: I think that we're for the landfill gas issue. Patrick Sullivan is our expert on the landfill.

CHAIRPERSON MOULTON-PATTERSON: Would you like him to go next.

MR. JOHNSTON: I think so. I think he can hopefully shed some more light on this.

CHAIRPERSON MOULTON-PATTERSON: Okay, Mr. Sullivan.

MR. SULLIVAN: Madam Chair, members of the Board. I'm Patrick Sullivan from SCS Engineers. I'm going to try to do a couple things up here. One is answer some of the questions that have been bandied about as well as try to present some additional information myself to hopefully clarify some issues.

For the record, I know we stated this previously, I think on the Bill Wright case, but just to make sure the Record is clear that SCS Engineers, my company, are landfill gas consultants. We, in a sense, wrote the book. We wrote the California Integrated Waste Management

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



1 Board's Procedural Guidance Manual for gas monitoring and
2 control. We've also been hired by the Waste Board to
3 train the LEAs on landfill gas issues.
4 We're also the lead contractor on the US EPA's
5 landfill method outreach program, so we do know a little
6 bit about landfill gas and the issues.
7 I'm going to jump into the issues I wanted to
8 talk about, then I know you guys are going to have plenty
9 of questions for me. The first issue I wanted to go over,
10 and some of the other speakers have briefly touched on it,
11 but clearly this case is very similar to the Billy Wright
12 landfill.
13 This entity, the Merced County Public Works
14 Department, has done everything right. They've got all
15 the approvals along the way. And now we understand that
16 this Board has some problems with the policy that exists
17 for the allowing of the acquisition of land as a
18 mitigation measure against migration.
19 And that's fine. And in this case, you should go
20 about a procedure to change that policy and change the
21 regulations to reflect that change in policy. But this
22 site, I believe, has done everything right to get to the
23 point that they're in, and in compliance with State
24 minimum standards.
25 When they propose -- the problem occurred when

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



they were set with a situation of what should they do about the gas migration? Merced County came to us and asked us in the situation what are the best choices, what are our choices?

And we looked at a variety of choices for control, both looking at the technological feasibility as well as the cost effectiveness. The major problem with this site as with the Billy Wright site, is that refuse is right up against the current permitted facility boundaries. So even the most comprehensive of landfill gas collection control systems might not be able to control the problem, because the landfill boundary is right up against where the trash is placed.

Even the best systems out there have some amount of migration. So going through those options and also taking into consideration the fact that the county was already undergoing a proposal to expand their landfill to the north, we decided that land acquisition would be the best and most cost-effective choice, because none of the other options could guarantee, even after the significant expense, that they would work unless the facility boundary was extended as well.

So the chosen method was to extend the facility boundary. And the county was very upfront with us. It's not like they've hidden this. It was in the agreements

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



with the LEA and those agreements were obviously forwarded to the Board staff and Board staff new about them. It's in the CEQA documentation, of which Board this is the reviewing agency. Nobody has expressed any questions, doubts, concerns about it all along the process.

And here we are, hopefully, to get the permit approved to get this plan fully into action and now suddenly there are some problems. So there's some concern we have with the concept of regulatory finality. You do everything right. You get all the approvals along the way that you're supposed to. At the 11th hour you have people that want to change the policy because they don't like it. And that's been a problem for Merced County.

We were very happy that when this Board voted on the Billy Wright landfill that one of the Board members, and I believe it was Board Member Medina, expressed that exact sentiment. I apologize for paraphrasing Board Member Medina, but that when you go through this process, and you get all the approvals, there should be some finality, and that's why this case is very similar to the Billy Wright site.

There are some differences, however, and I'd point out those differences. On the southern boundary, land acquisition was the chosen method, but we discovered that through the land acquisition, that did not completely

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



1 solve the problem. The land that was acquired along that
2 southern boundary, we've already had gas migration through
3 about three-quarters of that perimeter already. So that's
4 the reason that a decision was made at that time to put in
5 an active migration control system for the southern
6 perimeter.
7 And the reason we chose a carbon absorption over
8 the flaring method was for the argument that Scott
9 Johnston from Merced County expressed, that for the small
10 amount of landfill gas that we were going to be
11 collecting, in other words, we were just collecting the
12 small amount of gas that's migrated, not the entire amount
13 of gas through the landfill, a flare actually produces
14 more emissions than the amount of emissions that are
15 controlled by the system.
16 So we're going to attempt to use a carbon system.
17 Carbon is not a perfect system for control. Personally,
18 it does not control the methane very well. The methane
19 typically goes right through the carbon.
20 Also, it's very expensive to operate, because the
21 carbon gets expended very quickly and there's a lot of
22 expense acquired. So we may end up putting the flare at
23 this site eventually if the carbon is not successful. But
24 that's the reason why the southern boundary is being
25 treated with a gas collection system.

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



1 On the northern boundary, the reason we decided
2 to stick with the expansion of the facility boundaries is
3 they're going to put trash there. This is going to be
4 part of the facility. The area that we're talking about
5 expanding into on the position shown on the map, is
6 actually everywhere there is going to be landfill. Why
7 would we want to be monitoring sub-surface combustible gas
8 and calling it a boundary on the facility when there's
9 actually going to be trash placed there.
10 Obviously, you want that boundary outside of the
11 refuse footprint and that's what we've done. And they've
12 also gotten approvals from the US Fish and Wildlife
13 Service for the wetlands area. And that wetlands area
14 comes with an agreement with Fish and Wildlife Service.
15 And they did not express any concerns with the landfill
16 gas as migrating into that area.
17 And we had testimony last month actually by Board
18 staff indicating that one of the reasons maybe there was
19 not a concern is that these vernal pools, these wetlands,
20 are created by clay layers, very tight soils and that
21 those tight soils present a barrier so that the gas does
22 not migrate from the subsurface into the vernal pools.
23 And that there was a similar situation at the Keifer Road
24 landfill in Sacramento county. There has been no issues
25 with impacts to the vernal pool ecosystems.

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



1 On top of that, we have testified previously that
2 the High liquids content of the soil in this area also
3 prevent some barrier to migration.
4 To reflect that fact, we went out and did some
5 surface emission monitoring in accordance with the federal
6 standards, even though currently this site is not subject
7 to those requirements under the Federal Air Quality
8 Standards. We did surface emission monitoring in all the
9 expansion areas. And to give you a summary of those
10 readings, and Board Member Jones pointed that out, that we
11 did that same testing for the Billy Wright site, and the
12 testing for the Highway 59 landfill.
13 And to give you some perspective, under the
14 federal new sources performance standards, which is the
15 federal Clean Air Act requirement affecting landfills, the
16 surface emission standard was 500 parts per million
17 methane at the surface. San Joaquin Valley's local rule,
18 Rule 4642, this landfill is not subject to it, but just to
19 give you a reference, their standard is 1,000 parts per
20 million. And as Board Member Jones mentioned, five
21 percent is actually equal to 50,000 parts per million.
22 In our recent tests at the Highway 59 landfill,
23 along the southern perimeter and the southern expansion
24 area, all testing levels were less than 4 ppm.
25 On the eastern --

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



BOARD MEMBER PAPARIAN: Are you talking about the new perimeter or the old perimeter?

MR. SULLIVAN: Along the current perimeter and then extending into the expansion area. So when I say --

BOARD MEMBER PAPARIAN: You said the southern perimeter, there's two perimeters on that chart right there.

MR. SULLIVAN: I mean the current perimeter, at the current perimeter and then into the expansion area. We talked about the current perimeter and then the entire expansion area in accordance with the federal methodology permitting land surface module.

BOARD MEMBER PAPARIAN: Okay.

MR. SULLIVAN: We also did that eastern perimeter, even though the eastern probes themselves have not shown excessive levels of methane that the probe on the northeastern corner did. There have been some concerns about the eastern perimeter. So, again, we walked the eastern current perimeter and into that eastern expansion area. And every reading was less than three parts per million.

In the northwestern perimeter, so just the perimeter along the northwestern portion, thanks Terri, the readings ranged from five to 20 ppm. The highest was 20 ppm along the perimeter.

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



1 In the northwestern expansion area, so that area
2 north of the perimeter, all the way up, the concentrations
3 range from five to ten ppm.
4 And in the northeastern perimeter and in that
5 northeastern expansion area, which constitutes the
6 proposed wetlands habitat, the readings were less than 5
7 ppm. And, again, for reference to compare it to the five
8 percent standard, we're talking about reduction for orders
9 of magnitude or less in some cases, or more in some cases
10 in terms of concentration.
11 So as Board Member Jones pointed out, the
12 readings, whether they're 70 percent or five percent or
13 somewhere in between, those are readings in the
14 sub-surface and that does not reflect the concentration
15 that you're going to see when that gas actually comes to
16 the surface, because there are geologic barriers,
17 particularly in this area. The same barriers that are
18 creating these vernal pools, these tight clays at the
19 surface are also providing barriers to surface emissions.
20 So that's probably why I would see as low surface readings
21 as we do here.
22 I wanted to touch on a couple other issues and
23 I'm sure you'll have some questions. In terms of that
24 State minimum standard, we've argued about that issue.
25 This landfill is in violation of Title 27, Section

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



1 20915.5. And that standard has a provision that --
2 BOARD MEMBER ROBERTI: Madam Chair, would the
3 witness or maybe staff tell me what the readings are if we
4 have them in the proximity of wetlands?
5 MR. SULLIVAN: Right. Those surface emission
6 readings in the proximity of the wetlands, which is the
7 northeastern expansion area, were all less than five parts
8 per million.
9 MS. KIGER: Staff doesn't have any recent
10 readings, and I don't have them with me. And actually, I
11 haven't received an inspection report from the LEA since
12 November.
13 BOARD MEMBER ROBERTI: So there's been no
14 inspection report on readings in the vicinity of the
15 wetlands since November?
16 MR. de BIE: What Jennifer said is we haven't
17 received a report from the LEA. So unless the LEA can
18 tell us today if they've inspected in November, December,
19 we don't have any documentation to share with you.
20 BOARD MEMBER ROBERTI: And your numbers come from
21 what period?
22 MR. SULLIVAN: Our numbers come from, actually,
23 prior to that period. We did that work in preparation for
24 the December meeting of this Board. So our work was done
25 in, I believe, in late November.

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



1 BOARD MEMBER ROBERTI: Are wetlands -- I take it,
2 that they are, but I'm asking staff anyway, are wetlands
3 affected by subterranean or horizontal readings as much as
4 they are by vertical readings?
5 MR. de BIE: We're going to defer to Scott Walker
6 to help you with that one.
7 MR. WALKER: It depends upon the type of
8 wetlands. There's various types of wetlands. Vernal
9 pools have clay pans underneath them and so gas will tend
10 to migrate around them. But there are other types of
11 wetlands systems where landfill gas could certainly
12 migrate into the wetland area and cause, you know, damage
13 to vegetation, destruction of habitat.
14 BOARD MEMBER ROBERTI: If it's a horizontal
15 migration?
16 MR. WALKER: Horizontal or vertical for that
17 matter.
18 BOARD MEMBER ROBERTI: And what are the kinds of
19 wetlands we have here?
20 MR. WALKER: Well, you would have various
21 marshes, you know, tidal zones, things like that,
22 traditional -- basically at Highway 59, it's my
23 understanding that the wetlands are strictly vernal pool
24 type wetlands.
25 BOARD MEMBER PAPARIAN: I thought I heard

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



1 testimony suggesting that there was some sort of clay
2 underneath the wetlands, and therefore we wouldn't expect
3 migration.
4 MR. WALKER: What happens with -- clay landfill
5 gas will tend to, if it comes underneath or even
6 laterally, it will hit the clay. It won't go in. It will
7 tend to resist moving in through the clay. Basically,
8 vernal pools, that's how they're created. There's these
9 special low permeability soils, which allow for the
10 seasonal rains to pond. And that's how permeability, you
11 know, works, not just from above, but it works from below
12 too.
13 And they're shallow, they're very shallow zones.
14 So laterally it's not to say that landfill gas might be at
15 the surface and migrating the surface and affect the
16 wetlands, but normally what we've seen like at Keifer and
17 even at Miramar Landfill in San Diego, where actually
18 wetlands, vernal pool wetlands, were formed on top of the
19 landfill because you had all the settlement.
20 And so there was actually, you know, within the
21 landfill a viable wetland created. That's the type of
22 situations we've seen with those types of wetlands.
23 BOARD MEMBER PAPARIAN: Can you help me with one
24 point then? If that's right, that there's a low
25 permeability under the area where the wetlands are, it

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



seems like, and I understand what five parts per million, I understand that's a low reading, but it seems like the readings that they're getting above the wetlands is comparable to the readings they're getting elsewhere around the whole facility. It seems to all be around five parts per -- maybe as 5.8 here and there that doesn't quite make sense to me. If you're in an area of low permeability, you're getting comparable readings to areas where presumably there's better permeability.

MR. WALKER: It gets pretty complex, but, you know, landfill gas in the air, you know, mixes around quite a bit. So depending upon where your instrument is where you take your measurement, you could get a lot of mixture above the surface.

Now, if you go into the soil zone and do a real detailed investigation, and depending upon the climate conditions at the time, the pressure, you're going to find all kinds -- it gets really complex. So it's not unusual under the standard surface screening to find it fairly well distributed at the surface above. If there's a detailed soil gas sample, you probably expect to see a little bit more differences if you had very sensitive equipment.

BOARD MEMBER PAPARIAN: So back up one second on something you said, that it sounded like you're saying the

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



1 temperature conditions, the time of day and so forth?
2 MR. WALKER: Temperature, pressure, yeah, soil
3 moisture, barometric pressures, temperature, wind, -- the
4 migration of gas detected in the surface is very dependent
5 upon the conditions at the time.
6 BOARD MEMBER PAPARIAN: So when the Board, I
7 believe, did its inspection report December 6th, if I
8 remember the staff report correctly, did its inspection of
9 the facility, were we made aware of these readings and the
10 conditions under which the readings were taken and so
11 forth?
12 MS. KIGER: We just got copies of the most recent
13 gas monitoring that the operator had done.
14 BOARD MEMBER PAPARIAN: So these things that have
15 just been testified to, the surface above-the-dirt
16 readings, we weren't aware of those until today?
17 MS. KIGER: No. What the consultants were
18 talking about? No, we haven't seen that.
19 BOARD MEMBER JONES: That's not part of the
20 requirement.
21 MR. WALKER: No. We have not seen the detailed
22 investigation results and how they were conducted.
23 BOARD MEMBER PAPARIAN: So we don't have a way of
24 scientifically evaluating for those needs?
25 MR. de BIE: Mr. Paparian, just to remind the

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



1 Board members that Fish and Wildlife has been working with
2 the operator extensively relative to the wetland. And the
3 unusual drawing of the yellow boundary is one result of
4 that. But another result is a very firm agreement and
5 some requirement on the County that they monitor the
6 wetland habitat and prevent any degradation to that area.
7 So there are mechanisms in place to both monitor
8 and prevent problems with the wetland area that Fish and
9 Wildlife has worked with the operator on.
10 Staff typically does not do surface monitoring
11 investigations during their inspection. We focus on the
12 lateral sub-surface migration as a matter of business
13 practice and our inspection techniques.
14 BOARD MEMBER ROBERTI: What is the latest surface
15 reading again?
16 MR. SULLIVAN: The results?
17 BOARD MEMBER ROBERTI: Um-hmm.
18 MR. SULLIVAN: Those are the results that I just
19 went over, but it varied by area. But the summary,
20 anything ranging from less than three parts per million to
21 the highest reading we got was 20 parts per million. And
22 that's following the procedure outlined in the new source
23 performance standards.
24 BOARD MEMBER ROBERTI: I grant we don't have any
25 formulation for reading surface migration, but it does

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



1 strike me that the readings, especially when we go as high
2 as 20 parts per million, do indicate some correlation
3 between lateral or sub-surface collection of methane and
4 the methane that escapes into the atmosphere. I don't
5 think we can speak of them as in two separate entities.
6 MR. SULLIVAN: I think one thing to be clear
7 about, though, is in terms of the Clean Air Act, US EPA,
8 California Air Resources Board, San Joaquin Valley Air
9 Pollution and Control District, this landfill is subject
10 to federal air quality regulations. They have
11 demonstrated their emissions are below the federal trigger
12 level. Therefore, they are not required to control any of
13 the landfill gas.
14 In other words, they can emit all of the landfill
15 gas they currently generate whether that's straight out of
16 the top of the landfill or whether that's sideways out of
17 the landfill and upwards. In terms of the air quality
18 regulations, they have no requirements to control that at
19 this time.
20 BOARD MEMBER PAPARIAN: I thought we had
21 testimony that on the south end, there was a relationship
22 to the expected clean air requirements.
23 MR. SULLIVAN: No. On the south end, it's
24 because the migration has gone too far through the
25 proposed buffer zone, and we don't think we can control it

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



1 at even the new property boundary. So we're putting that
2 in for the sub-surface combustible gas, the lateral
3 migration on the southern boundary.
4 BOARD MEMBER PAPARIAN: No relation to the Clean
5 Air Act.
6 MR. SULLIVAN: Not in Relation to the Clean Air
7 Act.
8 BOARD MEMBER ROBERTI: Madam Chair?
9 CHAIRPERSON MOULTON-PATTERSON: Senator Roberti.
10 BOARD MEMBER ROBERTI: One last point for this
11 witness, and something that helps control my attitude on
12 this, one of the charges for the Board, one of the reasons
13 why the Board was brought into existence, was to control
14 the expansion of landfills, control the expansion of
15 landfills.
16 And that is something that we have to consider
17 and read in the interpretation of our statutes. So when
18 we talk about hazards and nuisance, we have to understand
19 that controlling landfill space it's -- and the amount of
20 area that is devoted in our state to landfills is a
21 priority. And therefore mitigation through expansion is
22 something that I find pretty incomprehensible, especially
23 in the light of 20919.
24 When we speak of hazard and nuisance as important
25 as the Air Quality Act are, and I believe they are, and

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



they're epic pieces of legislation, we also have to realize that the words hazard and nuisance are written not in the light of that legislation, but more properly in the light of our own birthing legislation, and that is to create restrictions on the expansion of landfills.

That being the case, mitigation through expansion just runs contrary to the Board. And I tend to agree with the audit, that if it was ever litigated, we would lose, because it is absolutely contrary to statute.

CHAIRPERSON MOULTON-PATTERSON: Okay. Mr. Sullivan, were you finished or did you have some more remarks?

MR. SULLIVAN: I think we wanted to bring up another speaker who has to leave.

CHAIRPERSON MOULTON-PATTERSON: Okay, because I have -- who?

MR. SULLIVAN: Then I may finish after that.

CHAIRPERSON MOULTON-PATTERSON: Okay. We have other speakers on the other side also. And our court reporter would like a break, so I'm just trying to either take one now or --

MR. YODER: This will be brief, Madam Chair.

CHAIRPERSON MOULTON-PATTERSON: Okay. Your name for the record, please.

MR. YODER: Madam Chair and members, Paul Yoder

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



on behalf of the California Chapters of the Solid Waste Association, North America, the association for solid waste management professionals in the world. It's unprecedented frankly for anyone on behalf SWANA to come before this Board and speak with respect to a specific permit.

But the fact of the matter is this permit sort of represents an article of faith with local government, if you will. It could be good faith. It could be bad faith. This permit, if approved, would allow this county, this landfill, to meet State minimum standards.

On behalf of SWANA I just want to urge the Board good faith doesn't matter, just in terms of complying with the diversion numbers. Good faith also should apply with respect to meeting State minimum standards. The county, as they have spoken to and documented, has dotted the "Is" has crossed the "Ts". They're before you today and this permit ought to be approved.

And I urge your indulgence as far as that is considered, Madam Chair.

CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr. Yoder.

Okay Mr. Peters, are you okay for a few more minutes?

THE COURT REPORTER: Sure.

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



1 CHAIRPERSON MOULTON-PATTERSON: Rick Best. Is
2 Rick still here?
3 MR. BEST: Thank you, Chairwoman and Board
4 members. Rick Best with Californians Against Waste. And
5 a pleasure to see you all in this new year, and hope all
6 is going well. And I look forward to eventually moving
7 downtown in the Board room much sooner.
8 (Laughter.)
9 CHAIRPERSON MOULTON-PATTERSON: So do we.
10 MR. BEST: I Look forward to finally being able
11 to walk across the street to your offices.
12 BOARD MEMBER EATON: We've got a pool if you'd
13 like to join.
14 MR. BEST: What's that?
15 BOARD MEMBER EATON: We have a pool as to when
16 this may happen.
17 MR. BEST: Oh, a pool. I want to speak here on
18 this item here today. And normally as was mentioned by
19 the previous speaker, we don't typically get involved in
20 specific landfill issues. We tend to focus more on the
21 State policy. But we believe that this landfill
22 represents a very significant policy that's been raised
23 and feel it's appropriate to raise this issue. And at
24 this point, we don't believe the Board should approve this
25 landfill permit based upon that.

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



1 But let me lay out the issues that we are
2 concerned about and that has already been indicated. The
3 State Bureau of Audits, the audit that was issued last
4 month, raised some significant concern about the Board's
5 Policy and particularly with regards to the Board's
6 policies on allowing for long-term violations to occur.
7 And we're going to be speaking here, I assume probably
8 tomorrow, on the item urging the Board to repeal that
9 policy upon the concerns that have been raised.
10 But understand this item is coming now before the
11 Board. And before the Board has an opportunity to
12 consider that policy, we believe the Board should act and
13 not approve this permit based upon the fact that this
14 landfill clearly has long-term violations that have
15 occurred.
16 According to the staff listings of violations,
17 first noted in 1997, it was supposed to be met by October
18 of 1999, yet here we are in the year 2001 and still the
19 violations continue to occur. And I think there was --
20 I'm still trying to get some clarity with regards to
21 what's going on. I've heard a lot of discussion here
22 today, some discussion about how perhaps at the northern
23 boundary that's going to be perhaps corrected or mitigated
24 by the fact that they're expanding the boundary, but I
25 haven't heard clearly how they plan to correct those

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



1 violations on the eastern south portions of the landfill.
2 But nevertheless, the fact is these landfill
3 violations have been going on for years, and according to
4 the discussion in the audit, I mean, landfill violations
5 of percentages of anywhere from six percent to up to 62
6 percent. I mean that's 14 times the standard that was
7 established, the five percent standard, that this landfill
8 was in violation.
9 So clearly, there were major violations going on.
10 And, frankly, I don't think it's necessarily just a
11 reflection on this permit, but the fact is there should
12 have been a lot better enforcement, a lot better making
13 sure that the landfill got into cooperation.
14 But nevertheless, we're here today on this
15 permit. And we believe that, based upon these continuing
16 violations, until these violations are addressed, we
17 believe that this is in violation and that the Board
18 should not approve a permit that as the statute indicates
19 the Board shall object to a permit where there is a
20 violation of State minimum standards.
21 We believe that the record is clear here that
22 there is these continuing violations. And until these
23 violations are corrected, we believe that the Board should
24 object to the permit.
25 Thank you.

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



1 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
2 Best.
3 We'll take a very short break. I apologize, but
4 it's been two hours and fifteen minutes and our court
5 reporter needs a break. So ten minutes.
6 (Thereupon a brief recess was taken.)
7 CHAIRPERSON MOULTON-PATTERSON: I'd like to call
8 the meeting back to order, please.
9 Okay, we're still on Item 3. I'd like to ask the
10 speakers to please be brief because there's -- I might say
11 to staff, my intention is to finish 3 and finish 4. And
12 we do have a number of speakers on Item 4, and then call
13 it a night.
14 Ex partes, Mr. Eaton?
15 BOARD MEMBER EATON: No, but I'll be willing to
16 go to any party afterwards.
17 (Laughter.)
18 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones?
19 BOARD MEMBER JONES: George Larson and Mr.
20 Hansen.
21 CHAIRPERSON MOULTON-PATTERSON: Okay. Mr.
22 Medina?
23 BOARD MEMBER MEDINA: None to report.
24 CHAIRPERSON MOULTON-PATTERSON: Mr. Paparian?
25 BOARD MEMBER PAPARIAN: Scott Johnston from

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



1 Merced County and Mike Remy as well.
2 CHAIRPERSON MOULTON-PATTERSON: Thank you.
3 Senator Roberti?
4 BOARD MEMBER ROBERTI: No ex parte.
5 CHAIRPERSON MOULTON-PATTERSON: I have none.
6 Okay, so we're back with Mr. Sullivan and then John Boss
7 very briefly and Mike Remy, I understand.
8 MR. SULLIVAN: I'm going to be very brief and we
9 can move on. I know you're running out of time. Two
10 issues I wanted to cover. One pertains to the current
11 violation. As I mentioned previously, MERCED County at
12 the Highway 59 landfill is currently in violation of
13 20919.5 because of exceeding the five percent standard at
14 the facility boundary.
15 When that happens, there are three things that
16 have to be done and we believe they've done all of them.
17 One is to take the necessary steps to ensure protection of
18 human health, place in the operating record a description
19 of the problem and the steps taken and three, implement a
20 remediation plan to control the problem.
21 Nowhere in 20919.5 does it require them to put in
22 a control system. It just tells them that they need to
23 fix the problem. And we believe the acquisition of land
24 will indeed do that. And that's why that method was
25 chosen.

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



1 I've heard a lot of talk about Section 20919. I
2 was not aware that the county was in violation of 20919.
3 They certainly haven't been cited for such a violation.
4 And there seems to be one important part of 20919 that I
5 don't hear being mentioned here. Basically, "if there is
6 determined to be a nuisance or hazard, and if the
7 monitoring that's conducted is triggered by that hazard
8 occurring, if the monitoring indicates methane gas
9 movement away from the site, the owner shall, within a
10 period of time specified by the requiring agency,
11 construct a gas system approved by that agency."
12 The second sentence here is more important. "The
13 agency may waive this requirement if satisfactory evidence
14 is presented indicating that adjacent properties are safe
15 from hazard or nuisance caused by a methane gas movement."
16 And when they cite an agency in this case, they
17 mean Local Enforcement Agency, the don't use the
18 California Integrated Waste Management Board, they don't
19 cite the Local fire agency. And that is a provision that
20 has been used by many LEAs and continues to be used. And
21 there's been some talk on this Board that somehow we were
22 setting a precedent here by getting a facility expansion
23 to control gas migration. That's not the case at all.
24 Many LEAs use this provision. They believe it
25 gives them the authority to grant a waiver to put in the

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



1 control system. And those cases actually haven't come in
2 front of this Board, because they've actually done that
3 without revising the solid waste facility permit.
4 And a manifestation of that, for example, is they
5 have -- which is very similar to this case, they have
6 methane and probes at the facility boundary, they have
7 trash right up to the facility boundary and this LEA
8 approves an alternate boundary for monitoring, that is
9 outside the permitted facility boundary and essentially
10 creating the buffer zone we're talking about.
11 And there are LEAs that have done that, without
12 necessarily coming to this Board for approval. So when we
13 say this is a longstanding policy of the Board to allow
14 this to happen, that's, I believe, how it's occurred, that
15 those sites have not come to this Board to get a solid
16 waste facility permit revision to extend the permitted
17 boundary.
18 Now, you may say that's not the correct
19 interpretation of the regulation and the LEA shouldn't be
20 doing that, but I think that's a problem inherent in this
21 regulation and in the policy. If you feel that needs to
22 be corrected then go in and correct, not only the policy,
23 correct the regulation and make it clear who should use
24 this waiver, how should this waiver be used. And that
25 shouldn't be done on the back of the Highway 59 permit

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



1 that is all the way through this process already.
2 That should be done as a separate rule-making
3 episode, a separate policy-making episode. And if you
4 decide that's the route you want to go, then all future
5 projects that come before you would know what they're up
6 against. It wouldn't be a moving target. They would know
7 all the standards they need to abide by and there would be
8 no question in front of you.
9 Merced hasn't had that luxury. The standards
10 seem to be changing as we speak and the target is clearly
11 moving.
12 And so in summary, I believe, as the standards
13 are currently, they've met the state minimum standards and
14 would meet the state minimum standards with the approval
15 of this permit, so I recommend approval.
16 CHAIRPERSON MOULTON-PATTERSON: Senator Roberti.
17 BOARD MEMBER ROBERTI: Well, the speaker has, on
18 a number of occasions now, said that the violation is of
19 20919.5. However, as I read it, and I think as the audit
20 has read it as well, we are not allowed to give a permit
21 revision if the concentration of methane gas does not
22 exceed the lower explosive limit for methane at the
23 facility property boundary.
24 Now, the argument, of course, is we're expanding
25 the geography in order to no longer have that reading of

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



1 methane at the boundary. But the issue is, I submit, that
2 we can't do that statutorily, because if we are changing
3 the permit by expanding the boundary, then we are, in
4 effect, granting the permit, because that's the reason why
5 we are expanding the boundary, even though the facility is
6 in violation at the boundary.
7 So you have to, in my estimation of my reading
8 and as I think the auditor reads it, clean the mess up
9 first before you ask for a permit variation. Asking for
10 the permit variation and the change at the boundary by
11 expansion is granting you a permit change when we're not
12 allowed to do that.
13 To the extent that Board policy in the past has
14 acted contrary isn't a question of good faith or not, I
15 think it's a question of violation of the law, on 20919.5
16 not to speak of 20919.
17 CHAIRPERSON MOULTON-PATTERSON: Mr. Paparian.
18 BOARD MEMBER PAPARIAN: I had some conversations
19 at the break about this as well, but I want to be real
20 clear about what's happening on this southern boundary to
21 make sure I understand it.
22 You testified that the gases migrated somewhere
23 like three-quarters of the way to the new boundary?
24 MR. SULLIVAN: Correct.
25 BOARD MEMBER PAPARIAN: And presumably it is

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



1 because of your expectation that it will continue
2 migrating to the boundary that the county is going to put
3 in this carbon system that was described to us?
4 MR. SULLIVAN: Right, the county is going to put
5 in an actual landfill gas extraction system just on that
6 perimeter, so the perimeter migration system, is the term.
7 But the collected landfill gas initially will be put
8 through a carbon unit for the gas treatment.
9 BOARD MEMBER PAPARIAN: And if they didn't do
10 that, we would expect the landfill gas to hit that new
11 boundary and probably pass that new boundary?
12 MR. SULLIVAN: We believe there's a sufficient
13 risk of that and that's why we decided to put in a control
14 measure at that point.
15 BOARD MEMBER PAPARIAN: And the other
16 clarification I had at the break was that ultimately the
17 system that would be put in there would likely also be
18 required because of the size of the facility and the way
19 the Clean Air Act regulates the size of the facility as
20 opposed to the actual emissions from the facility?
21 MR. SULLIVAN: No, not exactly. The way it works
22 is this, the new source performance standards for
23 municipal solid waste landfills regulate nonmethane
24 organic compound emissions from the landfill. So all
25 the -- one thing needs to be made clear here. We've heard

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



1 talk of methane. The Clean Air Act has no authority, the
2 US EPA has no authority to regulate methane.
3 The only mechanism for regulating methane
4 greenhouse gas is through the Kyoto protocol, which the
5 United States has not even signed yet. So the Clean Air
6 Act and the New Source Performance Standards, they
7 specifically regulate nonmethane compounds.
8 They realize they're going to get the methane
9 along the way. That's a good thing, but they don't have
10 the authority to regulate the methane. Nonmethane organic
11 compound emissions that exceed 15 megagrams, which is
12 about 50 tons per year, hits the federal trigger. When
13 they hit that trigger level, they are required to put in a
14 landfill gas collection and control system in accordance
15 with the standard.
16 The Highway 59 landfill has not hit that
17 threshold and will not hit that for several years, so they
18 are currently not required to control any of the landfill
19 gas being generated by the site because of the Clean Air
20 Act, but they will.
21 BOARD MEMBER PAPARIAN: Ultimately, the
22 expectation is that it would because the southern boundary
23 system would address that requirement as well as
24 preventing the landfill gas from reaching the new
25 boundary.

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



1 MR. SULLIVAN: Correct, when the NSPS
2 requirements put in a gas system that's triggered, it will
3 be a comprehensive system across the entire site wherever
4 waste is placed. And the current perimeter system on the
5 southern boundary that's being proposed to be installed
6 would then be incorporated into that larger system and
7 covered the entire site.
8 And that would -- we would believe that would
9 also control the gas migration certainly as well.
10 CHAIRPERSON MOULTON-PATTERSON: Thank you. Mr.
11 de Bie.
12 MR. de BIE: Thank you for a chance to put a
13 Board staff comment on the record relative to the waiver
14 issue that the last speaker brought up. In the situation
15 when Board staff are aware of waiver discussions relative
16 to the landfill standards, we've communicated to those
17 LEAs that that is not an option if there's five percent at
18 the boundary, that they need to control gas at the
19 boundary. And alternative monitoring beyond the boundary
20 is not appropriate.
21 So of those situations we're aware of, we have
22 not allowed it by practice or by any other manner.
23 CHAIRPERSON MOULTON-PATTERSON: Thank you.
24 CHIEF COUNSEL TOBIAS: May I also respond to
25 that? In section 20919, and I guess I would disagree with

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



1 the speaker, the way -- and until maybe there's
2 legislative history or regulatory history that I would,
3 you know, ask staff about. But my understanding is that
4 in that last sentence that says the agency may waive this
5 requirement, is that what that refers to is the agency who
6 first notified them that there's a problem.
7 So if we notify, under 20919, if we notify the
8 operator that there's a hazard or a nuisance, then we
9 would be one actually waiving the requirement, not the LEA
10 or somebody else. So I did want to clarify, that would be
11 my interpretation of how that reads.
12 CHAIRPERSON MOULTON-PATTERSON: Thank you. Thank
13 you, Mr. Sullivan.
14 Mr. John Boss. And Mr. Mike Remy next.
15 MR. BOSS: Yes, good afternoon, Madam Chair, and
16 members of the Board, I'll be very brief. I'm John Boss
17 principal engineer with Harding ESE in Sacramento. I have
18 been working on this project for a number of years as the
19 project manager and engineer for the preparation of the
20 report of facility information, which is the document
21 that's supporting this permit.
22 I'm speaking here also, to a certain extent, as
23 somebody who's been involved in permitting facilities for
24 about 25 years, partially as a staff member of your Board
25 early on and as somebody who's been involved with a lot of

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



1 design engineering and permitting landfills.
2 As such, I've looked at this facility, and I want
3 to try to bring out this is an expansion facility to gain
4 additional capacity for Merced County in compliance with a
5 statute that's on the book that says that the county has
6 to have 15 years of permitive capacity, which it currently
7 does not have.
8 So the big picture here is that this is a
9 facility that is being proposed to get sufficient capacity
10 within this county, so they can handle the waste that's
11 not diverted.
12 The facility has been designed to be consistent
13 with all State minimum standards. It meets the Subtitle D
14 requirements, leachate requirements. It's been designed
15 to meet all the drainage requirements for that facility
16 which is to the north of the existing facility.
17 Again, I'd like to point out there have been a
18 number of landfills that have expanded within this area
19 where they have gone contiguous to an existing landfill
20 and expanded beyond, and that there always has been
21 landfill gas migration from the older landfill underneath
22 the new landfill which is very similar to what's happening
23 on the north side.
24 I also wanted to repeat what I said last time for
25 Bill Mitchell, that as an instructor for the SWANA Manager

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



1 Landfill Operations Class, we always try to teach that a
2 good landfill tries to build in a buffer when it gets
3 permitted. This landfill has been permitted a long time
4 ago. And they are trying to, as part of the expansion in
5 order to be able to meet the standards of 1550 use
6 capacity, they are trying to get into the 21st century.
7 And lastly, I guess maybe more on a light note, I
8 do know that the northern area has been used for cattle
9 grazing for a number of years, so some of the surface
10 emissions there may not have been landfill generated.
11 (Laughter.)
12 MR. BOSS: I'd be happy to answer any questions.
13 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you,
14 Mr. Boss. I don't see any at this time.
15 Mr. Remy.
16 MR. REMY: Good afternoon, Madam Chair, and
17 members of the Board. My name is Mike Remy from Remy,
18 Thomas and Moose.
19 At the Billy Wright deliberations, my partner,
20 Jim Moose, appeared before you and from the legal point of
21 view basically made the point that your obligation is to
22 determine whether or not the approval by the LEA is
23 supported by minimum State standards.
24 I will try, at this point, to convince you with
25 logic, but I also believe, from a legal point of view,

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



there have been some very expansive interpretations of what, up to this point, was not known to my client to be requirements of the alleged expansion of the regulation.

First of all, I would say this, today if a landfill came to you without a buffer, you would not accept it. In 1970 when this landfill was built that was an acceptable methodology. For more than two and a half years now my client has been trying to solve a problem. It is a problem under 20919.5, which, by the way, Senator, does explicitly in subsection D indicate that it is an explosive value in the air as well.

This particular problem and its violation came into recognition by my client after already having pursued the objective of a landfill expansion. On the southern boundary of the facility, we have a situation which does not allow us, because of the lack of space, a lack of a buffer to take the remedial actions that are best for the environment.

I am sensitive to considerations of what is and what should be done to protect the environment. I believe my client has bent over backward. It's just that at this point, quite frankly, the rules are changing as we're going along.

I believe that that rule change is not appropriate and, and fact, is an exceedance of your

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



1 authority. I believe the determination to be made here by
2 you is whether or not the LEA's determination under the
3 circumstances are such that they do meet the minimum
4 standards.
5 If it is your intent the change the law
6 respectively, please do so. But I must say in advising my
7 clients, it is much better if I know the rules in advance.
8 Thank you.
9 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
10 Remy.
11 Okay, that concludes our speakers.
12 Mr. Medina.
13 BOARD MEMBER MEDINA: Madam Chair, I am prepared,
14 at this time, to move Resolution 2001-29 revised that the
15 California Integrated Waste Management Board concurs with
16 the issuance of solid waste facility permit number
17 24-AA-0001.
18 BOARD MEMBER JONES: I'll second it.
19 CHAIRPERSON MOULTON-PATTERSON: Okay. We have a
20 motion to concur by Mr. Medina and seconded by Mr. Jones.
21 Please call the roll.
22 SECRETARY VILLA: Eaton?
23 BOARD MEMBER EATON: Aye.
24 SECRETARY VILLA: Jones?
25 BOARD MEMBER JONES: Aye.

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



1 SECRETARY VILLA: Medina?
2 BOARD MEMBER MEDINA: Aye.
3 SECRETARY VILLA: Paparian?
4 BOARD MEMBER PAPARIAN: No.
5 SECRETARY VILLA: Roberti?
6 BOARD MEMBER ROBERTI: No.
7 SECRETARY VILLA: Moulton-Patterson.
8 CHAIRPERSON MOULTON-PATTERSON: No.
9 Three, three. And Ms. Tobias, again, on a three,
10 three vote, within 30 days it is permitted.
11 CHIEF COUNSEL TOBIAS: It is approved.
12 CHAIRPERSON MOULTON-PATTERSON: Thank you very
13 much.
14 We're going to try and finish Item 4.
15 DEPUTY DIRECTOR NAUMAN: Item number 4 is
16 consideration of approval of facility compliance loans.
17 This item is continued from your December meeting, at
18 which time you took action on three of the applications.
19 Bridget Brown, Program Manager, will be presenting the
20 item as well as the additional information that you had
21 requested of us at that time.
22 MS. BROWN: Good afternoon.
23 CHAIRPERSON MOULTON-PATTERSON: Could we clear
24 the room, please. Our court reporter cannot hear. Clear
25 the room of those speaking anyway.

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



1 (Laughter.)
2 CHAIRPERSON MOULTON-PATTERSON: Would you start
3 over, please.
4 MS. BROWN: Good afternoon, Madam Chair and Board
5 members. My name is Bridget Brown with the facility
6 compliance loan program. This item is continued from the
7 December 12th, 2000 Board meeting and presents the
8 facility compliance loan applications for approval.
9 The Budget Act of 1999 authorized $1.44 million
10 in the fiscal year of 2000/2001 budget bill and included
11 an additional 1.44 million for interest free loans to
12 assist owners and operators of solid waste facilities with
13 environmental compliance.
14 On June 1st of 2000, staff sent the notice of
15 funding availability to approximately 1,500 interested
16 parties, including LEAs, landfill operators, land owners
17 and local governments. The loan program received 14
18 applications requesting funds amounting to over $5
19 million.
20 The Loan Program Review Panel members completed
21 their individual analysis of the loan applications and
22 provided scores using the Board approved program scoring
23 criteria checklist, then met as a group to reach consensus
24 on the final cumulative score. Five of the 14
25 applications were unable to meet the basic criteria of the

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



program and did not receive scores.

Of the remaining nine applications, three were classified as eligible cost centers previously approved by the Board. These applications were for Black Butte Landfill in Siskiyou County, Tehama County/Red Bluff Sanitary Landfill in Tehama County, and the City of Santa Cruz Sanitary Landfill application number 2 in the City of Santa Cruz.

The Board approved funding for these three applications at its December 12th, 2000 Board meeting. The remaining six applications have primary projects that do not fall into eligible cost centers previously approved by the Board, and are classified under other uses as determined by the Board. These applications are presented to the Board today for approval on a case-by-case basis.

The six affected facilities are Bridgeport Landfill in Mono County, the City of Santa Cruz Sanitary Landfill application number one in the City of Santa Cruz, Brawley Solid Waste Landfill in Imperial County, Glenn County Landfill in Glenn County, Tehachapi Recycling in Kern County, and Coastal Material Recovery Facility Transit Station in Los Angeles county.

Two facilities, Brawley Solid Waste Landfill and Tehama/Red Bluff County Sanitary Landfill are the Board's inventory facilities that violate State minimum standards.

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



1 The applicant for the Brawley solid waste landfill project
2 has requested consideration of AB 2136 program assistance
3 in lieu of a facility compliance loan.
4 The City of Santa Cruz submitted two separate
5 applications for the same facility. And per the loan
6 application package applicant's may receive only one loan
7 from the current population.
8 At the December Board meeting, staff was
9 instructed to readdress the applications that were unable
10 to meet the basic criteria of the program and did not
11 receive a score, as well as to insert use of recycled
12 materials label into the loan agreement. These two
13 requests were completed.
14 Staff requests that the Board consider the
15 remaining six applications in the other category for
16 funding on a case-by-case basis until the limit of the
17 appropriation has been reached.
18 The Staff will now provide an overview of the
19 individual facilities applying for facility compliance
20 loans.
21 MS. MARKIE: Good afternoon Madam Chair, Board
22 Members. Sue Markie with the facility operations branch.
23 I wanted to address one question. At the January 17th
24 Board briefing, a question came up regarding how
25 applications were scored, specifically how was

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



1 demonstrated need determined.
2 There are two separate demonstrated needs
3 associated with the loan application. One is for an
4 existing documented compliance issue, and one is for a
5 demonstrated financial need. It was the intention of the
6 review panel to fairly score each applicant's applications
7 to the best of the panel's ability and in comparison to
8 other applications.
9 An excellent proposal that clearly demonstrated
10 the requested information would receive the maximum number
11 of points, whereas categories with specific requested
12 information missing would receive zero or partial points.
13 (Thereupon an overhead presentation was
14 presented as follows.)
15 MS. MARKIE: Now, I'd like to present the
16 remaining five applications that had passing scores. The
17 first is Bridgeport Landfill in Mono County. As
18 indicated, the compliance issues were litter control
19 problems, a landfill gas control problem, groundwater
20 impacts. The project is to install two groundwater wells
21 and six landfill gas probes, appropriation of closure,
22 post-closure plans and the final cover cap.
23 --o0o--
24 MS. MARKIE: The next slide indicates how those
25 funds would be allocated.

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



1 The first part of the plan would be to actual
2 have probes and wells. And the second part would be for
3 the Final closure plan and construction.
4 --o0o--
5 MS. MARKIE: I'm going to pass through Brawley,
6 since that was approved previously.
7 BOARD MEMBER JONES: Can we ask questions as we
8 go through?
9 MS. MARKIE: Sure.
10 BOARD MEMBER JONES: Sue, on this application,
11 we're looking at, for Bridgeport, we're looking for
12 closure activities. Was that one of the accepted
13 requirements that we had? I mean, I don't have any
14 problem with the gas probes or the monitoring on anything
15 like that, but we're talking about actual closure, which
16 should be funded already, I mean, in a closure plan.
17 DEPUTY DIRECTOR NAUMAN: Mr. Jones, we touched
18 upon this when we were looking at this item in December.
19 And you may recall that there are approved, what we're
20 calling, cost center specific types of activities that the
21 Board in and the program and designing the program
22 specified as being eligible just by their nature.
23 And then we had a catch-all category that you
24 asked us to establish so that the Board could consider
25 other activities outside of the prescribed four.

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



1 There was discussion, and I think we looked at
2 the transcript, when we were talking about this in
3 December, there was some discussion during those early
4 months of designing the program about whether closure,
5 post-closure costs and related activities would be
6 appropriate under this program.
7 And I do recall you and I perhaps don't recall
8 others specifically expressing some reservations about
9 funding those costs through this program. So I believe
10 that the Board has discretion under the D category to
11 approve or not approve closure and post-closure costs.
12 BOARD MEMBER JONES: Is the Bridgeport Landfill
13 funded in its closure, post-closure or are they using
14 pledge or is anybody --
15 MR. VLACH: Mr. Jones, Garth Adams from our
16 Finance Assurance can address that issue.
17 MR. ADAMS: Garth Adams, Financial Assurance
18 Section. And the answer to Mr. Jones' question, yes they
19 have an enterprise fund, basically fund as fast as they
20 fill. And they are adequately funded at this time and, in
21 fact, they are slightly over.
22 BOARD MEMBER JONES: All right. So this
23 request -- I know they've got letter problems, because
24 I've been contacted. I know they've got some other
25 problems that they need to deal with and I don't have any

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



1 problem with that. I'm just trying to figure out, because
2 this pool of money is so small and there are so many
3 people that need it, is the idea that we fund closure and
4 they use their closure, post-closure enterprise fund for
5 something else?
6 Or I guess what I'm trying to grapple with, if
7 they've got a fully funded closure plan, that the dollars
8 are in a fund and yet they're asking for a no-interest
9 loan to deal with closure, I'm having a hard time
10 understanding where the benefit is to the State, and the
11 citizens.
12 MR. ADAMS: Mr. Jones, they are not fully funded
13 where they meet the total costs of the closure. They are
14 adequately funded in time where they need to be at their
15 buildup. They have remaining capacity in the site, so
16 they do have more years to build up the fund, but when you
17 pay annually, they are where they're supposed to be in.
18 BOARD MEMBER JONES: For this point in time.
19 MR. ADAMS: For this point in time, they are in
20 compliance with the rates.
21 BOARD MEMBER JONES: All right. Are we looking
22 then at closing this landfill early?
23 MR. ADAMS: It sounds like it and maybe someone
24 can correct me, but it sounds like the request is to close
25 before they are fully -- before the site is full, so

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



1 basically early closure.
2 BOARD MEMBER JONES: Thank you.
3 MR. ADAMS: Some of the funds that would be
4 closure would be -- you know, obviously, you can't use
5 closure funds that they've accumulated over time for
6 anything else other than closure activities. So, no, I
7 would not anticipate that they would take that money and
8 use it for something else. I think it's a combination of
9 the two. They have what they're asking for.
10 BOARD MEMBER JONES: Under their closure fund,
11 they could do the remediation that's part of closure too,
12 right. If they chose not to remediate as part of the
13 operation, but as part of closure, then those would be
14 allowable expenses to monitoring and the wells, the
15 trenches all that stuff would be -- be fall into that
16 category as final closure, right?
17 MR. ADAMS: I believe so.
18 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina has a
19 question also.
20 BOARD MEMBER MEDINA: Yes. Madam Chair, this is
21 in regard to process, and particularly in regard to the
22 city Of Santa Cruz, which submitted two applications. And
23 the reason I'm raising this is I don't want to see any
24 other applicants get caught in the process where they
25 either don't understand or whether it is unclear to the

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



1 applicant.
2 And specifically, the City of Santa Cruz
3 submitted their first application in the amount of
4 $500,000 which was scored -- received a score of 17
5 points. They then submitted an application, a second
6 application in the amount of 88,906, which received 37
7 points.
8 And my question is that at any time did the City
9 of Santa Cruz -- were they aware that -- how their
10 applications scored because if I'm the City of Santa Cruz,
11 I've got on application and it's for $500,000. I've got
12 another one in for $88,000. One scores higher than the
13 other one.
14 If I'm the City Of Santa Cruz, I'm more inclined
15 to go for the $500,000 loan than I am for the $88,000
16 loan. I wonder whether -- is it a staff decision you only
17 inform them that one of their grant applications received
18 a high score and the second one did not, because even
19 their second application received a higher score than some
20 of the other ones that we will be considering funding.
21 So I'm just concerned about the process and the
22 dynamics and how we deal with the applicants.
23 MR. VLACH: Mr. Medina, the applications -- I'm
24 Bernie Vlach with the enforcement division.
25 The applications were received all during a short

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



1 period of time. They were received at the same time. We
2 encouraged the City to either combine their applications
3 or to withdraw one of them. We told them we anticipated
4 that there would be this kind of a problem.
5 However, inasmuch as they didn't take our advice,
6 and wished the staff to consider and process the two
7 applications, we found that one of the applications,
8 application number two, scored higher because it was -- it
9 identified landfill gas problems, which is one of the high
10 priorities for the Board, so that was the one that you
11 approved last month.
12 BOARD MEMBER MEDINA: So are you telling me that
13 the City of Santa Cruz was informed that they had, in
14 regard to their two applications, only one would be funded
15 and that one was at the $500,000 level and one was at the
16 $88,000 level and they chose to have the $88,000 one
17 funded.
18 MR. VLACH: They didn't choose that, sir. The
19 Board considered the applications in order and rank, and
20 that was the one that you took up last month and approved.
21 The City was fully aware of this requirement, as I
22 mentioned, written in the application and also we
23 contacted them afterwards and we pointed out to them that
24 this is problematic. As I said, they insisted on doing it
25 this way.

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



1 BOARD MEMBER MEDINA: Problematic in which
2 regard? That they had submitted two applications?
3 MR. VLACH: Yes, sir.
4 DEPUTY DIRECTOR NAUMAN: Mr. Medina, just another
5 point of clarification. Once the applications were scored
6 and we then prepared the item for the Board meeting, we
7 did not have discussion with any of the jurisdictions as
8 to how they ranked in the scoring. So we did not call
9 Santa Cruz and say, of your two applications here's how
10 you scored, here's how you ranked.
11 So the conversation relative to you have two
12 applications, do you want to process two applications,
13 obviously occurred before the scoring. And they chose, at
14 that time, to continue with the process with both
15 applications.
16 BOARD MEMBER MEDINA: So is that -- the decision
17 that you made, is that determined by staff that you have
18 decided to do that or is that established by the Board
19 that that would be the process.
20 DEPUTY DIRECTOR NAUMAN: It was established by
21 the Board that we would only allow one application per
22 jurisdiction to be funded.
23 Ms. Tobias.
24 CHIEF COUNSEL TOBIAS: Madam Chairman, can I
25 comment on this? I think we have a process going right

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



1 now where we are looking at all these programs to make
2 sure that they're consistent with the policies that we use
3 in the grant programs, but this was being done in a
4 different division than it was the first time out on it.
5 Normally, in a grant situation like this, if the
6 Grant -- if the guidelines that were set out said that you
7 could submit one application, then basically the second
8 application, whatever it was, would be discarded. And so
9 probably the thing that, you know, it's easy to say in
10 retrospect of what to do.
11 But in retrospect, what we should have done was
12 basically either given them the choice and said you can
13 choose which one you would like to have submitted, or take
14 the first one that came in the door. There's different
15 ways of handling that. But what we need to do is be
16 consistent with the policies that are set out.
17 So probably one of the these should not have even
18 been reviewed. And I think the question is more should
19 the county have a choice, and they would have had a choice
20 in the first place which to submit, but that's the
21 problem, we probably shouldn't have got to the point where
22 both were reviewed.
23 BOARD MEMBER MEDINA: And that's my concern
24 should it come up again.
25 CHIEF COUNSEL TOBIAS: And I think it will not.

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



1 I think we actually have a pretty good system in the
2 grants situation. And I know meetings are going on right
3 now about making sure that all of the programs that come
4 up, whether they go through the Admin Division or whether
5 they're in one of the other divisions, would be consistent
6 with those policies.
7 So I think even without this, we've already
8 started in on addressing that consistency issue, but it
9 was a problem here.
10 BOARD MEMBER MEDINA: Thank you.
11 CHAIRPERSON MOULTON-PATTERSON: Senator Roberti.
12 BOARD MEMBER ROBERTI: I have a problem as well.
13 Questioning why the scoring on Si-Nor, which I must say is
14 in Los Angeles County, of which I visited. It's a
15 minority run recycling of a MRF, is scoring much lower.
16 They are scored lower by three points over the company
17 that's ahead of them, Tehachapi, simply because Si-Nor
18 complied with the law and tried to improve their property,
19 even though they're at a possibility of being in
20 violation.
21 Tehachapi, which is in violation got three points
22 because they're in violation. I mean, this is not a
23 program to put a premium, and I'm not knocking Tehachapi.
24 This should not be a program to put a premium on those who
25 are in violation. It's to take care of troubled areas.

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



1 The operative word should be troubled, not in
2 violation, otherwise people who take it upon themselves to
3 make improvements are going to get penalized by the Board.
4 I mean, it's cockamamie. I don't know another word for it
5 and unfair.
6 BOARD MEMBER EATON: Well, Senator, that was
7 Kathy Wright, so I think you should address your comments
8 to her, because it is indeed the case that she wanted to
9 reward those who had a violation in the sense that there
10 was a compliance loan. This is that program, where we
11 want to seek a way to give out money and she wanted a loan
12 program with no interest. And one of the requirements was
13 that the violations -- that the priority was to establish
14 that the violations, companies or landfills or people
15 involved in the recycling business who had violations,
16 this was a way to bring them up to speed, and that was
17 something that was imposed upon us during a budget
18 subcommittee.
19 BOARD MEMBER ROBERTI: Well, I would surely like
20 to see the operative word if it is violation or threat of
21 violation, because I would think violation should be
22 written.
23 BOARD MEMBER EATON: Well, that's why they called
24 it a facility loan --
25 BOARD MEMBER ROBERTI: -- very narrowly.

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



1 BOARD MEMBER EATON: That's why they call it a
2 facility compliance program, because that's what she
3 called the program, because she tried to put her hook on
4 us. Where she dinged on was the fact that she thought we
5 were doing an underground grant program. If you remember
6 back at the budget, she accused the Board of doing an
7 underground grant program.
8 And so she said, therefore, I'm going to fix it
9 so that you can't do that. That was the LAO's
10 recommendation as well, that we, as a Board, were trying
11 to do an underground grant program. So therefore, they
12 were going to go and say that you had to have a facility
13 compliance loan program based upon facilities that needed
14 help and that were out of compliance.
15 BOARD MEMBER ROBERTI: Well, and Si-Nor does have
16 facility compliance problems.
17 BOARD MEMBER EATON: I'm not arguing
18 individual -- I'm not trying to be on the opposite. Maybe
19 I've been on the opposite side all day with you, so you
20 just want to listen for a second while I kind of talk to
21 you about some of the history, because, you know, that's
22 what it happened to be, that it was actually done to
23 reward. And we fought that, because we thought that the
24 whole program should have been. As you envision it today.
25 We were rejected on that, based upon an underground grant

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



1 program.
2 DEPUTY DIRECTOR NAUMAN: And part of the emphasis
3 was on small publicly operated facilities located in rural
4 portions of the State. So we were working with all of
5 those directives in working with the Board over, of
6 course, several months to design this program.
7 BOARD MEMBER JONES: I think you --
8 BOARD MEMBER ROBERTI: I'm not -- let me finish.
9 I'm not quarreling with any of those aspects, because
10 that's the statute.
11 BOARD MEMBER EATON: Especially not her.
12 (Laughter.)
13 BOARD MEMBER ROBERTI: Well, Ms. Wright is --
14 BOARD MEMBER EATON: Always right.
15 BOARD MEMBER ROBERTI: Ms. Wright never took
16 directions from me even at the Italian consulate dinners.
17 And we wanted who we wanted with no voice.
18 (Laughter.)
19 BOARD MEMBER EATON: She therefore was out of
20 compliance.
21 BOARD MEMBER ROBERTI: But nevertheless, I'm not
22 arguing with the word preference and all this. All that
23 considered, Si-Nor still loses because they are not in
24 actual violation, which I think is something that has to
25 be construed very, very narrowly if this was the way we

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



1 were supposed to go into it.
2 CHAIRPERSON MOULTON-PATTERSON: Ms. Markie, if
3 you could comment.
4 MS. MARKIE: If I could speak about that. There
5 were no extra points given to Tehachapi because they were
6 in violation. It was either a pass or fail. They
7 demonstrated the compliance problem. Where they lost
8 their three points was in the financial demonstrated need.
9 Tehachapi has their paperwork better.
10 BOARD MEMBER ROBERTI: It works the same way
11 though. It works the same way. It's just you didn't
12 affirmatively do it. It works in the negative rather than
13 affirmation, when I say the results appears to be the same
14 thing.
15 MR. MARKIE: Well, without their documented
16 compliance, they would have received a failing grade and
17 then they wouldn't have gotten any other points. So they
18 did demonstrate that there was a compliance issue.
19 And then I would like to address Mr. Medina's
20 concern. We did note your comments at the briefing and
21 the City of Santa Cruz is here today to address their
22 opinion.
23 CHAIRPERSON MOULTON-PATTERSON: Mr. Paparian.
24 As long as we're pulling out individual
25 facilities to discuss, I'm interested in poor old

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



1 Weaverville. We've received a letter.
2 CHAIRPERSON MOULTON-PATTERSON: Trinity.
3 BOARD MEMBER PAPARIAN: We received a letter from
4 the Regional Water Board indicating that they had
5 documented corrective action required for the Facility.
6 And I think at a prior Board meeting this was an issue,
7 whether they had any required corrective action or not,
8 and that it affected their scoring.
9 I'm wondering if, in light of the Water Board
10 letter, that changes things with regards to this
11 application or whether they have original value to the
12 Board?
13 CHAIRPERSON MOULTON-PATTERSON: Well, you know, I
14 know you're going to go through your presentation, but we
15 do have seven speakers, some from these areas, that might
16 be able to answer some of these questions or comments,
17 too. So you want to proceed or --
18 MS. MARKIE: Would you like me to address that or
19 do you want me to proceed with presentation?
20 BOARD MEMBER PAPARIAN: If there's a quick answer
21 to it.
22 MS. MARKIE: Well, I think the quick answer is
23 that their application was incomplete. They did not
24 document a compliance issue at the facility. After the
25 December Board meeting, they did indicate that the Water

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



1 Board had had some concerns. There was a letter in 1998
2 that the Water Board had indicated that they were under
3 corrective action, but there was no report from the LEA.
4 There was no Water Board reports of any notice of
5 violations.
6 Their consultant recommended that to address the
7 groundwater problems that they should put in a leachate
8 collection system and close the site, neither of which we
9 felt was addressed in their application. So we thought it
10 was unfair to go to applicants that had submitted the
11 documentation upfront to allow -- for a late submittal for
12 one, but then we couldn't even connect what they were
13 asking for and what the Water Board said that they had a
14 violation for.
15 Okay, I'm going to move forward.
16 Okay. Now, we're on to Glenn county. The issues
17 they had were frequent high winds, blowing debris. They
18 have claimed that litter fences and other mitigation
19 measures have proved to be ineffective at that site. And
20 their project is to construct an indoor tipping area
21 permitting all weather operations. And these violations
22 were documented by the LEA.
23 The breakdown on their design, I mean, I could go
24 through it, otherwise it's just the design specs, the
25 whole package, the construction and they're asking for a

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



full amount.

The City, in application number one, they're proposing to process their on-site mudstone for daily cover to meet permitting conditions. They have lack of availability of good cover soil. The unprocessed native mudstone allows for water to infiltrate and gas to migrate.

Their project is to process the onsite mudstone for daily cover use and they need to process it to three-fourths of an inch minus.

--o0o--

MS. MARKIE: Their breakdown is the crushing project, the design, mobilization and implementation.

--o0o--

MS. MARKIE: Tehachapi Recycling.

--o0o--

MS. MARKIE: Their issues are litter migration due to frequent high winds within the tipping area. The outdoor trommel and conveyor contributes to dust migration. And their project is to construct a new 20,000 square foot steel building which will include the dust misting system.

--o0o--

MS. MARKIE: And their breakdown is as follows with the equipment, labor, engineering services and some

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



contingencies.

--o0o--

MS. MARKIE: The last applicant is Si-Nor.

--o0o--

MS. MARKIE: Their issues are the outdoor tipping floor, the source of leachate, dust, litter, fuel spillage, right to air and water quality. Their project is to install a trailer pit to mitigate runoff, remove or relocate existing structures, reconfigure the access and install and move all weather canopies.

--o0o--

MS. MARKIE: And their breakdown is as follows. For the design; getting the use permit; revisions, plans and specs, the actual bidding and construction period.

There are several speakers today. And I didn't know at what point. We can either go forward with the Excel spreadsheets or wait until after the speakers.

CHAIRPERSON MOULTON-PATTERSON: We should do the speakers. Thank you.

Jim Sandoval, City of Santa Cruz.

BOARD MEMBER EATON: Madam Chair, can I ask a question. How long is this extra money that we didn't allocate available to us? Does it have to be spent within this fiscal year or can we --

DEPUTY DIRECTOR NAUMAN: It has to be spent

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



1 within this fiscal year.
2 BOARD MEMBER EATON: Okay. And then next year we
3 get --
4 DEPUTY DIRECTOR NAUMAN: No, we do not. This is
5 the full amount, it's 1.44.
6 BOARD MEMBER EATON: You mean, there's no more
7 money after this?
8 DEPUTY DIRECTOR NAUMAN: No, this is the end of
9 it.
10 MR. SANDOVAL: Good afternoon, Madam Chairman,
11 members of the Board. I'm here on behalf of the City of
12 Santa Cruz. My name is Jim Sandoval. I'm the engineering
13 manager for the Site, for the landfill. I'm here because
14 I misunderstood the application process. I think at the
15 beginning when we applied, it was my understanding from
16 the application process that we can -- there wasn't a
17 limit to the amount of applications for projects you can
18 apply for and.
19 And our site has problems, so I thought well,
20 hey, let's, you know, get as many in as we can and see
21 what we can come up with.
22 We ended up submitting two, as you know. And I
23 think somehow I misunderstood that they would -- one would
24 eliminate the other. You know, I'm trying to recall. I
25 know I had a conversation with staff. I'm trying to

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



1 recall what happened, but, you know, obviously we would
2 want the higher funded loan. The processing project is
3 the more overwhelming project for us.
4 And both projects are scheduled to be done later
5 this year and so I'm here to really encourage or to ask
6 that you would consider that, even combining the two. I
7 mean, we could really use the help.
8 Our landfill was sited 75 years ago in a canyon
9 where two canyons merge, and so it brought about a ton of
10 environmental challenges. And last year, the city has
11 spent $12 million to help bring the landfill into
12 compliance and to improve it.
13 Cover soil is one of the last big hurdles. And
14 processing is rather expensive. We have an adequate
15 supply of soil, but it's kind of like chalk rock, it's big
16 and clumpy and water infiltrates, as Sue was saying. It's
17 hard to compact and work with. We find that we need to
18 process it to really make it work, to minimize gas
19 migration or emissions, to minimize water infiltration, to
20 minimize some of the leachate seeps that we have.
21 And also just to gain some air space, because
22 with the soil condition -- with the soil that we use now,
23 it takes up too much air space. If it's processed, we can
24 use a lot less. We can compact it better.
25 So I think all the arguments are there that this

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



1 is a viable project and something we need to do. And, and
2 fact, we've done the first phase of a processing project
3 last summer in year 2000. And I think staff will agree
4 who have visited the site, the Waste Board is our LEA,
5 that the site looks amazing.
6 We applied the processed mudstone as intermediate
7 cover. And we have the best looking site we've ever had.
8 We're really prepared for winter.
9 So I'm asking you, on behalf of the City, to
10 please consider the application number one or combine the
11 two applications into one. I think either way it would
12 really benefit us.
13 Thank you.
14 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
15 Sandoval.
16 Mr. Jones.
17 BOARD MEMBER JONES: Were you getting violations
18 for inadequate cover?
19 MR. SANDOVAL: Yes. The Waste Board, LEA, staff
20 over the last several years we've gotten several
21 violations for cover and areas of concerns. It's been an
22 ongoing problem. And also we got one or two violations
23 from the Water Board on leachate seeps which is also
24 related -- covers related to that problem, because --
25 BOARD MEMBER JONES: And for staff this says the

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



one that we approve says City of Santa Cruz application number two of two, and then this one that we're talking about is application number one of two?

MR. VLACH: Yes.

BOARD MEMBER JONES: They came in the door together, the one came in first?

MR. VLACH: Yeah.

MR. SANDOVAL: They were in the same envelope.

BOARD MEMBER JONES: The same envelope.

MR. SANDOVAL: One thing else is you know, I just wanted to -- I think it's obvious, but if we were to swap application one for application two, I mean we're still scored fairly well in the mudstone project, so we would still be fifth ranked.

So I think, you know, our preference would be to eliminate the landfill gas one. We're still doing the work, but, you know, to eliminate the loan in place of mudstone.

BOARD MEMBER JONES: Well, a follow-up question Madam Chair?

CHAIRPERSON MOULTON-PATTERSON: Yes.

BOARD MEMBER JONES: If you had processed mudstone for cover material, then the positive impacts, the environmental impacts to your site would be -- have less infiltration of water into your system. You'd have

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



1 better compaction onto your -- of your landfill of the
2 waste that's in place. And this mudstone, is it a
3 clay-based mudstone?
4 MR. SANDOVAL: I'm not a geologist, but it's a
5 diatomaceous -- it's not quite clay, but it's similar.
6 Actually, when it's processed, it also works for us for a
7 liner. We're going to be using it -- or we used it in our
8 first linear development and we'd likely be using it again
9 in our next one.
10 BOARD MEMBER JONES: So this material would be --
11 if you're using it for construction -- construction side
12 of your liner?
13 MR. SANDOVAL: Yes.
14 BOARD MEMBER JONES: So would it work for
15 intermediate and final cover?
16 MR. SANDOVAL: It would work. I mean, we have
17 plans to use it for that. Although this loan isn't for
18 that.
19 BOARD MEMBER JONES: I understand that, but what
20 I'm trying to get across is that the standard for closure,
21 which is a higher standard than normal, cover material,
22 this material, if it was processed and applied daily,
23 would be giving you a series of layers that would make
24 this landfill a lot more sound environmentally.
25 MR. SANDOVAL: Yes.

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



1 BOARD MEMBER JONES: And it probably would have a
2 whole lot more benefit than running chunks of mudstone or
3 whatever else you can get and letting everything in the
4 world seep through it. So that your $88,000 to find out
5 how much gas you've got would probably continue to grow at
6 a quicker rate.
7 Okay.
8 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
9 Sandoval.
10 Mr. John Whitaker, Trinity County.
11 MR. WHITAKER: Hello, I'm John Whitaker, Director
12 of General Services. Thank you for having me speak to you
13 on this compliance loan issue. I'm the one that the Water
14 Board finally sent you a letter about our corrective
15 action.
16 We've been in corrective action since 1999 on
17 this site. Your staff has indicated we didn't send in
18 enough support documentation. I will tell you that prior
19 to submitting this application, I had spoken to the State
20 Water Board officials who assured me that they would
21 support this activity and send the correspondence to you.
22 I was not aware that the Integrated Waste
23 Management Board and Water Quality Board did not speak on
24 these issues of landfill since you both have --
25 BOARD MEMBER JONES: 1220.

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



1 (Laughter.)
2 BOARD MEMBER EATON: They just take our money.
3 MR. WHITAKER: They must also realize that this
4 is probably part of my fault that we didn't dramatize our
5 condition. But I will tell you that we went out and
6 borrowed $3 million to put a cap on our landfill to comply
7 with this water report. We've made a number of
8 improvements to our system through this loan process.
9 We went out and purchased commercial loan at four
10 percent over ten years to mitigate these measures that the
11 Water Quality Board has indicated finally in the letter
12 that you received or that you should have received last
13 week as it didn't get through distribution properly.
14 I would again disagree with staff on their
15 indication that what we're talking is remedial action for
16 the landfill. They can't see what the significance is or
17 how it relates to deterring water from the landfill.
18 I suggest if you visited the landfill, you can
19 actually see what we're talking about, since we're
20 watershedding over 500 acres of water away from the
21 landfill property itself.
22 We'd like you to reconsider this information that
23 the Water Quality Board has now provided to you. And I
24 apologize that you didn't get it earlier, but, again, we
25 think our application is valid and the reasons for the

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



1 money are valid.

2 I also need to point out that since we are taking

3 a proactive approach, we have put the intermediate cap on

4 the BLM property. We have built an inert cell and

5 appropriated income money. We will be proceeding with

6 asphalting the road and diverting the water and putting

7 the culverts in the concrete apparatus as we need to do to

8 divert the water. We will also put in the gas wells that

9 we are asking money for.

10 If we're not successful here, we'll apply for

11 Prop 13 money to do this corrective action. I thank you

12 for your time and I thank you for your consideration.

13 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.

14 Whitaker.

15 BOARD MEMBER ROBERTI: Madam Chair.

16 CHAIRPERSON MOULTON-PATTERSON: Senator Roberti?

17 BOARD MEMBER ROBERTI: One point I have which I

18 noted in this mini little audit is that all of the grants

19 that come above the line are for northern California,

20 which is, I hate to dwell on this too much, but it's -- I

21 thought that was something that we had discussed a while

22 ago.

23 BOARD MEMBER EATON: The electricity is going

24 south.

25 (Laughter.)

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



1 BOARD MEMBER ROBERTI: LA is LA. Electricity is
2 under cost. Not much under cost, but under cost. And I
3 thought that was something we had discussed with staff
4 that they should take some cognizance of this when we have
5 grant programs or loan programs.
6 At least, a little asterisk. And once again and
7 doesn't happen, so I think I've got to raise the point. I
8 grant that this is a program with a rural bias, so you
9 would see most of the money or a majority of the money,
10 but not all of it.
11 BOARD MEMBER MEDINA: I applaud the Senator.
12 Usually, most of the money is going south and I'm raising
13 concerns about money coming up north.
14 (Laughter.)
15 CHAIRPERSON MOULTON-PATTERSON: Okay. Yes.
16 MR. WHITAKER: I'd just like to make a comment to
17 Senator Roberti, when you consider that 23 percent of the
18 hydroelectric power we generate in California goes to Pump
19 Water to LA, I'm --
20 (Laughter.)
21 BOARD MEMBER ROBERTI: Let me throw one. We're
22 getting regional. We're getting regional. Let me tell
23 you what galls me so much is when Loma Prieta took place,
24 everybody, including the voters of southern California,
25 voted a half cent sales tax to clean up Loma Prieta, to

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



1 help them out. A few years later when LA county
2 experiences the same experience and LA gets devastated in
3 the Northridge earthquake, it was another one of those,
4 you know, wipe LA off the face of the map. And not one
5 county north of the Tehachapis voted even 20 percent for
6 Los Angeles.
7 So you become a little bit jaded. And so this
8 AndA-be-dammed-attitude, and I saw this with a smile, but
9 it does exist in Sacramento, where you hear the results of
10 the Los Angeles Dodgers like they came from Leningrad --
11 (Laughter.)
12 BOARD MEMBER ROBERTI: If you can get them at
13 all.
14 BOARD MEMBER EATON: I think at one time they
15 were called scalawags, if I remember, in 1991.
16 BOARD MEMBER ROBERTI: I watch this kind of
17 stuff.
18 CHAIRPERSON MOULTON-PATTERSON: Thank you,
19 Senator Roberti.
20 BOARD MEMBER ROBERTI: You're welcome, most
21 honorable Chair from Orange County.
22 CHAIRPERSON MOULTON-PATTERSON: Gerry de Roco
23 from Glenn County.
24 MR. de ROCO: Thank you, Gerry de Roco from Glenn
25 County. I too think this is a great program. It should

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



be continued and expanded in whatever shape, win, lose or draw. It would be fortunate for my county to do this, but we have to realize that when you have counties or small rural landfills outlining that are trying to get 50 percent diversion, you're losing a giant portion of your revenue. You lose all the revenue you put on the programs.

So I think this is marvelous. And we don't consider anything south of Sacramento to be northern California.

CHAIRPERSON MOULTON-PATTERSON: Thank you.

Silas Ugorji.

I'm not sure I pronounced that right.

MR. UGORJI: That was correct. Madam Chairman, members of the Board. My name Silas Ugorji. I'm with Si-Nor, Inc. Si-Nor is the operator of Coastal. This facility is in chronic noncompliance. If you rest, we shut down. If there's wind, we shut down. If it's hot, we shut down, because the people around complain.

When we acquired this facility it has a lot of violations, building code violations, fire violations. We have spent so much money to put back this facility.

We have also started to do some construction, but we couldn't complete it. Right now if you come to the facility there's pass -- we are operating below 20 be of

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



1 our capacity right now. And each time and LEA comes in we
2 are cited. Two months ago we received a letter to be
3 placed on the inventory. We have to shut down to comply
4 in order not to get into the inventory. That's how big
5 our game plan is, close down, try to satisfy the LEA.
6 This loan we are flexible. And a lot of people
7 need the loan. Last time I was here, I asked for half the
8 bread. And if you and at our cost, we will appreciate
9 whatever the Board members will give to us. We really
10 need this loan in order to continue doing our recycling.
11 And the last and I want to say is we service a
12 lot of the agencies in that we have recycling. We do a
13 lot of recycling. But because of just noncompliance, we
14 have not been able to operate to our capacity. And I pray
15 and the Board will consider my application.
16 Thank you.
17 CHAIRPERSON MOULTON-PATTERSON: Thank you very
18 much.
19 Mike Sides. There's a letter marked out. I'm
20 not sure of the pronunciation, Tehachapi.
21 And your name, sir.
22 MR. SIDES: Mike Sides, very simple.
23 Madam Chair, Honorable Board. I want to thank
24 you for hearing us today. I'm thrilled that the Senator
25 likes Tehachapi. We'll invite him up there.

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



BOARD MEMBER ROBERTI: It's a very beautiful town.

MR. SIDES: Thank you very much. We love it.

BOARD MEMBER EATON: How did you vote?

(Laughter.)

BOARD MEMBER ROBERTI: Probably the way we vote.

MR. SIDES: Believe me, we're a very diverse community. I'm here today to hopefully support and convince and to give our facility the loan that we've requested. We are currently facing a myriad of problems up there.

We're in a public/private partnership with the County of Kern in assisting in the AB 939 goals. We're currently the only material recovery solely operating in the county. And we have received numerous violations. Air quality has been in regard to our dust generation from the operation of the trommel screen.

And I might and that the trommel really is essential to the operation in being able to take out large volumes of material. We are also under LEA orders in regard to blowing litter and that sort and thing. We are a high wind area.

We also -- in fact, as we left today, we had -- we still have snow on the ground. And so we and the other issue which is also health related has to do with our

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



1 personnel operating outside the building.
2 We would like to install a mister system to help
3 protect their health and we have an industry hygienist
4 coming in to do an audit of the facility in the next few
5 months. And he has already given us kind of a cursory
6 review and advised us that the mister system is essential.
7 So with that, I'll try not to bore you with any
8 detail on the facility, but just to sum up and say that
9 and would appreciate your positive response and stand
10 ready to, hopefully with this loan, we can continue our
11 goal of sorting the mixed waste stream and dealing with
12 construction demolition and green waste.
13 Thank you very much.
14 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
15 Sides.
16 Evan Nikirk.
17 MR. NIKIRK: Thank you, Madam Chair and Board
18 Members. My name is Evan Nikirk. I'm the Assistant
19 Director of the Mono County Public Works Department. I'm
20 here to talk about a troubled area in Mono county. But
21 before I try to answer some of Mr. Jones' questions, I
22 want to thank you for continuing this item and continuing
23 and December and considering these projects that didn't
24 fit into the, you know, the obvious form that the first
25 three projects were selected there.

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



1 I'd like to give you a little perspective. When
2 I was driving in this morning I passed through Cameron
3 Park and I had to chuckle as I passed the town limit sign
4 and it said population 15,000 people, because that's 50
5 percent more than is in the entire county of Mono county.
6 And within the county itself, not just the
7 Bridgeport Landfill, but within Mono County, we generate
8 less than 30,000 tons, that's per year.
9 So whenever we try to make some improvements to
10 the program, it has to be done gradually, because we can't
11 generate the revenue quickly. And that is and of the goal
12 of this project.
13 We are currently funded. Our financial assurance
14 is currently funded to the appropriate level for the
15 disposal at this time. However, our goal is to eliminate
16 our rural landfills and to concentrate our disposal into
17 one regional landfill. And this would and one step be
18 doing that.
19 The reason this project was selected by Mono
20 County is that it has a number of problems that were cited
21 in the event, including groundwater, you know, 30 feet
22 below the trench, the base of the trench, unlined trenches
23 of the landfill. In addition, we have an indian
24 reservation just south of us. And the neighborhood has
25 popped and 500 feet from our southern boundaries.

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



1 So naturally landfill gas becomes a concern.
2 Further, we have a reservoir a quarter mile to the west
3 and an airport a quarter mile to the west. So as can you
4 see, all these issues kind of snowball and creates and our
5 minds a concern for liability.
6 So our goal is to try to limit our future
7 liability, take care of some of these environmental
8 problems before they become severe, and to try to close
9 this landfill before it reaches its capacity.
10 We do have plans to close it down the road, but
11 this would help us speed up that process. And again, I
12 thank you for your consideration. And I hope and future
13 loan payments to this program will, you know, help
14 progress and maintain and program for future projects.
15 Thank you.
16 CHAIRPERSON MOULTON-PATTERSON: Larry Sweetser is
17 our last speaker.
18 MR. SWEETSER: Good evening, Madam Chair and
19 members of the Board. Larry Sweetser, Sweetser and
20 Associates on behalf of the Environmental Services Joint
21 Power Authority, and I'll be as brief be can here.
22 We do appreciate, on behalf of Siskiyou and
23 Tehama last time, the approval on those two sites. It
24 will go a long way to addressing their issue. I also
25 extremely appreciate the reconsideration for the remaining

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



1 sites.
2 And I understand the ranking system and the
3 process that we've gone through to try to get the sites on
4 the list. But if there is funds available, we would also
5 request consideration on Trinity. We still keep plugging
6 away on that one.
7 Its one of those types -- as the Senator
8 mentioned, as being one of the problem sites. And also,
9 Senator, on behalf of Mono County, I think they'd want to
10 be considered southern be purposes of this loan program.
11 (Laughter.)
12 BOARD MEMBER ROBERTI: Well, in fairness, we took
13 care of Brawley ahead of time. I wasn't counting them.
14 So Brawley is southern California, I felt, but Mono, I
15 don't know.
16 MR. SWEETSER: It's all we've got left.
17 BOARD MEMBER ROBERTI: They're Eastern, on the
18 other side of the Sierra Nevadas.
19 MR. SWEETSER: Close.
20 BOARD MEMBER EATON: Brawley got half of what
21 almost remains to be taken.
22 BOARD MEMBER ROBERTI: You want to refight that
23 one.
24 (Laughter.)
25 MR. SWEETSER: This program has been extremely

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



1 helpful. You've seen the interest of people even though
2 there's not enough money available right now. This is a
3 one shot program, but we urge the Board and be willing to
4 be assist the Board in pursuing additional funding on in
5 the future for this program. There is a need out there
6 for that, far beyond just this one time.
7 And we'd also and willing, if be program does go
8 forward, to offer some suggestions on the application
9 process and the evaluation process. There are some things
10 we think could have helped get the applications better
11 suited to the process and we'd be glad to help in that
12 effort. And again we'd and you to fully distribute this
13 money. We really need it out there.
14 Thank you.
15 CHAIRPERSON MOULTON-PATTERSON: Thank you.
16 Any final comments by staff?
17 DEPUTY DIRECTOR NAUMAN: Madam Chair, we do, in
18 order to perhaps assist the Board in consideration of
19 these, we have a spread sheet prepared. Sue can work with
20 you. We also have provided some funding scenarios for
21 you, so that you can look at some options.
22 For instance, the Brawley Landfill, you took
23 action on that this morning, so there's $450,000 that have
24 been on the original calculation and recommendation that
25 become available.

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



1 Obviously, the situation with Santa Cruz, we have
2 two applications, questions about some of the line items
3 in Bridgeport. So there is some flexibility here to work
4 with the dollars available. And we'd be happy to assist
5 you with that as you discuss the individual projects.
6 CHAIRPERSON MOULTON-PATTERSON: Mr. Eaton?
7 BOARD MEMBER EATON: I just got a couple of
8 broader questions so that it may -- maybe they, in the
9 process of answering, they may narrow it down.
10 Are any of the individuals who we'd be
11 considering, do we eventually have to go through and see
12 whether or not they're able to repay the loan, like on our
13 other loan programs, do they qualify?
14 DEPUTY DIRECTOR NAUMAN: All of the private
15 applications were reviewed by our Loan Committee and then
16 we consulted with our Loan Committee on the public sector
17 applications. And we believe, based on that consultation
18 and review, that all of the applicants that we brought
19 forward to you have the ability to repay under the terms
20 of the loan.
21 BOARD MEMBER EATON: We don't have the problem
22 that, you know, 30 days from now we find out that entity,
23 for whatever reason, doesn't want to pledge their public
24 revenues. Then we've got the money and we don't have to
25 sign and get the money out the door. I'm just trying to

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



1 find out narrow parameters.

2 DEPUTY DIRECTOR NAUMAN: It is possible that one

3 or more of the applicants may choose not to execute the

4 loan documents. And we've thought of that eventuality.

5 We believe that, given that the funds have to be -- the

6 Board has to be on the funds by the end of this fiscal

7 year, that we would probably have just enough time to do

8 one more round with the Board prior to that and still have

9 the Board take the action prior to June 30th.

10 Or alternatively, you could fund, you know,

11 indicate your preferences to us all the way down and take

12 one of the applicants, who decides not to execute the loan

13 documents or decides not to take the loan for any reason,

14 then it would go to the next application in order that

15 we've indicated you'd be prepared be fund.

16 So you can either give us direction to keep

17 funding till we reach the limit or you can take action now

18 and we can and back to you if money becomes available

19 before the end of the fiscal year by virtue of one or more

20 of the applicants not executing the documents. We will

21 give them 60 days to execute the documents.

22 BOARD MEMBER EATON: What about the situation in

23 Santa Cruz, the fact that we have actually allocated the

24 money.

25 DEPUTY DIRECTOR NAUMAN: I'm going to have to

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



1 defer to either Admin Staff or counsel on that.
2 BOARD MEMBER EATON: I'm not trying to -- I'm
3 just trying to find out what our parameters are here. To
4 do it under what the NOFA went out with or what would be
5 the parameters in the NOFA so that we can, at least, you
6 know --
7 DEPUTY DIRECTOR NAUMAN: The NOFA said that only
8 one application per jurisdiction would be funded. I don't
9 believe the NOFA said that we'll only accept one
10 application from each jurisdiction. So I think --
11 BOARD MEMBER ROBERTI: What does NOFA mean?
12 DEPUTY DIRECTOR NAUMAN: The Notice of Funding
13 Availability.
14 BOARD MEMBER MEDINA: Madam Chair.
15 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina.
16 BOARD MEMBER MEDINA: Yes. In regard to the city
17 of Santa Cruz, given that both applications were in one
18 package and from the statements that were made here today
19 apparently it was not clear. I have not had a chance to
20 review the NOFA. I will be reviewing thatbe I would like
21 to have both of the applications, since they were in one
22 envelope to be considered as one application.
23 We've already funded $88,000. We certainly could
24 not do the 500,000 and perhaps not and half, but I do feel
25 that the City of Santa Cruz could come up with an amount

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



that would be somewhere in the vicinity between the 88 and the 250.

CHAIRPERSON MOULTON-PATTERSON: Senator Roberti.

BOARD MEMBER MEDINA: I'd also before just include -- I'm also supportive of the Si-Nor application. I think it has a lot of merit.

CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr. Medina.

Senator Roberti.

BOARD MEMBER ROBERTI: Yes. Two things on the -- as you know, I'm in favor of the Si-Nor application. On the Santa Cruz probably since the digressions were so great that it's hard to believe they would have taken the smaller in preference to the larger, but there must be something in the middle, that we can do what's fair with the careful understanding that you can't -- you have to give enough to do the job.

And then on Santa Cruz, I mean, if they are getting the money for closure through another fund --

DEPUTY DIRECTOR NAUMAN: I think I'd bring up Bridgeport.

BOARD MEMBER ROBERTI: Excuse me, I didn't mean Santa Cruz. If Bridgeport is getting money through another fund, I'm a little bit less sympathetic on that one, unless somebody can explain it. We're not cutting

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



them short. We're getting their closure. This isn't necessarily a closure program, although there's not a specific authorization on closure. There's certainly -- there's no specific --

DEPUTY DIRECTOR NAUMAN: No prohibition.

BOARD MEMBER ROBERTI: There's no prohibition, but there's no invitation as there is in other areas. I think a number of areas are specified and we do and closure programs and closure funds, witness the fact that Bridgeport has the money available in another fund.

DEPUTY DIRECTOR NAUMAN: In scenario number three, it reflects that distinction. If I can refer you to that, it's attachment 3-3.

BOARD MEMBER ROBERTI: Okay.

DEPUTY DIRECTOR NAUMAN: It shows, for instance, that on Bridgeport the request is 500,000. We have extracted the line items that reference closure, post-closure activities. And if you were to eliminate those items from their request, then the remaining amount to award would be 33,000be so you can see it does have a significant portion of the funds.

BOARD MEMBER ROBERTI: If we did the scenario number 3, how much money would we appropriate?

DEPUTY DIRECTOR NAUMAN: Well, these are just kind of example scenarios. I would like to suggest that

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



1 maybe if we start working with kind of the inactive method
2 up here, that maybe this can be of some assistance to you,
3 so we can show how far the money might be able to stretch.
4 CHAIRPERSON MOULTON-PATTERSON: Ms. Tobias, did
5 you want to say --
6 CHIEF COUNSEL TOBIAS: I just want to comment,
7 from a legal standpoint, that on the City of Santa Cruz,
8 if they want to withdraw one of their applications, I
9 think that that's, you know, certainly their choice to do
10 that.
11 I'm a little bit uncomfortable at combining them,
12 because I think that that's something that had other
13 jurisdictions known or supposed was a possibility that
14 they might have been in with combination projects as well.
15 So I don't think there's anything to stop the city from
16 saying well, thanks, we'll take our chances with the
17 project that's further down the list in terms of its
18 scores.
19 And that's what I would like to see compared. I
20 think there's lots of possibilities as long as they stay
21 in ranked order. But my preference from a legal
22 standpoint, in a sense of equity would be to, if the City
23 wants to withdraw that other applications that would be
24 their choice as opposed to combining.
25 CHAIRPERSON MOULTON-PATTERSON: Okay.

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



1 CHIEF COUNSEL TOBIAS: One Board member said
2 we've already awarded that, but I don't think there is
3 anything to stop that city from coming back in and, you
4 know, we've decided that that's not, you know, what we
5 would like to get a loan for.
6 CHAIRPERSON MOULTON-PATTERSON: Senator?
7 BOARD MEMBER ROBERTI: I'm just thinking. I
8 think we're probably close to working out a formula.
9 However, it might take, you know, some shuttle diplomacy
10 without the members involved, if that's permissible, just
11 to work the numbers out. It's hard to do -- it's hard to
12 do here. Maybe I'm wrong. Maybe somebody disagrees with
13 me.
14 BOARD MEMBER EATON: Well, I think it's up to
15 us -- on the one hand I'd like to be able to allocate the
16 money, I think that's what we're paid for.
17 BOARD MEMBER ROBERTI: Okay.
18 BOARD MEMBER EATON: Right. I mean as opposed to
19 trying to do it outside the bounds of the Board Room, I
20 mean.
21 BOARD MEMBER ROBERTI: Oh, no, no. We'd have to
22 do the final vote.
23 BOARD MEMBER EATON: The real issue here --
24 BOARD MEMBER ROBERTI: I'm just saying it's
25 difficult. I don't want to fight. If that's the way you

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



1 feel, fine, great.
2 BOARD MEMBER EATON: The nice thing is I don't
3 have a horse in this race, so it really doesn't bother me.
4 You know, I think what really is here is the fairness in
5 equity issue that pertains here and more importantly
6 issues as it relates to the integrity of how that money
7 was awarded.
8 So I think if you go in and I think the first and
9 is which ones of those are eligible. For instance, if you
10 go down and it seems there is, at least, a feeling that
11 Trinity County may or may not be eligible. Be as such,
12 and would be eliminated. That leaves you with, roughly, I
13 think four or five, shall we say, eligible jurisdictions.
14 BOARD MEMBER ROBERTI: Trinity isn't on my list
15 A. I know they came up in the testimony.
16 DEPUTY DIRECTOR NAUMAN: We did not include
17 Trinity in any of the funding scenarios.
18 BOARD MEMBER EATON: So part of it then is if you
19 take Santa Cruz out and do the proper legal maneuvering
20 that is necessary in order to make them eligible, then the
21 way to do it is you can fund at a certain level, i.e.
22 whatever they requested.
23 You know, for instance if Santa Cruz had
24 requested, you know, 450 and I don't and what the numbers
25 are and Brawley is and part of it anymore, or they may be,

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



1 Bridgebe et cetera, or can you just do the equitable thing
2 and say after the line, each of those remaining five will
3 split the pot evenly. If there's 1.8 and there's six
4 eligible contestants, shall we say, then each gets 300,000
5 and that's your fairness in equity across the Line.
6 That's one road map.
7 The other is to do it in such a way as you do
8 fund all of those until the money runs out. I don't have
9 a problem either way. My problem is basically let's just
10 make sure that our "Ts" are crossed and our "Is" are
11 dotted.
12 If Santa Cruz is going to be eligible, then we
13 have to take some official Board action to rescind that
14 portion of the award. I mean, so I --
15 BOARD MEMBER ROBERTI: That's fine. Madam
16 Chairman, my preference would be to fund Santa Cruz's
17 second proposal, their larger proposal, because it just
18 strikes me that their smaller proposal actually is what
19 cancelled out their larger proposal. And it just and
20 strike me that the city's fathers and mothers would have
21 counted --
22 DEPUTY DIRECTOR NAUMAN: Just to --
23 BOARD MEMBER EATON: With one --
24 BOARD MEMBER ROBERTI: -- have ever agreed with
25 that if they understood it. But we have to do it per Ms.

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



1 Tobias's legal recommendations.
2 BOARD MEMBER EATON: And the grant program. We
3 have to do it according to -- I mean, the loan program.
4 If they're getting -- I'm thinking of the grant. It has
5 to be in accordance with the scoring. So if the
6 scoring -- you see, so if Santa Cruz comes out, the first
7 one, that allows the others who have the scoring.
8 So that's the other criteria, not only rescinding
9 of the action, but the scoring criteria, because we can't
10 move anyone up that has a lower score over another.
11 BOARD MEMBER MEDINA: Consistent with the
12 scoring. Santa Cruz still scores high.
13 BOARD MEMBER EATON: Correct. That's what I'm
14 going for. I'm just trying to get us through --
15 BOARD MEMBER ROBERTI: The second, from my
16 perspective, is that we're not short-changing Bridgeport
17 Mono at all if we give them only the 33,000 because there
18 is a closure program, which they are eligible for, and
19 they have their own closure money. And that is and
20 particular duty that's going to be taken care of.
21 Everything else on the list with the exception of
22 Brawley, which has been taken care of, I think there is
23 the money.
24 BOARD MEMBER EATON: Do you want to repeat that
25 one more time. I didn't quite hear that.

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



1 (Laughter.)
2 CHAIRPERSON MOULTON-PATTERSON: Did you wish to
3 speak on that.
4 MR. NIKIRK: Evan Nikirk, Mono County, Public
5 Works. Partially in response to your comment just now and
6 Mr. Jones' and earlier, I should probably clarify
7 something, the $500,000 loan request is in addition to the
8 $132,000 we currently have on account for our closure
9 fund.
10 The total project is estimated to be $730,000.
11 The loan request is 500,000, meaning the county between
12 it's current closure fund and additional funding would
13 have to foot the Bill for 230,000 of matching.
14 Does that clear that up?
15 CHAIRPERSON MOULTON-PATTERSON: Ms. Tobias.
16 CHIEF COUNSEL TOBIAS: I just wanted to comment.
17 I know people are just throwing out ideas. I just wanted
18 to say that with the idea of funding everybody at the end
19 of the list with an equal amount, I think the way we would
20 normally do it in a grant program is that we would fund on
21 the basis of the scores. When you get to a certain line,
22 if there's money left for the next one, the money would go
23 to the next one on the list as opposed to a whole number
24 of people getting an equal amount.
25 And then what you'd have to do is basically ask

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



1 can that entity do what they proposed to do with that
2 amount of money? So let's say, for example, you get to
3 the bottom of the list, Si-Nor I guess, and they want and
4 in their -- they actually -- there's 150 left, you have to
5 basically say is there anything in that project that would
6 be, I don't want to say worth, but that would be feasible
7 to fund and get the and that they applied to do.
8 BOARD MEMBER EATON: The only way to give equal
9 amounts is if you were to fund any of the applicants who
10 received no score, because they all receive the same
11 score.
12 CHIEF COUNSEL TOBIAS: Right.
13 BOARD MEMBER EATON: Or the same score. Since
14 none of those above the line have received a duplicate
15 score, then they have to be funded at what the request was
16 for.
17 CHIEF COUNSEL TOBIAS: Right. And I would say I
18 don't think anybody that received no score would be
19 eligible for any funding. But I don't think we're there.
20 BOARD MEMBER ROBERTI: Could I throw out some
21 numbers.
22 DEPUTY DIRECTOR NAUMAN: Start filling in the
23 lines.
24 BOARD MEMBER ROBERTI: 412 for Santa Cruz. That
25 gives them the 88 that they had, but under application

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



1 number two.
2 CHIEF COUNSEL TOBIAS: I see what you're doing.
3 BOARD MEMBER EATON: Counting that they already
4 had 88.
5 DEPUTY DIRECTOR NAUMAN: No, you just give them
6 Five.
7 BOARD MEMBER ROBERTI: Give them five. Okay,
8 five.
9 CHIEF COUNSEL TOBIAS: Giving them five for the
10 application number two.
11 BOARD MEMBER ROBERTI: Doesn't that give us
12 $88,000?
13 DEPUTY DIRECTOR NAUMAN: I think we're trying to
14 be clear is that you're funding a particular project.
15 You're not just giving them 500,000 to mix and match the
16 and items from the two applications.
17 CHIEF COUNSEL TOBIAS: See if you give them
18 500,000 for their second application, but they would need
19 to withdraw their first application in order for you to do
20 that, or you could give them something less than 500,000.
21 BOARD MEMBER ROBERTI: What happens if we do
22 Santa Cruz 500,000, Glenn County 500,000, Tehachapi
23 496,000, Si-Nor 500,000. I know that leaves somebody out.
24 BOARD MEMBER EATON: What about Mono County?
25 BOARD MEMBER ROBERTI: We've got to massage it.

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



1 BOARD MEMBER EATON: I mean that's the point I
2 was trying to get at, is that I don't really have, as I
3 mentioned, a horse in here. The issue is is Mono scored
4 higher than Imperial, Glenn, Santa Cruz and Tehachapi.
5 The issue is you have to fund then, at least, if I hear
6 Ms. Tobias, you have to fund Mono at 500,000 or can you
7 pick and chose money off the those. That's what I'm
8 trying to get at.
9 DEPUTY DIRECTOR NAUMAN: And, Sue, if you can
10 fill in one for Si-Nor, does that -- have you done 500
11 there?
12 BOARD MEMBER EATON: No, you have to start from
13 the highest.
14 DEPUTY DIRECTOR NAUMAN: I understand. We're
15 just trying to show you a different scenario and how much
16 it would be.
17 CHIEF COUNSEL TOBIAS: I think we can do portions
18 if you have a reasonable basis on which to do that. Now
19 with the Mono County one, you know, if you have issues
20 about the closure, post-closure thing, I think that's
21 reasonable for the Board to say, you know, in light of
22 this whole thing, you know, that's not what we want to
23 fund. But I think you have to look for a rationale. I
24 don't think you can start --
25 BOARD MEMBER ROBERTI: Well, that is the

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



1 rationale that we've been giving.
2 CHIEF COUNSEL TOBIAS: I'm comfortable with that
3 from the legal standpoint on that particular one.
4 BOARD MEMBER MEDINA: In regards to Santa Cruz,
5 for them to withdraw their 88,906, does that require a
6 Board vote or is that done by a letter from Santa Cruz or
7 how is that to be?
8 CHIEF COUNSEL TOBIAS: Be I think if the
9 representative from the city -- I'm assuming this is the
10 city. If the city says that they, you know, will not take
11 that loan, and they wish to do that, I'm comfortable with
12 the fact that that person can answer to their own city
13 council in terms of withdrawing that. But I do think that
14 has to be a final action.
15 If they do that, they basically say we're taking
16 back this application, then that's it, it won't change,
17 given whatever else happens. And you probably would want
18 to have something, you know, from the city in the long run
19 that says that. But I feel that since both applications
20 did have approval by the city to be submitted, I'm not
21 uncomfortable with their representative basically
22 withdrawing one of their applications.
23 BOARD MEMBER MEDINA: I wonder if we could hear
24 from the representative just to get it on the record.
25 MR. SANDOVAL: Jim Sandoval.

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



1 BOARD MEMBER EATON: Who wants to be a
2 millionaire?
3 (Laughter.)
4 MR. SANDOVAL: Jim Sandoval, City of Santa Cruz.
5 Yes, on behalf of the Be I would like to withdraw
6 application number 2, which is the 88,000 for landfill
7 gas. And we can follow up with a letter from the person
8 who signed the application.
9 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
10 Sandoval.
11 DEPUTY DIRECTOR NAUMAN: Madam Chair and Board
12 members, if I can draw your attention then back to the
13 screen, if you look at how the numbers fall out, you'll
14 see with the suggested reduction in mono county, no money
15 going to Brawley because they've already been funded under
16 2156.
17 And Tehachapi being funded, Santa Cruz being
18 funded for 500. We can get down to 353,406 for Si-Nor
19 before we run out of money.
20 CHAIRPERSON MOULTON-PATTERSON: Okay. So under
21 the award column.
22 DEPUTY DIRECTOR NAUMAN: It's under the award
23 column is the allocation scenario you've been talking
24 about. And that would deplete the fund entirely.
25 BOARD MEMBER MEDINA: I'd like to make a motion

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



for that.

CHAIRPERSON MOULTON-PATTERSON: Okay. We have a motion by Mr. Medina to -- Ms. Nauman, it's late, would you state it for us then.

Could we get a second?

BOARD MEMBER ROBERTI: Second.

CHAIRPERSON MOULTON-PATTERSON: Seconded by Senator Roberti.

DEPUTY DIRECTOR NAUMAN: Okay. This is the application -- the applicant for Black Butte Landfill would be funded at be. The application for Tehama County Red Bluff would be funded be request of 497,100 or is it 105, Sue?

BOARD MEMBER EATON: 105.

DEPUTY DIRECTOR NAUMAN: Bridgeport Landfill in Mono County funded at 33,000, Glenn County Landfill funded at 500,000, City of Santa Cruz application number two funded at 500,000, Tehachapi Recycling funded at 496,494. And if my math has been done correctly, that leaves for Si-Nor 353,406 -- is 401. Well, Sue, you need to give me that fix, Si-Nor -- so 353,401. That brings you to a total of 2.88 and no funds remaining.

CHAIRPERSON MOULTON-PATTERSON: Okay. If everyone could look that over, we have a motion by Mr. Medina, seconded by Senator Roberti.

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



1 DEPUTY DIRECTOR NAUMAN: This would be Resolution
2 2001-28. What we've done is provided a chart in page two
3 that we will fill in based on that motion and that vote.
4 And Any other comments before we vote?
5 Mr. Eaton.
6 BOARD MEMBER EATON: I think that we should also
7 include, as part of the motion, the reason for not fully
8 funding Bridgeport Mono just as part of the resolution,
9 even though we've had the discussion and debate and should
10 be part of be resolution. And that way we're covered and
11 we have a reasonable basis, I think, is what Kathleen was
12 talking about.
13 And then in addition, since we did take an action
14 in December, do we have to rescind that resolution?
15 CHIEF COUNSEL TOBIAS: Well, I think --
16 BOARD MEMBER EATON: And I mean, And just want to
17 be clear. You can make that part of this motion. I just
18 want to get it all down. I'm not trying to complicate it,
19 but it is really that issue. And then also whether or not
20 the applicants, whoever they may be, can actually show the
21 relationship whether it be, you know, be of the public
22 entities or private entities that can actually do the
23 project.
24 CHIEF COUNSEL TOBIAS: I think on the last point
25 what we'd want to make sure is that we have a feasible

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



1 project from Si-Nor. So I think that Si-Nor is going to
2 have to come back and basically show what project they
3 have left with the $353,000 and show staff that it's
4 actually a feasible project. And then if staff has a
5 question, they'll have to come back to the Board.
6 BOARD MEMBER ROBERTI: I'm sure they can. I
7 think it was -- I was there visiting. I think there's at
8 least three separate projects. Each could be funded
9 individually.
10 CHIEF COUNSEL TOBIAS: I just wanted to make sure
11 that that's in there. I think as to Mr. Eaton's middle
12 question as to whether the Board wants to rescind the
13 other action, I think the Board could either rescind it,
14 if they wanted to, or from -- I'm satisfied if we get a
15 letter, but I think the motion should reflect the fact
16 that we would not do the loan documents on that first loan
17 they're going to get without the rescission of their first
18 one. So we do need to have that action take place before
19 we can work on the loan documents.
20 BOARD MEMBER EATON: And I think we should also
21 do it, relatively, within, you know, 30 or 60 days,
22 because if there's some reason they want to come back and
23 request the money, correct, under their first one -- let's
24 say the City Council wants to use, for whatever reason,
25 the 88, then we may have some other money left over that

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



1 we have to use local or NOFA or what have you. It really
2 has to be a timing issue.
3 CHIEF COUNSEL TOBIAS: Well, the money does have
4 to be basically -- the loan documents need to be finished
5 by June 30th, so --
6 DEPUTY DIRECTOR NAUMAN: Actually the program
7 requires that the loan docs be executed within 60 days of
8 Board action, so you could have --
9 CHIEF COUNSEL TOBIAS: I think in any case we
10 have to be moving quickly on that.
11 CHAIRPERSON MOULTON-PATTERSON: And your question
12 about Bridgeport, do we have enough in the --
13 BOARD MEMBER EATON: I think we've just got to
14 put something into the motion that basically reflects --
15 CHIEF COUNSEL TOBIAS: I think we could also
16 rewrite the motion to add in that, since the Board spoke
17 to that issue.
18 DEPUTY DIRECTOR NAUMAN: I just need one more
19 clarification. I misspoke when I was reading the list and
20 called it application number two. And it's really
21 application number 1 for Santa Cruz that we're funding at
22 the $500,000 level.
23 CHIEF COUNSEL TOBIAS: The other thing that we
24 could suggest, not to drag this out, is that we could
25 rewrite the resolution and have it ready for tomorrow, if

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



1 you wanted to start with that, or you can just indicate
2 what you'd like us to do.
3 CHAIRPERSON MOULTON-PATTERSON: Do you want it
4 rewritten? Okay, rewrite and we'll vote on it tomorrow
5 then.
6 CHIEF COUNSEL TOBIAS: That would be best to have
7 the resolution in front of you.
8 CHAIRPERSON MOULTON-PATTERSON: Okay. Is
9 everyone comfortable with that?
10 BOARD MEMBER JONES: You're not changing
11 anything? You're going to give us the resolution that
12 looks like this funding, because they're going to go home.
13 I don't want them to think that we're going to play this
14 game again.
15 CHIEF COUNSEL TOBIAS: We'll just --
16 BOARD MEMBER JONES: We're not, are we?
17 (Laughter.)
18 CHIEF COUNSEL TOBIAS: We're going to add an
19 explanation, add in that Si-Nor needs to come back with a
20 feasible project and we're going to add in that Santa Cruz
21 needs to Identify how they're going to use the money.
22 CHAIRPERSON MOULTON-PATTERSON: And let me remind
23 the Board members that we will be discussing the audit
24 report, number 32, and the auditor will be here at 10:00
25 o'clock.

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



BOARD MEMBER ROBERTI: Can we start the meeting then?

(Laughter.)

CHAIRPERSON MOULTON-PATTERSON: Well, let's hope we'll get started by then.

BOARD MEMBER JONES: You're not on our time anyway.

BOARD MEMBER EATON: Senator, you're not going home hungry tonight, trust me.

CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you very much.

(Thereupon the California Integrated Waste management Board meeting was recessed at 6:05 p.m.)

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



1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:
5 That I am a disinterested person herein; that the
6 foregoing California Integrated Waste Management Board
7 meeting was reported in shorthand by me, James F. Peters,
8 a Certified Shorthand Reporter of the State of California,
9 and thereafter transcribed into typewriting.
10 I further certify that I am not of counsel or
11 attorney for any of the parties to said meeting nor in any
12 way interested in the outcome of said meeting.
13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 7th day of February, 2001.
15
16
17
18
19
20
21
22
23 JAMES F. PETERS, CSR, RPR
24 Certified Shorthand Reporter
25 License No. 10063