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STATE OF CALIFORNIA

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

BOARD MEETING

JOE SERNA, JR., AUDITORIUM

1001 I STREET

SACRAMENTO, CALIFORNIA

TUESDAY, JUNE 19, 2001

9:35 A.M.

BALINDA DUNLAP, CSR NO. 10710, RPR, CRR, RMR

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1 A P P E A R A N C E S

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4 BOARD MEMBERS PRESENT:

5
LINDA MOULTON-PATTERSON, Chair
6 DAN EATON
STEVEN R. JONES
7 JOSE MEDINA
MICHAEL PAPARIAN
8 DAVID A. ROBERTI

9

10 STAFF PRESENT:

11
BONNIE BRUCE, Interim Executive Director
12 KARIN FISH, Chief Deputy Director
KATHRYN TOBIAS, Chief Counsel
13 ELLIOT BLACK, Legal Counsel
YVONNE VILLA, Board Secretary
14 DEBORAH McKEE, Board Administrative Assistant

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1 SACRAMENTO, CALIFORNIA, JUNE 19, 2001

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3 BOARD CHAIR MOULTON-PATTERSON: I'd like to

4 welcome you all to our June meeting. And would the

5 secretary please call the roll.

6 SECRETARY VILLA: Eaton?

7 BOARD MEMBER EATON: Here.

8 SECRETARY VILLA: Jones?

9 BOARD MEMBER JONES: Here.

10 SECRETARY VILLA: Medina?

11 BOARD MEMBER MEDINA: Here.

12 SECRETARY VILLA: Paparian?

13 BOARD MEMBER PAPARIAN: Here.

14 SECRETARY VILLA: Roberti? Moulton-Patterson?

15 BOARD CHAIR MOULTON-PATTERSON: Here. We do have

16 a quorum.

17 At this time I would like to ask you all to turn

18 off your cell phones and pagers to avoid disrupting our

19 meeting.

20 Before the meeting begins, I would like to, again,

21 remind you that the Governor's asked us all to conserve on

22 energy, and we have the Flex Your Power little symbol down

23 here to remind everybody that we must all work together to

24 reduce electricity usage and use our energy more

25 efficiently.

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At the Waste Board we have implemented a plan to reduce consumption by a minimum of 10 percent during critical power shortages. We are asking you, too, to flex your power.

Given our commitment to conserve energy and reduce waste, we are also providing a limited number of copies of the agenda items, and they are located at the back of the room.

For those of you in the audience that would like to speak on a particular item, there are speaker request forms in the back. If you wish to address any item on the agenda, please fill out a slip with a specific item or items you plan on addressing and give it to Ms. Villa, who is right over here, and she'll make sure that we know you desire to speak.

Lastly, there will be a closed session after our lunch break.

Do any members have ex partes? Mr. Eaton?

BOARD MEMBER EATON: No, not today, thank you.

BOARD CHAIR MOULTON-PATTERSON: Mr. Jones?

BOARD MEMBER JONES: I was up to date until George Larson.

BOARD CHAIR MOULTON-PATTERSON: Mr. Medina?

BOARD MEMBER MEDINA: None to report.

BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian?

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1 BOARD MEMBER PAPARIAN: None to report.
2 BOARD CHAIR MOULTON-PATTERSON: And I have none.
3 Reports, Mr. Eaton?
4 BOARD MEMBER EATON: Just one, Madam Chair. A
5 couple of weeks ago I, along with Mr. Jones, had the
6 opportunity to go over and visit the Napa valley in a
7 project that we had funded, I think, almost probably two
8 years ago dealing with Rutherford Grove Winery and its use
9 of composting for the erosion of the hillside.
10 As you well know, both in Napa and Sonoma there's
11 been a lot of problems with the watershed, and some of the
12 work that was done with our money and the matching moneys
13 that were provided both by the recipients of that as well as
14 others were provided for more of a discussion.
15 Scientifically it was far above my head, I have to
16 admit, but at least the growers who were there understood
17 it, and looks like that there may be a good opportunity for
18 the growers in and around both of those valleys to utilize
19 excess material and waste from the waste stream for the
20 prevention and erosion of hillsides and moisture, both of
21 which would benefit the wine growers personally and the
22 economy and the water quality of both valleys there.
23 So it was really a pleasure to go and see that the
24 money was put to work and that there were actually results
25 that were there. And they are going to be coming back and

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1 defending it later on in court. That's it.
2 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
3 Eaton.
4 Mr. Jones?
5 BOARD MEMBER JONES: Madam Chair, just to continue
6 with what Mr. Eaton said, that still is my only trip. Mike
7 Quaknick [phonetic] gave opening remarks at the SWANA
8 conference in San Diego on my behalf because my doctor asked
9 me not to travel before this Board meeting, which only means
10 he's afraid I'll smoke too much.
11 But I do want to say, to follow up on what
12 Mr. Eaton said, is that study on erosion control may have
13 impacts throughout the state that we had never really
14 anticipated. One of the results on a new vineyard was
15 moisture retention in a three-inch bed of mulch and a
16 one-inch bed of mulch that actually allowed for four inches
17 of stem growth late into October.
18 That's not great for a vineyard that needs to get
19 the water out to turn it to sugar so they can make wine.
20 But what it is an indicator of is that with that mulch
21 material, we may be able to help them alter their irrigation
22 systems, which means the overdrafts on those aquifers that
23 are going on right now, they are drawing too much water, we
24 may be able to manage through something like that.
25 And I think it is these kinds of studies and

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1 programs when the Waste Board really needs to take the
2 lead. Because the next logical step would be not on the
3 slope stability, but on the flatlands. When we add mulch, a
4 layer of mulch, we can change the water inhabitants using
5 less water to still get the same kinds of yields and the
6 same kinds of qualities in those grape vineyards, therefore,
7 lending itself to sustainability.
8 So I just wanted to continue with what Mr. Eaton
9 said. I just think that was a -- that could be one of the
10 most important pilot projects that we've done. Because it
11 may lead to an awful lot of other things. Thank you.
12 BOARD CHAIR MOULTON-PATTERSON: Thank you,
13 Mr. Jones.
14 BOARD MEMBER JONES: If we have money to pay for
15 it.
16 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina?
17 BOARD MEMBER MEDINA: Madam Chair, last week I met
18 with the Morango Indian Tribe in Riverside County to review
19 a statement of principles to be signed by members of this
20 Board, the secretary for the California Environmental
21 Protection Agency and tribal leaders.
22 The intent of the singular principle is to forge a
23 new government-to-government working relationship between
24 the Board and this tribe with the anticipation that we may
25 sign similar agreements with other tribes in the near

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1 future.

2 As I have indicated in the past, the Riverside

3 press reported that Indian tribes in California are expected

4 to spend more than 2.5 billion in construction this year

5 alone. A recently reported statistic is that it is

6 anticipated that Indian tribes in California in the

7 not-too-distant future will exceed Nevada in gaming

8 revenues.

9 These tribes are aggressively reinvesting these

10 revenues in diverse businesses throughout the state. So if

11 the Board can work with the tribes to ensure that at least

12 10 percent of reusable/recycled materials can be used, it

13 will significantly increase the reuse/recycled market in

14 California.

15 The Morango Tribe has indicated an interest in

16 sustainable buildings and is willing to work with the Board

17 to reuse and recycle. To assist both the tribes and the

18 Board to achieve a good working relationship, it is my

19 intent that the statement of principle be signed at our next

20 Board meeting in July in Long Beach.

21 As such, I would request that this be placed as an

22 agenda item for the July Board meeting. That concludes my

23 report.

24 BOARD CHAIR MOULTON-PATTERSON: Thank you,

25 Mr. Medina. Thank you for all your work. We appreciate

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it.

Mr. Paparian?

BOARD MEMBER PAPARIAN: Thank you, Madam Chair. I had the opportunity to go on a couple of site visits this last month with the help of the staff of the Waste Board. I wanted to especially thank them for their good work in putting these trips together, Wes Mindermann and Todd Alhamer [phonetic] for setting up a great visit to the Sonoma Burn Dump in the City of Sonoma, the waste site at McIlvaine Road and prior cleanup site up in Dunnigan.

Then on a separate visit Judy Friedman and Kevin Taylor helped put together a trip to San Jose to take a look at the new Vye Island Zanger Road composting facility [phonetic] as well as NorCal's Pacheco Pass Landfill.

A couple weeks ago I met with Barry Keen [phonetic], the director of the Department of General Services, to discuss green to permit and having State agencies repurchase more recycled content products.

Kid Cole on my staff is going to be serving on the green procurement task force of the State of Consumer Services Agency along with Tom Estes of the Board staff and folks from his office.

On Thursday and Friday of this week I'll be attending the National Product Stewardship Institute's meeting in San Francisco where nationwide negotiations are

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1 ongoing with the electronics industry regarding CRTs and
2 other computer-related electronics.
3 As you might recall, I am representing CalEPA.
4 And Mark Kennedy of my staff is participating in as well as
5 Peggy Harris of the Department of Toxic Substances Control.
6 For more background of this issue, there's
7 actually a new report that was mentioned in the paper this
8 morning that California's against waste, put out titled
9 "Poison PCs and Toxic TVs, California's Biggest
10 Environmental Crisis that You've Never Heard of."
11 I brought copies of this that I'll pass out to the
12 Board. It is on the CAW website if anybody else is
13 interested in taking a look at that.
14 I think, Mr. Jones, it helps answer some of the
15 questions you were raising last month about the nature of
16 the problems associated with disposal of televisions and
17 CRTs.
18 On another topic, I'd like to ask my fellow Board
19 members for their feedback regarding an issue. I have been
20 having some discussions with Gary Arstein about audio
21 broadcasting of Board meetings over the internet. It is
22 technologically possible. The Energy Commission is doing
23 this. A number of other State agencies are looking into the
24 potential for broadcasting their Board meetings over the
25 internet.

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1 And if my fellow Board members concur, I'd like to
2 continue working with Gary Arstein on this and moving
3 forward on this effort. I understand that Gary's here to
4 answer any questions that you have.
5 And, again, if you are comfortable with this, I
6 would like to move forward. If it is something that people
7 feel requires a little more attention, a Board item, I would
8 be happy to help arrange for an agenda item on this as well.
9 BOARD CHAIR MOULTON-PATTERSON: From my
10 perspective, I would like to see you move forward. I think
11 the more we can have our message get out to the public the
12 better, and it is a good way.
13 Any objections?
14 BOARD MEMBER JONES: Just a question, or a couple
15 of questions. Do we know how much it is going to cost this
16 Board to do that? I mean, I know we have got a pretty tight
17 budget, and I just would like to know what that expense is
18 before we make a decision. And just anecdotally as an
19 operator, every time I went in front of the Board that was
20 televised, those meetings got about two times longer. So I
21 don't know what --
22 BOARD CHAIR MOULTON-PATTERSON: I don't think ours
23 can get any longer.
24 BOARD MEMBER PAPARIAN: I think Gary Arstein can
25 help me answer that. One distinction I would like to make,

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1 though, is audio broadcast, not video broadcast.
2 MR. ARSTEIN: Gary Arstein, chief officer for
3 Integrated Waste Management Board. On the question of cost,
4 if we were to use an external service for this, the cost
5 even in that case is fairly moderate, about $1500 per month
6 to put it out there, and there's some possibility of sharing
7 across other Boards, departments and offices.
8 We are in the process of upgrading our external
9 internet connection to a significantly faster connection
10 with essentially no increase in price for us here. Again, a
11 collective effort where the Boards, departments and offices
12 are trying to move ahead with this.
13 Once we move ahead with that, that provides a
14 connection that we would not have to use an external
15 service. We currently are broadcasting internally. The
16 major issue is really to make sure we have a strong
17 infrastructure to support broadcasting this outside, and
18 make sure we have appropriate guidance from legal with
19 regard to ensuring that we have got a quality and reliable
20 service for those that are receiving it externally, since
21 they may make the choice and want to receive externally
22 rather than actually come and attend the meeting.
23 Basically the pieces are in place, and the cost is
24 not very high. What I could do is come back with a more
25 detailed plan and cost associated with this several months

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1 down the road as we get closer to the installation of the
2 high-speed connection, if you like.
3 BOARD MEMBER JONES: Fine. Eighteen grand a
4 year. That's not a whole lot of money, but it means
5 something else has to give.
6 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton?
7 BOARD MEMBER EATON: Can I just request of Mr.
8 Arstein, will this service also be able to be provided when
9 we are at out-of-town Board meetings?
10 MR. ARSTEIN: It will be able to in the same sense
11 that we currently, from the current section and other
12 off-site sections, we bring the signal up to here and
13 broadcast it internally. And, again, we will turn it
14 outside here just like we turn it inside right now.
15 BOARD CHAIR MOULTON-PATTERSON: Thank you. And
16 just very, very briefly, because we have a long agenda
17 today, I have been on quite a few site visits, but just two
18 that I wanted to mention.
19 First, I visited Mule Creek State Prison and saw
20 what a fine job they are doing in implementing AB 75, and I
21 would encourage any of the Board members or Board staff to
22 go out there. They are really doing a fine job.
23 The second one, on June 9th I participated in a
24 Hyde Street pier harbor opening in conjunction with national
25 clean boating week. And we were honored by the Marine

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1 Environmental Educational Foundation for our outstanding
2 efforts in promoting clean boating education practices.
3 As most of you remember, we have given grants to
4 the California Coastal Commission and have helped with
5 national boating and clean boating. So we received this,
6 and I just wanted to share it with the other Board members
7 and our staff.
8 And with that, I will turn it over to Ms. Fish,
9 our deputy executive director for her report.
10 MS. FISH: And I do have a report here today. I
11 would like to draw your attention to a couple of the faces
12 that the Board may see. Chris Patrick is here representing
13 Frank from the Office of Public Affairs. Martha Gildart is
14 here representing the tire section of Special Waste. And
15 Shirley Willd-Wagner is here representing the use oil and
16 household hazardous waste for the Special Waste Division,
17 and I am here representing Mark Leary, who saw his priority
18 to be attending a wedding for his sister in Illinois. And
19 executive staff is planning to punish him for missing this
20 first meeting, so I'll try to do justice for him.
21 The Rocky Mountain Institute was in California
22 last week to facilitate a design forum for the California
23 state capitol.
24 Leading experts and several State agencies,
25 including Board staff, reported findings from initial

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1 investigative work on the historical capitol building, its
2 annex and the legislative office building. Participants in
3 addition to Board staff included the Energy Commission, the
4 Air Resources Board, the Departments of Conservation,
5 General Services, Health Services and Water Resources as
6 well as numerous nongovernmental building professionals,
7 architects and engineers. This project spearheaded by the
8 State and Consumer Services Agency will have our capitol
9 serve as a model sustainable building.
10 Indirectly that means that the highest level of
11 State government will become more aware of environmental
12 issues in the workplace.
13 The two-day event started with a series of
14 reports. Presenters reported on historic preservation,
15 energy efficiency, lighting, water, materials, efficiency,
16 included integrated waste management and capitol park
17 sustainable landscaping project, environmentally-preferred
18 projects and innovative solutions, such as generating solar
19 energy on rooftops, discrete lighting changes that use
20 advanced systems control through computers and operated more
21 efficiently and heating and cooling options that provide
22 greater comfort and improved indoor air quality.
23 At the end of the two-day event, the 85
24 participants are identified and recommend actions that will
25 be compiled in a report for consideration by the Joint Rules

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1 Committee.
2 There are several issues of immediate concern that
3 the Board is uniquely qualified to assist in. Finding a new
4 home for the 60 tons of organic materials generated monthly
5 on the capitol grounds, conducting a comprehensive waste
6 assessment and characterization assessment with
7 recommendations for diversion holes.
8 Our recent experience of the CalEPA building can
9 serve as an example. Implementing an upgraded waste
10 diversion program that includes not only building
11 operations, but all of the 1300 or so events that are
12 permitted annually in and around the capitol, developing
13 educational display for school children who visit the
14 capitol, and diverting renovation and construction discards
15 and selecting new building materials.
16 Obviously implementation will be very important
17 and offers unique challenges. Board staff will continue to
18 provide technical assistance to this exciting project. It
19 provides an excellent opportunity for the State to lead by
20 example and provides positive format for numerous agencies
21 to work together on a common goal, and will educate not only
22 the public who visit the capitol, but also the highest
23 levels of State government.
24 WRAP 2001, changing subjects on you now, is in the
25 home stretch. The Board's Waste Reduction Awards Program

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1 application period closes June 30th, and the program
2 anticipates another banner year. Building on its successful
3 recognition, nearly 1900 California businesses last year,
4 WRAP has distributed over 8,000 applications this year and
5 is bracing for the returns.
6 With the WRAP brand name growing in familiarity
7 through such exposure as the logo appearing on behalf of all
8 Pacific Bell telephone directories, and with more and more
9 local governments reaching out to their business sectors, it
10 is not surprising that early submittals are already running
11 ahead of past years?
12 If you know a business that should receive
13 recognition for voluntarily reducing waste and by doing so
14 is helping out its community to achieve the exposure
15 reduction roles, time is running out. The application is
16 available on-line through the Board's website or through
17 contacting the WRAP site.
18 Greenwood Park, it is not uncommon that only one
19 or two Board members can get an opportunity to visit some of
20 the many projects that the Board funds through its many
21 grant programs. Today we have a very short video that is a
22 chance to share with you the results of a $25,000 playground
23 cover and track surfacing grant awarded to the City of
24 Modesto just over a year ago.
25 The City has done a wonderful job of capturing

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1 this effort on video, and we would like to show it to you
2 now. Are we ready?
3 (Video playing.)
4 BOARD CHAIR MOULTON-PATTERSON: Thank you.
5 MS. FISH: I would also like to add that the City
6 of Modesto project had two main objectives in this, first to
7 install the playground cover made from 100 percent
8 California waste tires, and second to provide ongoing
9 education to the residents about alternative and productive
10 uses for waste tires, and we really want to thank them for
11 this video. It certainly created an excellent educational
12 tool.
13 Finally, I have a budget update. As you're aware,
14 the Governor's budget is still currently in the Budget
15 Conference Committee. It looks like the budget will not be
16 on time this year, but we keep hoping.
17 At this point we are aware of only one issue
18 pending relating to the Board's fiscal year '01-'02 budget,
19 and that's the question of the tire revenues.
20 As you know, the State Senate and Assembly
21 subcommittees made legislative change to the financial
22 budget adding 19 positions while keeping the funds at 26
23 million. However, the Senate proposed to capture almost 323
24 million in revenues from the tire recycling management funds
25 during the year '01-'02 and transfer it to the general

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fund. We have been advised that that recent action taken, the Conference Committee voted against the transfer of these funds. We will keep you posted on any other developments as they occur.

Any questions? Thank you.

BOARD CHAIR MOULTON-PATTERSON: Thank you very much.

The first two items on our agenda this morning are for commendations for guests that made outstanding contributions to the success of our Board and its programs. I am going to suggest that we consider these items in succession, and then ask our honorees to join us over to the right of our dais for pictures.

I want to say a few words about Gerry deRoco and his many contributions to the Integrated Waste Management Board in Glenn County and our rural counties through his involvement with the Rural Counties Environmental Service Joint Powers Authority.

As Board members, we probably know Mr. DeRoco best for his appearances before us on numerous occasions when he seemed usually to be thanking us for giving Glenn County money. He's been instrumental in securing funding from this agency for projects in rural Northern California that otherwise would have never been accomplished were it not for his involvement.

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I want to acknowledge Mr. DeRoco's leadership and the creation of the Glenn County Regional Waste Management Authority, which appears to be making possible the achievement of AB 939 goals, and also his dedication to establishing a permanent household hazardous waste facility that serves seven Northern California counties as well as a used oil recycling infrastructure in Glenn County.

Mr. DeRoco, we know that the citizens of Glenn County will miss your service. Let me wish you, on behalf of all the Board members, a long and happy retirement.

With that, I would like to move adoption of Resolution 2001-223 in honoring Mr. DeRoco.

BOARD MEMBER JONES: Second.

BOARD CHAIR MOULTON-PATTERSON: Okay. We will have a unanimous vote on that. Thank you.

At this time I would like to consider Mr. Rick Best's commendation, and I believe that Board Member Paparian would like to introduce this commendation.

BOARD MEMBER PAPARIAN: Thank you, Madam Chair. It is my pleasure this morning to introduce for the Board's consideration a commendation for Rick Best.

As you all know, Rick has represented Californians against waste before the Board for nearly a decade. As a relatively new Board member, Rick was extremely helpful to me in getting up to speed, although I had many years of

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1 working with Rick in my prior capacity in the Sierra Club.
2 During the first few months of the Board, I wished
3 I could transfer everything Rick knows about AB 939 and
4 plastic recycling and tires and everything else into my
5 brain so I could get a leg up on dealing with the issues
6 that come before this Board.
7 I know Rick is respected, but in some cases
8 feared, I think, by industry, environmental groups,
9 citizens, action groups and local governments, and I think
10 it speaks to his expertise and integrity that he has been a
11 resource for all those parties at different times throughout
12 his work with the Board.
13 I hope Assemblyman Kielly appreciates what he got
14 when he hired Rick. I'd like to -- I won't read the whole
15 resolution that you have before you, but I'll read the last
16 sentence, whereas Mr. Best often single-handedly carried the
17 torch for the environmental community's interest before the
18 Board, facing opposition with his unusual wit and tenacity.
19 Be it resolved that members of the California Integrated
20 Waste Management Board, that Mr. Best's generosity and kind
21 spirit will be sorely missed by Board members and Board
22 staff alike.
23 With that, I would like to move Resolution
24 2001-224 commending Rick Best.
25 BOARD MEMBER JONES: Second.

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BOARD CHAIR MOULTON-PATTERSON: Okay. And we also have a unanimous vote on that. Again, we will really miss Mr. DeRoco and Mr. Best, and we would like to ask them to join us up here for some pictures.

(Recess was taken.)

BOARD CHAIR MOULTON-PATTERSON: Before we move into the consent calendar, I would like to mention that items 4, Avalon, and item 22, antifreeze, has been continued to July. Item 12 will be heard at 2:00 p.m. Items No. 23, 26 and 35 have been placed on the consent agenda.

Would any Board member wish to pull any item from consent? Hearing none, may I have a motion for the consent calendar?

BOARD MEMBER MEDINA: So moved.

BOARD MEMBER JONES: Second.

BOARD CHAIR MOULTON-PATTERSON: Moved by Mr. Medina, seconded by Mr. Jones to adopt the consent calendar.

Please call the roll.

SECRETARY VILLA: Eaton?

BOARD MEMBER EATON: Aye.

SECRETARY VILLA: Jones?

BOARD MEMBER JONES: Aye.

SECRETARY VILLA: Medina?

SECRETARY VILLA: Aye.

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1 SECRETARY VILLA: Paparian?
2 BOARD MEMBER PAPARIAN: Aye.
3 SECRETARY VILLA: Moulton-Patterson?
4 BOARD CHAIR MOULTON-PATTERSON: Aye. Thank you.
5 We will be starting with continued business. We
6 have a gentleman from Ventura County that would like to say
7 a word. His item was on the agenda, consent calendar,
8 Gerald Kapuscik. I am sorry. I'll let you pronounce it.
9 MR. KAPUSCIK: Thank you. Good morning, Madam
10 Chair. I am Gerald Kapuscik. On the theory that brevity is
11 the better part of discretion, I want to simply take the
12 opportunity of thanking the Board for the wonderful
13 opportunity of working with your staff to work through,
14 which at times was a thorny process, but in this case not
15 only the destination but the journey was well worth it.
16 I believe we have gone through this process and
17 provided the most updated summary plan and citing element in
18 the state, and this is of enumerable value to us in planning
19 our infrastructure in emerging in dynamic changing
20 technology.
21 I want to particularly thank the efforts of your
22 staff, and particular Pat Schiavo, Karen Morgan, Tara Gotia
23 and Niki Minwincy [phonetic], who used to be our LEA
24 representative in the beginning of this project. It was a
25 pleasure working with them, and thank you very much for

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1 approving our plan. We like being the final plan in the
2 state, so we appreciate the opportunity to work with you.
3 BOARD CHAIR MOULTON-PATTERSON: Thank you. We
4 know it has been a long road, and we appreciate your
5 comments.
6 Ms. Nauman, item No. 3.
7 MS. NAUMAN: Julie Nauman with Permitting and
8 Enforcement Division. Item 3 is consideration of revised
9 funding for the Redwood Street and 38th Street Burn Dump for
10 the City of San Diego.
11 This item has been continued from your March
12 agenda. There are a number of representatives from the City
13 of San Diego who wish to address the Board on this issue
14 today. So in the interest of time, I will ask Scott Walker
15 with the staff to make a brief presentation.
16 MR. WALKER: Thank you, Madam Chair, members of
17 the Board. Scott Walker, Permitting and Enforcement
18 Division.
19 Again, this item is to present consideration of
20 approval of the 38th and the Redwood Burn Dump cleanup
21 project pursuant to the solid waste disposal and codisposal
22 program site cleanup program. The City of San Diego is
23 requesting revised funding in the form of a matching grant
24 not to exceed $750,000 to assist in completing the project.
25 Staff is recommending approval of the City's

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1 request in an amount not to exceed 750,000 as requested or
2 in a lesser amount based on the Board's determination of
3 potentially more costs.
4 I will give you a brief presentation now of the
5 description of the site, chronology, remediation project and
6 the City's request.
7 The 38th and Redwood site is probably the most
8 complex and controversial cleanup project that Board staff
9 has encountered, and it has also been characterized as an
10 environmental justice situation. The site is in the City
11 Heights area of San Diego, and it is an urban, low-income
12 residential area. Approximately 30 percent of the
13 population is below the poverty line. In addition, 76
14 percent is non-Caucasian.
15 The site is also located within the
16 California-Mexico border zone.
17 Solid waste burn ash residue has impacted multiple
18 properties in this case, including eight residential
19 projects and City of San Diego right-of-way, street
20 right-of-way, and also Caltrans highway right-of-way. The
21 City's right-of-way is approximately 10 percent of the
22 site.
23 This site constitutes a confirmed condition of
24 pollution and nuisance, A-1 priority, due to the potential
25 exposure to residents of lead and radioactive materials.

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1 There are very few records related to this site. It is not
2 listed in the City Planning Department's 1938 planning
3 department report, and this report is the kind of basis for
4 really early activities in San Diego regarding solid waste
5 disposal.
6 Open dumping and burning by the public may have
7 occurred at this site in the 1920s and 1930s. It is also
8 possible that the waste was brought in from a separate site
9 or separate sites and used as fill for construction,
10 residential construction, highway construction in the 1950s
11 and 1960s.
12 The nearest identified burn dump site from the
13 1938 report is the 38th and Quince Street site, and that's a
14 separate site. And there is some record of a private owner
15 and operator, and also where public-private parties and also
16 City refuse collection had brought some waste in.
17 The site chronology. Board staff started
18 investigating the site in December of 1998 at the request of
19 the local enforcement agency. In March of 1999 Board staff
20 identified elevated radiation from investigation trenches.
21 Board staff promptly contacted the U.S. EPA Emergency
22 Response Team, and U.S. EPA took the lead in removing this
23 radioactive waste.
24 Contaminated burn ash was also at that time
25 discovered to have -- to be outside of the City right-of-way

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1 into the surrounding residences and Caltrans right-of-way.
2 The Board first considered a cleanup project in
3 August of 1999. And at that time the Board directed staff
4 and the City to conduct further investigation in preparing
5 additional items and work plans before approving the
6 project.
7 In January of 2000 the Board approved with
8 conditions of a matching grant in the amount of $250,000,
9 not to exceed $250,000 in addition to a $1 million loan to
10 the City of San Diego. The loan was declined, and the grant
11 agreement was not signed pending further discussions and
12 finalization of the project with U.S. EPA, and those
13 negotiations were conducted between the City and U.S. EPA.
14 U.S. EPA completed removal of burn ash from
15 parcels in December of 2000 under agreement with the City
16 and also Caltrans. And, also, the City has continued to
17 implement other aspects of the project which are still in
18 progress.
19 I am going to go through a few slides just to give
20 you a feel for the complexity and the cleanup project.
21 This shows the emergency removal of the
22 radioactive waste in 1999. Notice the property fence right
23 there. Fortunately the radioactive source was located just
24 below the surface and was not a -- an exposure situation at
25 the surface.

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However, it was a very high grade source of a strontium 90 pour pellet that was discovered, and U.S. EPA removed that. And obviously this situation created a lot of public concern, and there was quite a complex process to get this accomplished in the time allotted.

This next slide shows the removal of burn ash from a resident's backyard. Essentially this project involved removing the top three feet of burn ash and contaminated soil, and a total of about 1700 cubic yards of material were removed and disposed of at the Kettleman Hills class one facility.

As part of the project, blood lead level testing was provided free to the surrounding residents by the City. Fortunately there was no detection above the action level for children. So the lead is the principal constituent that is analyzed through that method to determine if there's an exposure.

This slide shows the completed excavation. Essentially they could not -- it is not feasible to remove below three feet. The top three feet was removed, and this shows a geotextile marker which is used to prevent, you know, unforeseen excavations below that mark where the depth of clean fill will be placed.

This essentially -- with the removal of the top three feet, coupled with deed restrictions, this results in

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1 an insignificant risk to the public, but it does require
2 deed restrictions.
3 This final slide shows the clean fill placed at a
4 residence, and this is really for the final landscaping,
5 which the City has done that part of the project.
6 The City's part of the remediation project also
7 includes essentially a large portion of the engineering and
8 environmental services, lab testing that's done, etcetera,
9 essential for this project to be completed.
10 In addition to the agency coordination, all the
11 agencies that have been involved, community relations and
12 outreach has been a major part of this project.
13 The deed restrictions, that's also been conducted
14 and continues to be conducted by the City. And then finally
15 the property acquisition or compensation for loss of use to
16 property owners. Sorry. Finally being some additional
17 waste removal rating site security that was done and is
18 continued to be done to complete the project.
19 Upon completion of the project, the City will
20 provide a final report. And this report will be submitted
21 to the County health department who will review and approve
22 the report to make sure that cleanup goals have been met and
23 that all potential health risks have been removed.
24 DTSC, Department of Toxic Substances Control, has
25 concurred in this approach in addressing the need for a

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1 voluntary cleanup plan agreement.
2 The City request for revised funding. The City
3 has requested revised funding because of an increase in the
4 complexity and scope of this project. The total estimate
5 cost for cleanup of the entire cost is -- ranges from 2.7
6 million to 3.5 million, and this is depended upon final
7 settlements, on deed restrictions and property acquisition
8 or compensation for loss of use.
9 This estimate also includes the U.S. EPA cost
10 estimate of 1.2 million, which was their part of the
11 project. These requested activities in our regulations for
12 the solid waste cleanup program are listed either as
13 eligible or potentially eligible subjects to the Board's
14 discretion of approval. Potentially eligible costs are
15 subject to the Board's discretion, and, also, none of the
16 activities that are proposed are specifically ineligible in
17 the regulations.
18 The proposed City share of costs for this entire
19 project are estimated at 730,000 to $1.5 million, and this
20 includes activities, project oversight, property acquisition
21 and compensation for loss of use. And, again, that will
22 depend on the final settlements that they establish.
23 The City has also agreed that if their request is
24 approved, they will provide cost recovery to the Board of 50
25 percent of proceeds of any future sale of the properties

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that are part of the match.

In addition, the City has indemnified the Board to all activities related to the remediation project.

The group request for Board participation is to match City costs up to a $750,000 cap. And there are two categories of requested activities. Specifically eligible activities, including the remaining engineering and environmental services, some costs already occurred to date and some grading activities, site security, the total estimate is $537,147.

The remaining category, or potentially eligible, and this includes the community relations, outreach and the deed restrictions for this project, and that, again, remains -- that will range from approximately 145,700 to $250,000, depending upon the final settlement. And, again, the Board's match would be capped at $750,000.

And in addition, no cost associated with the Board's match would be used for property compensation or loss of use.

In conclusion, staff recommends adoption of Resolution 2001-78, approving the City of San Diego's request for a matching grant not to exceed $750,000 or a lesser amount based on the Board's determination with respect to potentially eligible costs.

Staff is available to answer questions. In

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1 addition, besides the other parties that requested to speak
2 here, we also have in the audience the local enforcement
3 agency, Paul Manasjan, and also the U.S. EPA on-scene
4 coordinator, Rich Martin, who are available to answer
5 questions that the Board may have. Thank you.
6 BOARD CHAIR MOULTON-PATTERSON: Thank you,
7 Mr. Walker.
8 Any questions for Mr. Walker from the Board?
9 Mr. Eaton.
10 BOARD MEMBER EATON: I have some questions. I
11 would like to hear from the speakers first, though.
12 BOARD CHAIR MOULTON-PATTERSON: Assemblyman Juan
13 Vargas.
14 ASSEMBLYMAN VARGAS: Thank you, Madam Chair, and
15 it is good to see you again.
16 Members, it is a pleasure to be here today. My
17 name is Juan Vargas. I used to represent an area bordering
18 this area of San Diego. I used to represent the City of San
19 Diego. I was on the City Council for eight years, and
20 that's where we met. I was a representative of the Assembly
21 on the State Coastal Committee, so it was a pleasure.
22 I strongly support the City of San Diego's request
23 for $750,000, matching request for the 38th and Redwood Burn
24 Site. This site is located within my Assembly district, and
25 I speak on behalf of City Heights' community and their need

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1 for City assistance.
2 I was a member of the San Diego City Council where
3 we gave direction and authorization to complete the
4 remediation of the burn site and make the impacted residents
5 whole. We recognize that the effected property owners had
6 no knowledge of the contamination and, of course, were not
7 responsible for it.
8 As you heard, this happened quite some time ago.
9 I am very proud of the efforts taken by the City of San
10 Diego to assist the City Heights community in desperate need
11 of our help.
12 As an Assemblymember, I am very concerned for the
13 safety and well-being for the residents of City Heights, and
14 I am deeply concerned about the ongoing potential health
15 problems and the stigma damage to their property of
16 interest. The City of San Diego has offered to purchase
17 some of the effected homes and provide diminution to their
18 value of property.
19 To this intent, the City has requested assistance
20 from California Integrated Waste Management Board, the U.S.
21 EPA and San Diego County Department of Environmental Health
22 and several other sources. If we all work together, I
23 believe we can pro-actively meet the needs of the residents
24 and provide redress that face the community at no fault of
25 their own. And I respectfully urge the Board to approve the

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matching grant that has been recommended here today.

I don't know how many of you have actually been to City Heights, but it is a community in need. You have, Mr. Eaton, I understand that, and I appreciate it. You probably know that the City has invested a lot of money in this community. It is a community that for many years did not receive any help from the City or other agencies, and we just allowed it to decay.

But many of us fought very hard to make sure that these older areas got what they deserved, what we believe is social justice and environmental justice. So we fought very hard for that. I want to thank you for your efforts and your help here. I hope you do approve this. I think it is an issue of environmental justice.

I hope the people there, through no fault of their own, are taken care of. I think the City stepped up to the plate. I didn't represent them. That was not my district. My district was a bordering district. But since it was a bordering district, I was very involved.

I think the City has spent more than $1 million now. I think the Board would do well, and I think it is the right thing in approving this grant. I appreciate very much for the opportunity to speak today and the courtesy to speak first.

BOARD CHAIR MOULTON-PATTERSON: Thank you very

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much. We appreciate you coming, Mr. Assemblyman.

Chris Gonaver, City of San Diego.

MR. GONAVER: My name is Chris Gonaver. I am deputy director of the Environmental Protection Division within the City of San Diego.

I am pleased to be here this morning to request that your Board approve the $750,000 matching grant for the cleanup of 38th and Redwood.

38th and Redwood site, as we've heard, is in the heart of one of the most ethnically diverse communities within the entire city. The demographics estimate that the population is approximately 80 percent people of color, almost 50 percent are families with income less than $25,000 per year, and about 25 percent of the population are children under the age of nine.

People living in this community were not aware of the potential public health issues associated with these properties when they moved into the area.

The City of San Diego, in cooperation with the U.S. EPA, your staff and Caltrans, has completed the cleanup of this site, which completes nine parcels. As staff mentioned, eight residential parcels and one vacant lot.

Of the eight residential parcels impacted by this site, six parcels require that ash near the ground surface be removed to a depth of three feet. The City offered to

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1 temporarily relocate these citizens directly impacted by the
2 inconvenience of this soil removal.
3 Because burn ash extended directly under the
4 concrete slabs of these homes, the City also offered to
5 purchase those six homes. The purchase of the homes was
6 offered to address long-term public health issues and the
7 environmental justice needs of this community. Two
8 homeowners have accepted the City's offer to purchase.
9 For the remaining effected properties, burn ash
10 was found at greater than three feet below the ground
11 surface and under sidewalks, driveways and foundations.
12 Deed restrictions are required to limit the use of certain
13 portions of the property where burn ash remains. The deed
14 restrictions will also permit access by the local
15 enforcement agency to monitor these properties to ensure the
16 protection of the public health and the environment.
17 These restrictions are a critical component of the
18 project and will run in perpetuity of each of these
19 properties. Deed restrictions are in the process of being
20 developed and will be placed on each of these properties.
21 In addition, critical to the completion of the
22 project was the option for property acquisition. Even
23 though all of the public health risks associated with the
24 remaining burn ash have either been eliminated or addressed
25 with the placement of deed restrictions, a few of the

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1 property owners perceive that their home is no longer a safe
2 place to live. That perception that their health may be at
3 risk is something that we needed to address.
4 The unique residential location of the burn dump
5 site requires that all jurisdictions involved take
6 protective and equitable approaches toward remediation and
7 treating these residents fairly.
8 We believe that the entire project, which includes
9 contaminated soil removal, temporarily relocating the
10 residents during the cleanup process, options to purchase,
11 offers for diminution of property value and loss of use
12 should be shared through a partnership with the State. This
13 partnership can best address this complex situation
14 involving economically disadvantaged minority citizens.
15 The City of San Diego requests this Board's full
16 approval of the $750,000 grant, and thank you for your
17 consideration. And I would be happy to answer any questions
18 that you might have.
19 BOARD CHAIR MOULTON-PATTERSON: Thank you.
20 Elmer Heap, San Diego City attorney.
21 MR. HEAP: Thank you, Madam Chair and Board
22 members. My name is Elmer Heap. I am a part of the City
23 Attorney Office in the City of San Diego, and really just
24 here as part of the City team to respond to any questions
25 that may arise in this hearing.

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1 I did want to make one point that we failed to
2 mention, and that is in the City of San Diego when this
3 issue became a significant issue, Chris Keho was the Council
4 member at this time, and City Heights fell within her
5 district, and she was very supportive of our efforts to take
6 care of those who resided in her district.
7 Obviously, as well as you are all aware, she's an
8 Assemblymember at this time. She's aware what's happening
9 at the present time. And she's also interested even as she
10 sits here representing the State of California.
11 BOARD CHAIR MOULTON-PATTERSON: Thank you, very
12 much, Mr. Heap.
13 Scott Harvey, San Diego County Disposal
14 Association.
15 MR. HARVEY: I am Scott Harvey on behalf of San
16 Diego County Disposal Association. And it is also, I think,
17 appropriate to note that I, too, am a former Council member
18 who shared a district next to City Heights. And while my
19 term ended long before Mr. Vargas' did, this was an issue
20 that was just beginning to be discussed while I was on the
21 City Council.
22 The homeowners in San Diego are very pleased to
23 support what is going on here. Because the interagency
24 cooperation, your Board and by U.S. EPA and County and the
25 City, I think, has given hope to the residents that this is

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1 a high priority matter.
2 I think your granting this money up to $750,000
3 would underscore that commitment. There's no question that
4 burn sites are a problematic issue throughout California.
5 This is probably just the first of many issues you may hear
6 on this.
7 We hope that you will agree with your staff and
8 the City that this is an important thing to do, and we would
9 encourage your vote. Thank you.
10 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
11 Harvey.
12 Last speaker, John Lorman.
13 MR. LORMAN: Madam Chair, I have nothing to say.
14 Thank you.
15 BOARD CHAIR MOULTON-PATTERSON: Thank you.
16 Mr. Eaton, did you have your questions?
17 BOARD MEMBER EATON: Sure, and a couple of
18 comments. Since I was one of the original members of the
19 Board who first took up this matter -- and I am thankful
20 that Mr. Vargas and Ms. Keho have continued the interest.
21 Because I did work with Ms. Keho to frame the first
22 agreement, which I think what I would like to find out from
23 the City is why did you find that unacceptable?
24 I don't have any problem with helping the
25 individuals within this community. In fact, it was this

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1 Board along with Senator Roberti and myself and Mr. Jones at
2 the time, I believe, that pushed the City on the
3 environmental justice issue.
4 So while I disagree with the characterization that
5 the City has moved quickly, I think the record speaks to the
6 opposite with regard to the environmental justice issues in
7 regard to the homes and the transcripts that you spoke
8 before us.
9 And I am sorry Mr. Hayes is not here, because
10 Mr. Hayes was the individual who came before the Board, that
11 it really was us who was pushing. In fact, going back with
12 Mr. Hayes and myself and, Elmer, you remember the meeting we
13 had at Ridge Haven back on August 11th, 1999. We dealt with
14 the whole issue of basically what is going to happen to
15 these citizens here.
16 And at that time you did not deal with the issue,
17 nor were you willing to purchase their homes. We said we
18 would be unwilling to purchase them for you, but that we
19 felt that that was a critical component. Therefore, that
20 continues to be part of the crux of my disagreement with the
21 City, and not the City representatives, the elected
22 officials, with regard to this site.
23 Furthermore -- so I don't want it to be said that
24 somehow I am opposing the project based on lack of
25 information. Because it really was the environmental

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1 justice issue that drove this Board to drive the bargain
2 hard.
3 Because what is not being told here today is that
4 there are several other sites within the City of San Diego,
5 is my understanding, which have burn dumps as well. And
6 part of the reason for crafting the loan, the million dollar
7 loan, was so that we could, under our limited funds, be able
8 to recycle those funds back into those other sites.
9 The question really becomes, is now that if this
10 project is going to be approved, and my guess it will be,
11 that what's going to happen to those other sites? Some are
12 located near schools. The whole idea behind the loan was to
13 be able to get money to go back into the fund so that our
14 sites, not only in San Diego or in the greater San Diego
15 area, but Los Angeles.
16 You'll see later in today's agenda we have another
17 burn dump located somewhere in another part of the state.
18 So I guess I am sort of in a quandary, and I would like to
19 hear from City officials why wasn't the original document
20 signed so that we could at least get some of these other
21 sites moving?
22 And furthermore, I would like to talk with
23 Mr. Walker. When were we informed that they weren't going
24 to sign the loan agreement? I have never received notice
25 that the City was not going to sign the documents.

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1 MR. GONAVER: Madam Chair, Board Member Eaton,
2 Chris Gonaver again with the City of San Diego. As far as
3 the initial loan and grant award that was approved by your
4 Board back in January of 2000, there were a number of
5 conditions that were identified in the receipt of that
6 grant. And at the time the site or the scope of the project
7 involved the vacant lot and probably two to three other
8 properties.
9 Subsequent to that Board hearing, a different
10 contractor was brought on board to continue the
11 investigation. At the same time discussions were underway
12 with U.S. EPA to undertake the cleanup, and we received a
13 memo from Board staff in March of 2000 that indicated if,
14 indeed, we were going to change some of those conditions,
15 most particularly the agreement with DTSC and the cleanup
16 approved through the State of California, CalEPA, we needed
17 to come back to your Board to let them know what the revised
18 scope of the project really entailed.
19 And as we move forward in the year 2000, the
20 project grew from those three properties to including five
21 residential properties. So the scope all of a sudden became
22 much larger than what was initially approved with the
23 $250,000 matching grant.
24 In addition, throughout that time period, from
25 January 2000 until probably the end of 2000, we did keep

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1 Board staff involved, and I think the Board members
2 involved, through monthly memos and reports, letting you
3 know where we were in the process with EPA.
4 As you well know, EPA did, indeed, come in and
5 complete the remediation for us. We have received approval
6 from DTSC to work through the County Department of
7 Environmental Health voluntary assistance program to oversee
8 the adequacy of the cleanup. So there were several
9 conditions that needed to be modified. Actually, that is
10 the real reason why the grant at that time and the loan was
11 not signed.
12 BOARD MEMBER EATON: Did you ever advise staff?
13 MR. GONAVER: Each month we had monthly reports
14 that came to the Board advising them of where we were in the
15 process.
16 BOARD MEMBER EATON: That's not in the execution
17 agreement. I don't want to belabor the point, but contrary
18 to what you represent, on December 19, 1999, was a document
19 again raising the very concerns you talked about with
20 several other pieces of property.
21 At that time we informed you that, as I stressed
22 to you in our conversation on December 6, 1999, IWMB wants
23 the see the site made as soon as possible and have the staff
24 bring the agenda item to the Board at the January 25-26,
25 2000, meeting.

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1 So, again, you had an opportunity to provide
2 additional information for not only this site but other
3 sites. And I think part of what sticks in my claws is the
4 process. And it is unfortunate that the individuals within
5 this particular section of the state of California are,
6 probably least able to fight for their own rights, would be
7 subjected to such a delay based upon the fact that for some
8 reason you just didn't want to deal with the environmental
9 justice issues at that time. And the Board was willing to
10 do so.
11 The facts speak for themselves. I don't think
12 that spending money for remediation but rather going for
13 public relations is a wise expenditure of dollars for these
14 individuals, nor should we as taxpayers have to pay for
15 those. That really was the City.
16 Because my understanding is that the City is
17 responsible for this property and has admitted so. Is that
18 not correct, Counsel? At least we have a letter that says
19 the City is responsible.
20 So the question really is, is what are we going to
21 do with the other sites within the City? Are we going to do
22 those same things? Because I dealt with Ms. Keho and
23 others, and Mr. Vargas' predecessor, Denise Buchaney.
24 We all came up with a plan which we thought would
25 be beneficial, given the facts that were presented to us.

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1 And I just think that in some ways we were misled until, you
2 know -- and I appreciate the politics by the City, "Let's
3 wait for a change in makeup of the Board." Now that's
4 occurred, and that's fine.
5 But the issue really is the fact that these
6 individual citizens in this area have been made to suffer
7 for a long time, and it is not a result of this Board
8 dragging its feet. It is the result of the individual
9 within a particular department who didn't want to spend
10 excess funds, because it did come to the Council several
11 times.
12 MR. GONAVER: Board Member Eaton, if I can address
13 the other burn sites we are working on in San Diego through
14 our local enforcement agency, who has been very proactive
15 and very aggressive in recommending sites that we look at.
16 Right now we are working on four sites, three
17 additional sites. So as staff mentioned in their
18 presentation, there is an additional site down at Quince and
19 38th that we have completed the investigation. The final
20 record for that investigation is being compiled by the end
21 of this month or early in June. We will have a full
22 assessment of what the impact is to those properties at that
23 burn site, and we'll be developing remediation plans
24 surrounding the Quince site.
25 The second site is at -- Camp Berryessa, which is

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1 a Francis Parker School. We have a situation where there is
2 some residual burn ash on an external slope outside the
3 fence property of that school. The City of San Diego has,
4 again, completed the assessment of that particular site, and
5 we are in the process of developing remediation plans for
6 that as well.
7 The third site that we are -- our fourth site in
8 addition to 38th that we are involved in is our old town
9 bridge site, which is in San Diego River, or on the banks of
10 San Diego River, and that is in the very preliminary stages
11 of investigation.
12 As far as coming back to your Board for additional
13 requests for support, the Francis Parker School, we likely
14 will not be asking for support from the State. The old town
15 bridge site, there's a strong likelihood that there are some
16 funds that would be available through the State Water
17 Resources Control Board, since it is in a watercourse. But
18 we do intend to ask your support for assistance at the
19 Quince site.
20 BOARD CHAIR MOULTON-PATTERSON: Thank you.
21 Anything else, Mr. Eaton?
22 MR. HEAP: If I could, Board Member Eaton, in
23 relating that the responsibility was accepted, and that
24 relates to the one-eighth parcel, that vacant lot in which
25 we have maintained, that we have responsibility for that

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1 lot. In relation to all these other properties that we are
2 talking about, we have stepped up to the plate because we
3 want to meet these issues and make them whole. Not because
4 we are acting as a responsible party, but it is because it
5 is the right thing to do.
6 I respectfully disagree with you characterizing
7 that San Diego is not motivated to deal with environmental
8 justice issues. That is wrong.
9 As you look at the record, I know that you have
10 looked at the record, there was an issue as to who was going
11 to be the lead agency. At one time we thought the Board was
12 going to be the lead agency. Then we thought if you are
13 not, maybe it is going to be DTSC. It ended up being that
14 we had to work with U.S. EPA to do this cleanup.
15 Now the lead agency was going to be the County.
16 This is a very difficult process. The City has worked hard
17 to meet these environmental justice issues, and I
18 respectfully disagree with having you characterize it that
19 somehow this Board has pushed the City to meet these
20 issues. It is not that. It is not that at all.
21 The City has worked hard. We have busted our tail
22 to met the needs of these citizens and to do the right thing
23 here. And here we sit today, June 19th, every citizen in
24 this area has been taken care of, has been made whole. We
25 have principal agreements with every single one of these

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1 citizens. Why? Because it is the right thing to do.
2 Did we do it because there was a claim filed by
3 these citizens? No. Did we do it because there was a
4 lawsuit that was filed? No. Did we do it because there was
5 a threat of lawsuit? No. Because it was the right thing to
6 do.
7 We have taken responsibility for the vacant lot.
8 We are not here to ask for any moneys as relates to the
9 vacant lot. We are here to ask for money to assist us, for
10 you to partner with us as U.S. EPA partnered with these
11 citizens.
12 BOARD CHAIR MOULTON-PATTERSON: Thank you.
13 BOARD MEMBER EATON: I respectfully disagree. As
14 you well know, we sat in the room and asked the question
15 with our counsel, had you gone to the property owners and
16 advised them to seek counsel or had you gone for legal aid
17 to assist them in making decisions, and at that time you
18 informed us that you had not. And it was this Board, and me
19 in particular, sitting in a meeting that told you we think
20 that it is really important that these individuals in this
21 low-income area should, at the City's behest, seek some sort
22 of legal representation separate and apart from what the
23 City was representing to them. You know that that was the
24 truth.
25 MR. HEAP: In August of '99, you're absolutely

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1 correct, Board Member Eaton. When we were together we
2 talked about several issues. One of the issues related to
3 legal representation of these citizens. And at that time
4 there was counsel that was given these citizens that they
5 should seek legal representation.
6 But there were many things talked about in that
7 meeting, including the indemnification language that is now
8 in front of the Board to protect the Board for any liability
9 related to this issue. Kathryn Tobias and I worked out that
10 language after that meeting, and it was presented to this
11 Board to protect the Board from any liability.
12 So you're right as it relates to the legal
13 representation, but this is early in the process of August
14 of '99. But, you know, that was taken care of. And you
15 know what, the majority of these property owners, guess
16 what, they were represented by counsel. There was only one
17 of these property owners that was not represented by
18 counsel. So they were represented by counsel.
19 BOARD MEMBER EATON: My point exactly. We were
20 able to get you to do what was necessary.
21 Furthermore, let me ask you --
22 MR. HEAP: I respectfully disagree with that
23 comment. It wasn't because of this Board.
24 BOARD CHAIR MOULTON-PATTERSON: Other Board
25 members want to speak, Mr. Eaton.

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1 BOARD MEMBER EATON: First off -- this is probably
2 for Board staff. Does Board staff believe there is no money
3 that we are being asked to provide that relates to property
4 acquisition?
5 MR. WALKER: Correct.
6 BOARD MEMBER EATON: Perhaps, Mr. Walker, you can
7 explain to me what deed restrictions are. I thought deed
8 restrictions relate to property or covenants that run with
9 the land. Those are legal costs that are associated with
10 property acquisition as a result, and I don't want our Board
11 to be buffaloed because that was a standpoint from the
12 beginning, that we were willing to help, but we weren't
13 going to acquire the properties.
14 Those are -- contrary to whatever you may believe,
15 involve property acquisition, and I would suspect -- and I
16 would ask that my fellow Board members not approve those as
17 a legitimate, eligible cost. Because that City wants to do
18 that. We can find other ways to help make the City whole
19 and make up for those moneys that can be spent for other
20 things, but we should not be involved in the property
21 acquisition.
22 BOARD CHAIR MOULTON-PATTERSON: Thank you,
23 Mr. Eaton.
24 Mr. Jones?
25 BOARD MEMBER JONES: I wonder if there's an --

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1 what is the deed restriction?
2 MR. GONAVER: Madam Chair, members of the Board,
3 just to go back one step as far as the deed restrictions are
4 concerned, in the Integrated Waste Management Board advisory
5 356 there is a requirement that if there are post-closure
6 land uses other than a non-irrigated open space, deed
7 restrictions are required to identify those areas where the
8 public should not go.
9 And in this case we have completed the removal
10 down to three feet. Below three feet there is burn ash on
11 some properties. We don't want people to be digging down
12 past three feet. Because if they do, they are likely to
13 come into contact with old burn ash.
14 So in order to protect the public health, in order
15 to protect the integrity of the cap that is on this old burn
16 site, the deed restrictions must be in place and must run
17 with the property so that future property owners are aware
18 that this burn ash remains at depth.
19 Now, that's not to say that they cannot go below
20 that depth. What it says is that we want to know about it.
21 So if you are going to put a pool in your backyard and need
22 to go down eight feet, we need to be involved. We need to
23 be the ones responsible for the excavation of that old burn
24 ash so that you can install your pool.
25 We don't want people haphazardly digging down past

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1 three feet. That's why we put the geotextile membrane there
2 to serve as a barrier, so that they would know we don't want
3 them doing that. Because they then potentially would be
4 exposed to elevated levels of lead and the burn ash.
5 So from my point of view, from the City's point of
6 view, these deed restrictions are in place within the
7 State's process of how you deal with closed sites.
8 BOARD CHAIR MOULTON-PATTERSON: Thank you.
9 BOARD MEMBER JONES: Okay. So our dollars are
10 used to compensate the landowner for those deed
11 restrictions?
12 MR. GONAVER: Correct. That is what we are
13 proposing. It is a match. It is on your side -- on your
14 side of the ledger.
15 BOARD MEMBER JONES: As opposed to it being on
16 your side of the ledger. I wanted to make just a couple
17 comments here as one of the Board members that was here when
18 this issue first came out.
19 There's a lot of issues going back and forth. I
20 will tell you from my point of view, for our honorable
21 assemblymember and others, part of my concern came when
22 requests were made. We were sure that we were going to get
23 that information and that they would go forward, and that
24 never happened in more than one occasion.
25 And then after the vote for the 250,000 grant and

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1 the $1 million loan -- I am the industry seat on this
2 Board. Nobody from the industry in San Diego contacted me
3 about this other than to support it.
4 And it was after that vote that I found out from
5 Mr. Hayes that, in fact, all the haulers were going to be
6 assessed at the landfill to repay that debt, and he wanted
7 to know if any of them had contacted me. I told him had
8 they, I probably would not have voted for it. Because they
9 were not the responsible party.
10 But it is those kinds of issues that muddy up this
11 process. Because clearly there was a desire by this Board
12 to make sure that all of those parties were protected. And
13 we went back and forth on the timing of this thing, the was
14 it identified, wasn't it identified. Somebody said it was
15 old private haulers, but I think the ordinance and the City
16 of San Diego goes back to 1919, that the City would be
17 responsible for all the solid waste collection. So if you
18 logically take that out, that kind of means if they are
19 responsible for collection, they are also responsible for
20 disposal.
21 I am going to vote for this issue because I think
22 we need to move on. But I tell you the truth, and I said it
23 at the -- in the briefing, it bothered me that we never got
24 the letter asking for indemnification, and it bothered me
25 the way some of these things were -- and I know it was a

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1 fluid situation. I know that you guys were getting
2 inundated from every direction, and that's why I tried to
3 stay silent. But I just want to kind of put it as a little
4 added concern that this Board had.
5 Because we don't act recklessly, and I know the
6 City of San Diego does not act recklessly, but sometimes we
7 get caught up in the minutia and in the budgets and in the
8 people that we work for, and that created a problem.
9 ASSEMBLYMAN VARGAS: Thank you, Madam Chair. If I
10 may respond just briefly. As I said, I was on the Council
11 during this time up until December of last year. This was
12 not my district. This was Chris Keho's district. I was in
13 the bordering district.
14 When I first heard of this was in closed executive
15 session where the mayor and the Council meets. I can assure
16 you at that point that Chris Keho, who represented the area,
17 was aggressively pursuing it, especially the issue of
18 environmental justices.
19 I can't speak what was happening at the staff
20 level, but I certainly can speak what was happening at the
21 level of the elected officials, the mayor, Chris Keho, who
22 represented the area, as well as my colleagues, were very
23 interested and wanted to make sure we did the right thing.
24 It was a new issue to us. As you know, we were
25 not and are not a licensed hazardous waste agency. And

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1 finding radioactive waste there was a very interesting thing
2 for the City Council. To be frank, we weren't expecting
3 this. This is not the sort of thing we have dealt with in
4 the past.
5 We knew that we were trying to work with your
6 Board, that obviously you have a great reputation for doing
7 the right thing, and you work hard and you are a very expert
8 Board, and we appreciate that.
9 You do have to recall that we were somewhat of a
10 novice in this process. So the mistakes probably did
11 happen, but I can assure you from the level of the City
12 Council and certainly the mayor, we were working hard on
13 environmental justice issues. I hope that our staff was,
14 too.
15 I can tell you right now that I think approving
16 this is the right thing to do. I noticed up there that the
17 money that the City is asking for is eligible, or
18 potentially eligible. You have the ability to make that
19 decision. I think it would be a good decision to do it. I
20 think when you do have an issue that is new like this and a
21 City Council and mayor who hasn't dealt with radioactive
22 waste and these sort of things -- and you're right, one of
23 the things that alarmed us is that this was not the only
24 area. We tried to figure out where were they in my district
25 and in older parts of the city.

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1 So, again, I think this is a new experience for
2 us. I think it is one we should work together, and I think
3 working forward we can move forward.
4 BOARD CHAIR MOULTON-PATTERSON: Thank you,
5 Assemblyman.
6 Mr. Medina?
7 BOARD MEMBER MEDINA: Madam Chair, I am ready to
8 move this item. I first became acquainted with this in my
9 tenure as director of Caltrans, and I had an opportunity to
10 visit the site as a newly-appointed member of this Board,
11 and I am sympathetic to the residents of the committee.
12 So I would like to move Resolution 2001-78,
13 consideration of revised funding for the 38th Street and
14 Redwood Street Burn Dump Site, San Diego, pursuant to the
15 solid waste disposal and codisposal site cleanup program,
16 approving the 38th Street site for a matching grant with the
17 City of San Diego in the amount of $750,000, and of that
18 amount not to be used to cover the deed restrictions.
19 Because I do appreciate and respect Board Member
20 Eaton's due diligence in regard to this matter. And I
21 hereby would like to direct staff to develop and execute the
22 matching grant agreement with the City of San Diego to
23 complete the remediation projects. I was impressed about
24 the work that was ongoing while I visited the site.
25 BOARD MEMBER EATON: I'll second that motion,

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1 Mr. Medina. And just as a way of extending an olive branch,
2 I do know that the City Council members and the mayor were
3 involved, that is because I had the conversation after I had
4 the conversation with the staff level as to what was going
5 on. I think that's an excellent thing.
6 Madam Chair, I would like to be able to put
7 something on the agenda in whatever time works in the fall,
8 where we actually go over what legitimate expenses are there
9 so we don't run into these in the future. We are going to
10 run into them with burn dumps, and so we are going to have
11 to figure out what's eligible and what's not eligible. So
12 that may be a cure for us to look at ourselves and see what
13 was wrong.
14 BOARD CHAIR MOULTON-PATTERSON: Thank you.
15 Ms. Fish, you got that and will have that on our meeting in
16 a few months?
17 We have a motion by Mr. Medina, seconded by
18 Mr. Eaton to approve Resolution 2001-78 with the change.
19 MS. FISH: Did Mr. Medina accept that as part of
20 the motion, to bring the item back?
21 BOARD MEMBER EATON: It doesn't have to be part of
22 the motion.
23 MS. TOBIAS: If it is not part of the motion, then
24 the Board will have to take it up. Because we need the
25 direction of the Board. If the Board agrees with that,

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1 that's fine.

2 BOARD MEMBER EATON: Let Mr. Medina make a

3 motion. Then after the motion we can vote on it.

4 BOARD CHAIR MOULTON-PATTERSON: Thanks,

5 Mr. Eaton.

6 MR. GONAVER: Just with respect to the deed

7 restriction, the deed restriction is not a property

8 acquisition or a property purchase. It is something that is

9 necessary in order to be able to maintain the site. So it

10 is just a part of the process that in your advisory 356 is a

11 recommendation that these be put into place.

12 And really what it is is a health risk-based

13 remediation option. In other words, we could have gone in

14 there feasibly and removed and done a clean closure. We

15 could have gone down eight, ten, 12 feet, whatever the depth

16 of the burn ash is in that neighborhood.

17 Obviously we cleaned down to three feet and spent

18 1.2 million for the remediation. We could have gone for

19 clean closure and gone down to ten feet and spent ten or $12

20 million for the disposal.

21 But this is a remediation option which has been

22 approved, which is done. It is not associated with property

23 acquisition, but rather associated with the property to run

24 with the title of that, of that property, so that people are

25 not digging down below the three-feet level. I just wanted

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1 to clarify that it is not a property acquisition cost.
2 BOARD CHAIR MOULTON-PATTERSON: Right. I don't
3 think we have a problem with the deed restrictions. We just
4 didn't want our part of it, right?
5 BOARD MEMBER EATON: Correct. It is a covenant
6 that runs with the land. And as such, part of what we are
7 trying to make the distinction here and what we pushed on
8 before is that anything having to deal with property
9 acquisition and/or covenants that run with the land should
10 not be something the Board wants to be involved in. That
11 was part of the reason for it.
12 More importantly, and I think that you know, take
13 the money and be thankful. I'll even be willing to go and
14 grant you the full $750,000 absent what Mr. Medina was
15 willing to do if you'll bring back, at the proper time, a
16 substitute series of items to be funded. So that will help
17 the City. So if there are other items that relate that are
18 eligible costs, so that you get the full 750.
19 But with regard to the covenants that run with the
20 land or anything with property acquisition, I don't think we
21 are prepared to go there. We have never been.
22 One of the questions, if you want to continue to
23 push, with Mr. Hayes, what are you going to do with these
24 property owners who rent these homes out in the future? Are
25 you, the City, going to advise the renters that there's a

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1 problem? A deed restriction does nothing to the renter.
2 So I would think you would want to be thinking
3 about those things. Because those are the kind of
4 individuals with renters, who any of us who have ever been
5 renters, were advised of. I think that's where you got to
6 look.
7 I am willing to go that far, 750, that the deed
8 restrictions, anything related to the property is not
9 acceptable and not part of the matching grant, but we'll
10 grant you the full 750. But you can bring back a
11 substitute. What more can you ask? You are getting a full
12 enchilada, unless you already expended the money.
13 MR. GONAVER: No, I appreciate that. I just
14 merely wanted to clarify that. Again, the deed restriction
15 is not property acquisition.
16 BOARD CHAIR MOULTON-PATTERSON: We appreciate
17 that.
18 We have a motion on the floor and a second.
19 Please call the roll.
20 SECRETARY VILLA: Eaton?
21 BOARD MEMBER EATON: Aye.
22 SECRETARY VILLA: Jones?
23 BOARD MEMBER JONES: Aye.
24 SECRETARY VILLA: Medina?
25 BOARD MEMBER MEDINA: Aye.

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SECRETARY VILLA: Paparian?

BOARD MEMBER PAPARIAN: Aye.

SECRETARY VILLA: Moulton-Patterson?

BOARD CHAIR MOULTON-PATTERSON: Aye. Motion passed. We will now take a 15-minute break.

(Recess was taken.)

BOARD CHAIR MOULTON-PATTERSON: Ex partes, Mr. Eaton?

BOARD MEMBER EATON: None, thank you.

BOARD CHAIR MOULTON-PATTERSON: Mr. Medina?

BOARD MEMBER MEDINA: None to report.

BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian?

BOARD MEMBER PAPARIAN: Yes. A brief conversation with John Cupps about enforcement issues.

BOARD CHAIR MOULTON-PATTERSON: And I have none.

I need to go back to you, Mr. Eaton, for your direction, additional direction on the burn site.

BOARD MEMBER EATON: Thank you, Madam Chair. I was hoping at some point, whenever the executive staff comes back, no time restrictions, but in the next three or four months, if a 2136 item comes up and we start talking about things, I would like to be able to put something on the agenda which relates to what will be expenses that will be eligible or ineligible under our regulations, that it relates to burn dumps but other kind of activities.

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1 Because I think you will see more and more of
2 these. I guess we have one up in Folsom Prison that will
3 come up, and one down in the central valley. So they are
4 starting to become more prevalent. So if we have some
5 guidelines of what's eligible and what's not.
6 BOARD CHAIR MOULTON-PATTERSON: I think that's a
7 good idea.
8 Mr. Jones, did you have any ex partes?
9 BOARD MEMBER JONES: Absolutely. Everyone.
10 Yvonne Hunter, Denise Delmatier, George Larson. I think
11 that was it. All PEP.
12 BOARD CHAIR MOULTON-PATTERSON: Thank you. As I
13 mentioned earlier, four has been continued to July, Avalon,
14 the City of Avalon.
15 Takes us to the first item of new business, item
16 No. 5. One thing that I did want to mention, again, I
17 should have mentioned at the beginning, it is my intent
18 today to take up items 1 through 28, and then tomorrow we'll
19 do the rest of the agenda.
20 MS. NAUMAN: Thank you. Madam Chair, as we begin
21 the new section of the agenda, I would like to ask the
22 Board's indulgence to moving item 9 to this section. The
23 LEA, Mr. Jeff Penowi, is present this morning, but is unable
24 to remain here this afternoon due to some budget hearing.
25 BOARD CHAIR MOULTON-PATTERSON: Item No. 9.

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1 MS. NAUMAN: It is a consideration of a new solid
2 waste facility permit for Environmental Reclaiming
3 Solutions, Inc., in Yolo County.
4 MS. POROLI: Beadrice Poroli. The facility's
5 operated by Environmental Reclaiming Solutions,
6 Incorporated. The proposed permit is to change a green --
7 existing green and composting facilities to a registered
8 facility to a full solid waste permit.
9 The proposed permit will allow the following:
10 Increase the amount of material on site from 10,000 cubic
11 yards to 50,000 cubic yards initially, and then eventually
12 increase the volume to 100,000 cubic yards. It will also
13 increase the permitted acres from 20 acres to 56.
14 A bit of background information. The conditional
15 use permit required the operator to post a security bond by
16 January 2001. Since the operator had not complied with this
17 requirement, the staff of the Yolo County Planning
18 Department recommended at the June 14th, 2001, planning
19 meeting to begin the process to revoke the permit.
20 The Commission unanimously voted to begin the
21 process of the reuse permit. The Planning Commission will
22 meet again on July 19, 2001, to consider the revocation of
23 the conditional use permit.
24 As discussed on page 9-5 of the agenda item, the
25 facility has been offered in violation of a Public Resource

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1 Code Section 44014(b), terms and conditions of the July
2 1998 -- July registration permit. The facility has been
3 authorized and under notice of order since 1998.
4 Upon Board concurrence with the permit and
5 subsequent issuance of the LEA, the violation will be
6 corrected. The LEA and Board staff have determined the
7 following: The facility is identified in the county's
8 non-disposal facility element. California Environmental
9 Quality Act has been complied with. The operations of the
10 facility is consistent with the State minimum standards.
11 Staff reviewed the proposed permit and supporting
12 documentation and have found them to be acceptable for
13 consideration by the Board.
14 In conclusion, staff recommend that the Board
15 adopt solid waste facility permit decision 2001-183
16 concurrent in the issuance of a solid waste facility permit
17 No. 57AA0029.
18 The LEA and operator are present to answer any
19 questions you may have.
20 BOARD CHAIR MOULTON-PATTERSON: Thank you very
21 much. Before I call on Mr. Jones, I misspoke. We are
22 taking up items 1 through 27 today. Sorry.
23 Mr. Jones.
24 BOARD MEMBER JONES: Thanks, Madam Chair. Just a
25 question for the staff, and I guess the LEA. This facility

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1 has had some delay along the road. We have been informed
2 that there was going to be a hearing on their CUP on one of
3 the conditions. Somebody, I think, in our briefing said it
4 was going to be next week, but I had heard it had already
5 happened. Has it happened?
6 MS. POROLI: The hearing has happened, and come
7 July 19, that would be the exact day when the decision is
8 final.
9 BOARD MEMBER JONES: Was there a preliminary
10 decision offered at the hearing?
11 MS. POROLI: I don't believe so. My staff was at
12 the hearing. I will let him answer that question.
13 MR. PENOWI: Jeff Penowi, Yolo County LEA. The
14 Planning Commission voted last week, last Thursday, to
15 consider on July 19th revocation of the conditional use
16 permit for the facility.
17 BOARD MEMBER JONES: All right. So my question
18 is: If that CUP is revoked locally, then this permit is
19 also revoked, correct?
20 MR. PENOWI: If the CUP is revoked, my
21 understanding, not having yet talked to legal staff, there's
22 a condition in the permit that requires that the permit,
23 that they have all local -- that they have all other permits
24 required. If the CUP is revoked, that would place them in
25 violation of the solid waste permit, and we would have to

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take permanent enforcement action.

BOARD MEMBER JONES: Would that enforcement action be a cease and desist?

MR. PENOWI: Yes, it would.

BOARD MEMBER JONES: The issue at hand is the -- as I understand it, is the bond to make sure -- how much material is on-site right now?

MR. PENOWI: The last inspection, which was conducted with Board staff, was measured to be approximately 33 to 35,000 cubic yards.

BOARD MEMBER JONES: So if they lose their CUP and aren't able to continue operation, who is going to be responsible for cleaning up the 35,000 cubic yards?

MR. PENOWI: At this time if they were to lose the CUP, not have the bond in place, the LEA would require the property owner to clean the property as well as the operator. Failing that, I am not sure what our recourse would be.

BOARD MEMBER JONES: The property owner is --

MR. PENOWI: His name is Mr. Morlin McNanigel [phonetic].

BOARD MEMBER JONES: Is he aware of what's going on on the site?

MR. PENOWI: He is aware, and he supports the facility.

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1 BOARD MEMBER JONES: He supports the facility?
2 MR. PENOWI: He does.
3 BOARD MEMBER JONES: But they may lose the CUP
4 because of the issue?
5 MS. TOBIAS: I think that there's probably a legal
6 question as to whether the solid waste facility permit can
7 be revoked if a CUP has been revoked. Evidently in this
8 case the CUP has a condition in it that says if you don't
9 have all your other permits or if your permits are not in
10 good-standing, that they can revoke the CUP. I don't have
11 the wording in front of me.
12 However, I think that there's probably a legal
13 question as to whether one jurisdiction can kind of knit
14 together those permits. Generally it is my understanding
15 that these permits stand alone. So that if in general,
16 without that condition, if a CUP is revoked, then the solid
17 waste facility permit is not necessarily revoked.
18 They can't operate without a CUP. That's their
19 use permit, but I am not sure they can revoke it. And it
20 may be something that's resolved in court as to whether a
21 jurisdiction has the ability to do that.
22 So I would say it is an open question.
23 BOARD CHAIR MOULTON-PATTERSON: I for one am
24 having a real problem with this. Is it appropriate for the
25 Board to vote to approve a full permit for this facility

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1 when it knows the County is proceeding to revoke its CUP and
2 the facility has not completed its existing Board policy,
3 Board permit for three years.
4 MS. TOBIAS: I think those are all separate
5 issues. Whether they have all their other permits prior to
6 12/20, we generally require that they have all their other
7 permits in place prior to coming to the Board. Because ours
8 is usually referred to as an operating permit.
9 So for the reasons that it was an operating
10 permit, and also for the reasons that a CUP has changed the
11 local level, it means if they get our permit, then they go
12 back and get a CUP. The conditions change, that means they
13 have to come back to the Board and get another and revise
14 their permit here. So we generally require that the other
15 permits be obtained before they came to the Board.
16 Post 12/20, I think that we tried generally to not
17 have those conditions. You know, I can't say how many
18 permits do have that tie in. The question that you asked
19 with respect to the outstanding violations, I think, is a
20 different question.
21 BOARD CHAIR MOULTON-PATTERSON: I'll ask that in a
22 minute. I interrupted Mr. Jones. Sorry. Had you
23 finished?
24 BOARD MEMBER JONES: No problem, just two more
25 questions for the LEA. If the permit was deemed concurred

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1 with, is there a mechanism in place to fund the bond? I
2 mean, do you have that ability as the LEA to make sure that
3 that condition is taken care of? It is a little different
4 than closure.
5 MR. PENOWI: I don't think the LEA would have the
6 ability to fund that bond. I believe that it is the sole
7 responsibility of the operator and the landowner. So I
8 don't believe the answer is yes. We really do not have that
9 ability to do so.
10 BOARD MEMBER JONES: Is the operator here?
11 MR. PENOWI: I believe so. While she's coming up,
12 I really want to express my appreciation for changing the
13 agenda and you accommodating me.
14 MS. WILLUM: My name is Sue Ellen Willum, and I am
15 the president of Environmental Reclaiming Solutions.
16 BOARD MEMBER JONES: I have a couple of questions
17 dealing with the bond requirement. The permit has been out
18 of compliance with State minimum standards in the past for a
19 long time, but the bond issue that is a requirement of the
20 CUP is going to cover the -- it is an insurance policy to
21 say that that material will be taken care of off-site if the
22 business were to fail. The fact is it -- do you have a plan
23 in place for that?
24 MS. WILLUM: We do. It has -- through the history
25 of it, it has become apparent that a bond is not an option.

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1 And the Planning Department had it written up that a bond or
2 any other kind of security that they approve of. We have
3 been through a lot of bonding agencies. And basically this
4 is an operation -- or this is a type of operation that they
5 are not willing to bond.
6 The owner of the property does support us 100
7 percent, and he has co-signed for a bond. And he has a
8 financial worth of over $4 million, and he still can't help
9 us. He can't get a bond for us. So a bond became -- it
10 became apparent that a bond is not going to happen.
11 So we talked to the Planning Department. And on
12 tomorrow we are talking with a lawyer who is going to write
13 up some paperwork for us. The Planning Department right now
14 is looking at us having a cloud on the deed of the property,
15 which basically says that the owner cannot get a loan on the
16 property or cannot sell the property because it is noted on
17 the deed that he is responsible for the business that's
18 going on there, and that he's responsible for the liability
19 on that. And we are having a lawyer write that up so that
20 it is in the wording that the County needs.
21 From there the legal counsel for the County is
22 going to look at that. If they don't find that adequate,
23 then they have talked to the owner of the property, and he
24 is willing to sign a contract between himself and the County
25 saying that they will clean that up if that becomes

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1 necessary.
2 And that's going to be the second option. But the
3 County Council wants to look at the clouds on the deed first
4 and have the contract with the owner be a second option.
5 BOARD MEMBER JONES: Okay. So you have a valid
6 CUP today, and it is today that we have to deal with this
7 permit. Okay. That was my question of the operator.
8 I have one more for the LEA. I am assuming based
9 on the write-up -- did this facility create an imminent
10 health and hazard at any time, or has it operated within the
11 normal guidelines?
12 MR. PENOWI: Within the past few years of
13 operation this place has operated quite properly. We have
14 not found any imminent health hazard or, you know, a serious
15 risk to the environment.
16 BOARD MEMBER JONES: Thank you.
17 BOARD MEMBER EATON: For the LEA, I am just
18 reading from the history. There seems to be a pattern here
19 where nothing is able to be met in a timely fashion, and
20 there's a constant kind of, you know, extension.
21 Even at one point our Board staff back almost in
22 March of last year had an expectation, and then that was
23 broken. Kind of reminds me of a sandbox analogy. We have a
24 sandbox here, and we can't keep the sandbox clean, so we
25 keep expanding the sandbox. And now we are going to go from

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1 10,000 yards to a bigger one.
2 Because if you can't manage it, we are going to
3 build you a bigger sandbox. Is that what's happening here?
4 There seems to be very difficult operational
5 problems here that can't be overcome. So by increasing the
6 size, aren't we aggravating the situation by building a
7 bigger sandbox for them to dirty up?
8 MR. PENOWI: I think it appears that way. I think
9 the problem is the volume. The permit right now is with the
10 maximum volume allowance of 10,000 cubic yards, and I think
11 the operators underestimated the kind of volume they will
12 receive from their contractor. And so, you know, I believe
13 that with the expansion of volume, they should be able to
14 handle the process.
15 Now, also into the formal ways, one thing is that
16 in the beginning the equipment, they were not well-equipped,
17 and I think they are in the process to ratify that. They
18 have personnel problems also. So I think they are in the
19 process to verify that as well.
20 So I believe that by granting them the permit to
21 have a larger volume allowance, I sure hope that, you know,
22 those problems can be resolved.
23 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian?
24 BOARD MEMBER PAPARIAN: Couple things. First for
25 counsel, I am not sure I quite understood the explanation

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1 before. Let me just ask it succinctly. Do we have any
2 ability to condition the issuance of our permit on the
3 existence of a valid CUP?
4 MS. TOBIAS: In my opinion, no.
5 BOARD MEMBER PAPARIAN: For our staff, the notice
6 and orders go back to 1998. I guess there is another issue
7 later in the agenda about reissuing notice of orders over
8 and over again. This may be kind of a poster child for
9 that. Do we get the notice and orders? We get the notice
10 and orders when they are issued? We get copies of them?
11 MS. NAUMAN: We do get drafts of them.
12 BOARD MEMBER PAPARIAN: Did we do anything along
13 the way to counsel the LEA on this?
14 MS. NAUMAN: Yes, Mr. Paparian, we did. We have
15 been helping counseling this LEA all along the way, and I
16 can give you more documentation of that, documentation of
17 numerous phones calls.
18 I indicated to you in the briefing last week I had
19 called for the LEA to come in and meet with me and staff,
20 and that meeting did occur last week. And we had very
21 lengthy and frank discussions with the LEA about our
22 concerns over the history of their involvement with the
23 site. Mr. Penowi explained many of the same factors that
24 he's just alluded to to the Board.
25 We are going to be going through the

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1 regularly-scheduled evaluation of this LEA this summer, and
2 these and all other facts related to the performance of the
3 LEA in the past three years will be closely examined.
4 BOARD MEMBER PAPARIAN: I share some of
5 Mr. Eaton's concerns about the expanding sandbox. It seems
6 like a notice and order was issued, and then there's
7 violation of that notice and order, so you kind of expand
8 what's available to them in the next notice and order.
9 And I recall -- I actually recall in some other
10 situations where we had a -- in some of the situations
11 involving tire facilities it seems like we fine the facility
12 along the way when they are out of compliance with the level
13 of permit that permits them to have a certain amount of
14 tires. We fine the facility as we bring them into
15 compliance with a revised permit.
16 MS. NAUMAN: We did discuss with the LEA the
17 authority that the LEA has to impose penalty, and we
18 specifically inquired why he had not chosen to use those
19 enforcement tools during this period of time, and his
20 explanation really related to the extenuating circumstances
21 that he felt at the time were in some part at least beyond
22 the control of the operator, and also indicated to us that
23 he did not find any immediate threat to health, safety and
24 the environment, and for those reasons did not choose to use
25 the authority that he clearly has to impose penalties.

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1 BOARD MEMBER PAPARIAN: Do we have the authority
2 to impose penalties if the LEA chooses not to?
3 MS. NAUMAN: Mark can correct me if I am wrong,
4 but let me try this one. As I understand the system, only
5 if we go in and take over as the LEA for a specific facility
6 or for the jurisdiction of the LEA would we then have that
7 authority.
8 MR. DeBIE: We do have the authority in a couple
9 situations. One, if there's an imminent threat to the
10 environment of public health and safety that is not being
11 addressed by the LEA, we can step in immediately.
12 BOARD MEMBER JONES: As individually?
13 MS. TOBIAS: As the Board.
14 BOARD MEMBER JONES: As the EA?
15 MS. TOBIAS: We would probably act through the EA,
16 but we would be there and the LEA would be there also.
17 Imminent threat only. We would not be acting as the Board.
18 We would not need to take the certification away from the
19 LEA to address that.
20 With the new enforcement regulations, we now have
21 some criteria that we have now established relative to
22 appropriate enforcement action. And with using those
23 criteria, we would go through a process of evaluating the
24 LEA's performance. And if they failed both sets of
25 criteria, then we could, through a public hearing process,

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1 step in and take unilateral enforcement action.
2 BOARD MEMBER PAPARIAN: What sort of comfort level
3 do we have that this -- the levels in this proposed permit
4 won't be exceeded as the notice of ordinary levels were
5 exceeded along the way? I guess that's for the LEA.
6 How do we know that this isn't going to come back
7 again, and you are going to need another notice and order
8 for a higher level.
9 MR. PENOWI: First of all, I want to say that as
10 an LEA in all these years, we have taken appropriate
11 enforcement actions a few times, and we do take the
12 enforcement action when we think it is appropriate.
13 In this case we would have taken a strong
14 enforcement action right in the beginning, if not because
15 that the operator had shown genuine effort to ratify the
16 situation and because of the circumstances beyond the
17 control as well as the site having no imminent health and
18 environmental hazards.
19 Most of the extensions, as you notice, are on time
20 lines. Those time lines is beyond the control of the
21 operators, and we are talking about the process time line
22 that are going through the Planning Commission and other
23 agencies. So it is beyond their control. So that's why we
24 make those decisions.
25 To guarantee this is not going to happen, I think

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it takes the cooperation of the operator. I hope the operator has recognized that this has been an extraordinary effort of every party, that including the State water staff, my staff and other agencies to get a permit allowing to have a bigger volume to operate, and so that they can make sure that they will process the waste very timely and keep the operation in good faith and in good condition.

To guarantee that on the LEA side, we would definitely carry out strong enforcement, when necessary. And in this case, from here on there would be no more excuse not to comply with the conditions of the permit. So we will definitely carry out very timely enforcement measures.

BOARD CHAIR MOULTON-PATTERSON: Thank you. I think this has gone on way too long. And to me it is just like rewarding bad behavior with a bigger permit. Unless there's something that I am not seeing, I am voting no.

MS. NAUMAN: I think what the operator is trying to do is get the appropriate level of permit to match the operation. And it is clear that with the waste stream that's coming to that site, that they really have needed the higher level permit for some time. So what they are trying to do is, again, just kind of size the permit to the size of the operation based on the contracts and hauler arrangements that they have coming to the site.

BOARD MEMBER JONES: Madam Chair?

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1 BOARD MEMBER EATON: Two years, though, right, to
2 judge what the inflow was? Because the original violation
3 was two years ago. The registration permit is 10,000. So
4 two years ago.
5 MS. NAUMAN: Almost three.
6 BOARD MEMBER EATON: There's a leak in the bucket
7 kind of, you know, that two years to not be able to judge
8 flow is a bit much. I have to share the sentiments of the
9 Chair, that perhaps the best thing to do is just not approve
10 the permit and see what happens in July, the condition use
11 permit. If they don't get that, then we are assured legally
12 that they can't come forward.
13 MS. TOBIAS: On what basis would the Board be
14 denying the permit?
15 BOARD MEMBER PAPARIAN: We don't necessarily have
16 to -- if we don't approve a permit today, on July 21st I
17 believe would be the date, or July 20th, the LEA could issue
18 the permits, which would be after the hearing on the CUP.
19 And the LEA, as I understand it, if they deny at the CUP
20 hearing, there's no CUP. After that then the LEA could not
21 grant the permit; is that right?
22 MS. TOBIAS: Well, I think that would certainly be
23 -- I won't say "certainly." That could be in the LEA's
24 discretion to not issue an amendment. Applicant would have
25 an issue with the LEA.

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1 I do think the Board could decide to not make a
2 decision and turn it over to the LEA. And I hope I didn't
3 sound dismissive of that. But as you all know, we have
4 criteria upon which the Board has to find before they can
5 deny a permit.
6 And in this case I think I would agree with
7 Ms. Nauman's analysis, is that the real issue here is that
8 they should have gotten the appropriate permit in the first
9 place. And now for the amount of material they are
10 handling, they are getting that permit.
11 It sounds like they have got the backing of the
12 owner. So that if there is material on site, that that
13 issue's been covered. So I don't see a basis upon which
14 under statute that the Board could deny the permit. But you
15 as the Board could certainly decide not to act on it.
16 BOARD CHAIR MOULTON-PATTERSON: I would like to
17 ask if the AG's office agrees with that.
18 MR. HILDRETH: I would say that when I hear the
19 operator say that they are unable to get a bond, that that
20 raises some concern for me. What do we know about the
21 property owner?
22 BOARD CHAIR MOULTON-PATTERSON: Thank you.
23 Mr. Jones, did you have something else, then?
24 BOARD MEMBER JONES: Just a couple of things. I
25 think that the information I have always heard was that this

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is a good LEA. I think that issues within Yolo County -- I know your waste stream is coming from the City of Davis and all of its collections. If it didn't go here to be composted, it would probably go to the Yolo County Landfill to be ABC.

MR. PENOWI: That's very possible.

BOARD MEMBER JONES: And I don't have a problem with that, but I think that while this took a long time, part of it has to be the financing of the operator, trying to get the right equipment and right people on the site. Part of it is the flow of material that's been directed, probably by the City of Davis as well as -- I don't know about the County of Yolo, if they directed material to this site to be a primary. I know that's an area that prides itself in composting and in doing as many sustainable things as is possible.

And I think that what is in front of us today is a permit application that everything is put in place, sequenced. There is no violation, other than the tonnage, which there is a notice and order on, and it is finally going to get taken care of.

I think the LEA is going to have to struggle with the CUP. But I am not for dismissing or taking too long of a time under notice and order. That is not something that I want to applaud. But I think this issue may be reflective

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of what goes on in local jurisdictions, that situations change. Issues change. Waste stream changes. And I am a little surprised -- well, I'll hold off on those comments.

Anyway, I have to, based on the fact that this has met all the State minimum standards, support the issuance of this permit. But I would hope that if that CUP is denied, if they cannot put in a mechanism that is -- that works for the County to clean it up, because I really don't want to see you back here asking for 2136 money to clean this thing up, and I have a very strong feeling that if this operator goes out of business today, we are going to see a 2136 program to clean it up, and then all the material gets used as ABC.

I am going to move adoption of 2001-183 for a new solid waste facility permit for -- is it solid waste permit or composting permitting?

MR. PENOWI: Solid waste.

BOARD MEMBER JONES: Solid waste facility permit for the Environmental Reclaiming Solutions.

BOARD MEMBER EATON: Before there is a second, what's the financial assurance? If they can't get a bond -- this is a full solid waste facility permit. What are the financial assurances that are in place?

MR. DeBIE: Mark deBie with Permitting and Inspection Branch. There are no financial assurance

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1 requirements on a composting landfill. However, the LEA
2 could have chosen to include a term or a condition in their
3 permits to require some bonding, but did not in this
4 particular permit.
5 BOARD MEMBER EATON: Then help me through it. If
6 you say we can't deny a permit because it doesn't meet
7 statute and the statute says what, financial assurances, is
8 that correct, in one of them, what other items can we base
9 the denial on?
10 Because it is not a full solid waste facilities
11 permit. It is a compost permit now. So you're telling me
12 that I can't use the statute for financial assurances
13 because it is a compost permit. Because that only relates
14 to solid waste, a full solid waste facilities permit. So
15 what denial -- basis of denial can we use for compost
16 permits?
17 MR. DeBIE: The criteria 44009 of the PRC Code is
18 the section that speaks to the Board's concurrence on a
19 permit, and it outlines the various statute sections that
20 the Board can utilize when making its decision on the
21 permit. And there has to be consistency with all of those
22 various PRC requirements.
23 BOARD MEMBER EATON: My contention, Mark, is that
24 those sections deal with a full solid waste facilities
25 permit. Because if they don't require financial assurances,

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1 then there must be some other statutory guideline that
2 allows us to deny a permit.
3 So are you saying they included everything
4 possible within that section, regardless of any kind of
5 permit.
6 MR. DeBIE: The section applies to any kind of
7 solid waste permit, and then the requirements are laid out,
8 some of which are in regulation, especially when this
9 section refers to consistency of State minimum standards,
10 basically, by the Board. So you would look at regulation.
11 Then when you do look at regulation for composting facility,
12 you won't find a requirement for financial assurances.
13 Again, you do have that for a landfill. So if
14 this were a landfill permit and they failed to have adequate
15 financial assurances, that would be reason for the Board to
16 not concur. But that's not the situation.
17 In our agenda items when we bring up these
18 permits, staff does outline findings. And those are
19 reflective of those issues and 44009, and they are different
20 for each type of facility.
21 BOARD MEMBER EATON: Is there any standard by
22 which the Board has adopted that a time frame of nearly two
23 years is far -- if it is too much time to elapse or that you
24 can continually exceed a notice and order?
25 MR. DeBIE: There's nothing.

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1 BOARD MEMBER EATON: What I am trying to hang my
2 hat on is 4410, that enforcement agency shall issue what it
3 fines a proposed solid waste facility as specifically
4 adopted by the Board. Surely there's got to be some
5 standard by which this Board can hang its hat and deny a
6 permit, other than -- if that's a catchall.
7 BOARD CHAIR MOULTON-PATTERSON: Because it has
8 been almost three years, September '98.
9 MR. DeBIE: There's nothing specific to my
10 knowledge in statute and regulation that has any time
11 specifics for issuing enforcement orders or time frames
12 associated with enforcement orders, nothing that restricts
13 the LEA from rolling over those notices and orders.
14 Other than what we now have in regulation relative
15 to the criteria that I spoke about previously on the
16 apportionment action. And if they fail the criteria, the
17 result is for the Board to step in and take enforcement
18 action. But it does not connect that with a permit action.
19 Not to champion this permit too much, but I do
20 want to point out to the Board that this permit does reflect
21 a project that went through a very thorough CEQA process in
22 which the Board staff participated in great detail.
23 We were able to meet with the Planning Department
24 and counsel them about potential environmental impacts and
25 appropriate mitigation. It is a full permit, so there are

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1 site-specific conditions layered into this permit, unlike
2 the registration or standardized permit.
3 So this permit does have a lot more environmental
4 safeguards than the current registration permit. If the
5 Board did not act on this permit today or found reason to
6 deny the permit, the registration permit would still be in
7 place.
8 They are out of compliance with that permit.
9 Staff's expectation would be that the LEA would carry
10 forward with their latest version of the notice and order
11 and work towards revocation of that permit unless they were
12 able to come into compliance with the 10,000 cubic yards.
13 And I believe the compliance stated in that newest
14 regulation is a July 1 compliance date.
15 BOARD CHAIR MOULTON-PATTERSON: We have a motion
16 on the floor. Can you waive -- can we do something to --
17 can the operator waive the time? Because I don't hear a
18 second.
19 MR. DeBIE: It is my understanding the operator
20 has initially waived the overall time frame for processing
21 this permit application. It is not clear to me, and perhaps
22 the LEA has new information on whether that waiver is still
23 in place or -- and needs to be expended, if the -- if that's
24 under the control of the operator to make that decision.
25 They are basically waiving the processing time as required.

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1 MR. PENOWI: My understanding is a waiver is not
2 in place.
3 BOARD CHAIR MOULTON-PATTERSON: It is not in
4 place?
5 MR. PENOWI: That's right, it is not in place.
6 BOARD CHAIR MOULTON-PATTERSON: Well, the
7 operator's here. Are you willing to waive? Am I asking the
8 right questions, waive the time? Because I don't think it
9 is going to get voted on -- that it is going to be passed
10 today.
11 MS. WILLUM: Waive it on the condition that we are
12 getting a conditional use permit, is that what you're
13 asking?
14 MS. NAUMAN: What the Board is asking, that you
15 waive the statutory time frame by which this Board has to
16 act in order to give the Board additional time to consider
17 your request for the permit, and that would allow the Board
18 to observe what happens with the use permit and then bring
19 back your request for a solid waste facility permit at a
20 subsequent Board meeting.
21 BOARD MEMBER JONES: Madam Chair, before the
22 operator answers, because this is -- this has happened a
23 couple times at this Board when the waiver was asked from
24 the dais. But I think the operator needs to understand that
25 the waiver -- if you don't give the waiver, I have made a

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1 motion to concur. There's no second. That means there
2 either has to be a motion not to concur with the permit,
3 which four votes means you don't have a permit. Or if there
4 aren't four votes not to concur, then the LEA issues the
5 permit de facto. Is that accurate?
6 MS. TOBIAS: That's accurate.
7 BOARD MEMBER JONES: Okay. I just don't think it
8 is fair to ask the operator to waive without knowing how the
9 process works. We live it every day.
10 BOARD MEMBER PAPARIAN: Identification. Is the
11 LEA required to issue the permit at that point or do they
12 have some option at that point based on what happened at the
13 CUP or some other circumstance?
14 MR. DeBIE: It is my reading of the statutory and
15 regulatory requirement that once the Board has concurred on
16 the permit or has been deemed to concur because of not
17 taking action by the time frame, that the LEA has been
18 allowed to issue the permit. But there isn't any specific
19 time frames on which they are required to issue the permit
20 other than the overarching time frame. That once the
21 application's been deemed complete, that the LEA make a
22 decision to issue or not issue within, I believe, 120 days.
23 If the LEA failed to issue the permit after the
24 Board concurred or deemed to have concurred on the permit,
25 certainly the operator could appeal the LEA's inaction to

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1 issue the permit and take recourse that way. But there's
2 nothing other than the 120-day time frame that requires the
3 operator or the LEA to issue the permit. And we would have
4 to look at where they are with that. Because there wasn't
5 an initial waiver of time to process the permit.
6 BOARD MEMBER PAPARIAN: Who would the operator
7 appeal to?
8 MR. DeBIE: To their local hearing panel.
9 BOARD CHAIR MOULTON-PATTERSON: I am going to take
10 a five-minute break right now.
11 (Recess was taken.)
12 BOARD CHAIR MOULTON-PATTERSON: I would like to
13 call the meeting back to order.
14 Ms. Nauman.
15 MS. NAUMAN: Madam Chair, during that brief recess
16 I was able to talk with the operator and the LEA, and the
17 operator understands the situation. And while I will let
18 her speak for herself, she is willing to waive time.
19 But what I would suggest to the Board, to the
20 operator as well, is that that time be extended to your
21 August Board meeting. That will allow time for the County
22 to hold the revocation hearing in mid-July and maybe if that
23 doesn't conclude in that one meeting, then provide
24 additional time hopefully to come to resolution on that CUP
25 issue.

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1 I would also suggest that the Board give specific
2 direction to the LEA with respect to the notice and order
3 that is now in place. Because that notice and order directs
4 the operator to commit to compliance to reduce the volume on
5 site and to obtain the permit to line one.
6 So in order to have all this in sync, that notice
7 and order, despite the fact you don't like to see
8 extensions, it does need to be extended so that it is in
9 sync with the date that the operator is waiving to.
10 So on both instances it should reflect the August
11 Board hearing dates. But I believe the LEA is looking to
12 the Board to give him that specific direction so that the
13 enforcement history is clear on this and the reason for the
14 extension is clear.
15 BOARD CHAIR MOULTON-PATTERSON: Okay. So to the
16 operator, so we get on the record, state your name, please,
17 and would you -- say if you are willing to waive this until
18 the August Board meeting.
19 MS. WILLUM: My name is Sue Ellen Willum, and,
20 again, I am the president of Environmental Reclaiming
21 Solutions, and I am willing to waive this issue until the
22 August Board meeting with the stipulation that the notice
23 and order that we are under also gets extended. Because it
24 says that we have to have this permit by the 1st of July.
25 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank you

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very much. Okay. We have a decision. It is 12:20. Would you like to take our lunch break now, and we can be back at 1:30 for closed session? Will that give everybody enough time? We are adjourned until 1:30.

MS. NAUMAN: Can we assume from the discussion that I had with you that you are providing that direction to the LEA?

BOARD CHAIR MOULTON-PATTERSON: Yes, definitely.

BOARD MEMBER PAPARIAN: With no indication of any opinion about what's happened in the past on these notice and orders that I continue to be highly uncomfortable with.

MS. NAUMAN: As I indicated, we will look at the entire history.

BOARD MEMBER EATON: While I appreciate it, I don't understand it. Perhaps you can tell me why the Board hasn't given direction to the LEA since it seems like on at least four or five past occasions the LEA didn't need our direction to extend a notice and order, and I don't really appreciate getting jammed on a stipulation.

I mean, I think it is quite apparent that the Board would like the waiver of time. We have got that. We stipulate that. I think the LEA is now within his or her authority as they were previously. They didn't need our direction to extend it in the past. If they would have come to us before and asked us for direction, we would have said

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1 no, or I would have said no. I'll speak for myself. So I
2 don't really want to connect the two.
3 Because as you raised the issue in the evaluation
4 process going on, I don't want it to get raised in the
5 evaluation process, "Well, the Board made me do it." I
6 don't think that's fair, and it disturbs facts.
7 MS. NAUMAN: I appreciate your comments,
8 Mr. Eaton, and the support staff will be looking at the
9 whole issue.
10 MS. TOBIAS: Madam Chair, I am also assuming that
11 you are continuing this item to August?
12 BOARD MEMBER JONES: Madam Chair, I agree with the
13 idea that the operator has asked for a waiver until August
14 4th, if the LEA has all the authority in the world to keep
15 that notice and order intact until August 4th, and I don't
16 think there's much objection, but I hate censuring it, or I
17 hate validating it only because I think that power resides
18 with the LEA. But I think it is pretty clear we want to see
19 it in August.
20 BOARD MEMBER EATON: Not August 4th.
21 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank you.
22 Now we will adjourn until -- we will go into closed session
23 at 1:30. We should only be a matter of about 20 minutes to
24 a half an hour.
25 (Whereupon the noon recess was taken.)

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1 SACRAMENTO, CALIFORNIA, JUNE 19, 2001
2 AFTERNOON SESSION
3 ---o0o---
4 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton, any ex
5 partes?
6 BOARD MEMBER EATON: No, none, thank you.
7 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones?
8 BOARD MEMBER JONES: Denise Delmatier and Ron
9 Vonpas PEP.
10 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina?
11 BOARD MEMBER MEDINA: No.
12 BOARD CHAIR MOULTON-PATTERSON: And I have none.
13 Mr. Paparian?
14 BOARD MEMBER PAPARIAN: Brief conversation with
15 Justin Malan of CCDH regarding PEP.
16 BOARD CHAIR MOULTON-PATTERSON: Okay. We are
17 going to be moving to item No. 12, consideration of approval
18 of new sites for the solid waste disposal and codisposal
19 site cleanup program.
20 Ms. Nauman.
21 MS. NAUMAN: Thank you. Wes Mindermann.
22 MR. MINDERMANN: This item presents consideration
23 of approval of eight projects pursuant to the solid waste
24 disposal and codisposal site cleanup program. Staff are
25 recommending approval based on reviews of these projects

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pursuant to the Board approved program requirements. The total estimated Board cost for these projects are $3,240,405. The following is a brief description of the projects.

The Vidal Community Illegal Disposal Site is located on land owned by the Bureau of Land Management and is located approximately one mile southeast of the community of Vidal. Prior to the establishment of garbage bin service three years ago in Vidal, an estimated 1500 cubic yards of solid waste was dumped, burned and scattered primarily along shallow drainage channels in the desert.

The San Bernardino County department of Health Services, which acts as the LEA, issued an order to them for legal removal of the waste at the site. The BLM has assessed the situation and determined that the quantity surpasses the ability to perform a timely cleanup and are requesting Board assistance under the interagency agreement.

The program contractor will remove solid waste to an appropriate facility for disposal. The BLM will commit to removing any hazardous waste discovered during the process and match 50 percent of the cleanup costs. The LEA and the BLM will continue to monitor the site to control illegal dumping and will continue to work with the community leaders to educate the public regarding solid waste issues.

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1 The preliminary estimate for the cleanup is
2 $94,000 total cost. Staff recommends a waiver from cost
3 recovery from the Bureau of Land Management on the following
4 basis: The site is publicly owned and maintained for the
5 public benefit and use. The BLM did not cause the disposal
6 of solid waste, and the BLM will provide a 50-percent
7 matching fund of the project cost under the existing
8 agreement with the Board.
9 Next is the Oakhurst Illegal Disposal Site in
10 Madera County, consists of two privately-owned parcels in a
11 residential area. In violation of County zoning ordinance
12 codes, the property owners accumulated and discarded waste
13 on the approximately seven-acre site.
14 The code enforcement of Madera has actively sought
15 compliance from the property owners regarding the
16 accumulated solid waste and debris on the site since the
17 initial complaint was received in 1992.
18 Madera County has requested program assistance,
19 because the owners have failed to perform the necessary
20 cleanup.
21 The preliminary estimate for the cleanup is
22 $150,000. Madera County has agreed to the following:
23 Obtaining legal permission to assess the site and abate the
24 site for the Board and its designated contractors. Red-tag
25 disabled and abandoned vehicles for removal, and assist the

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1 program in obtaining permits and finding recycling options.
2 One point of clarification on this site. The
3 County has requested a Board-managed cleanup of the site
4 rather than a grant. Because they are a small county and
5 don't have the resources to manage these types of large
6 projects.
7 This may have an impact, however, on the methods
8 with which we pursue cost recovery, in that it appears that
9 it is more problematic for counties to place liens on
10 properties on the Board's own behalf when we do a
11 Board-management cleanup rather than a grant. The Board can
12 resume cost itself. The program office and the legal
13 department will thoroughly review our cost recovery options
14 and see if they are sufficient when we are done with the
15 cleanup.
16 Folsom State Prison has been working since 1985 to
17 remediate a variety of sites, including its burn dumps,
18 which were created at the correctional facility. In fall of
19 2000 it was approaching the budget amount. Program staff
20 were contacted for technical assistance, due to our
21 experience with working with burn dumps on steep slopes.
22 The location of the burn dump is immediately
23 adjacent to the American River, and it has the potential for
24 erosion.
25 The recommendations implemented by Folsom State

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1 Prison were to complete the removal of the burn ash to the
2 extent possible, pile and stockpile burn ash in a stable
3 area. And using the remaining budget funds, stabilize the
4 burn dump prior to the onset of this winter.
5 Folsom State Prison is asking for assistance in
6 completing the long-term remediation of the site. To date,
7 Folsom has expended an estimated $1 million on the
8 remediation, and the preliminary estimate to complete the
9 cleanup is $541,500.
10 Staff are recommending a waiver from cost recovery
11 from the Folsom State Prison on the following basis: The
12 site is publicly owned and maintained for the public benefit
13 and use. Owner will not gain financial benefit due to the
14 condition of the property and hardship to the property
15 owner.
16 The City of Sonoma Burn Dump is a regulation burn
17 dump adjacent to a steep ravine. The 60-acre site, which
18 includes a two-acre burn dump, was required to be a park by
19 the City voters in 1999 when measure A was passed.
20 Program staff initially met with City of Sonoma to
21 assess this old burn dump in 2000. Staff found an extremely
22 steep slope with a large pouring of burn ash located in a
23 drainage and activity scavenging for old bottles.
24 Another interesting aspect is that program staff
25 removed 26 pieces of radioactive debris discovered during

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1 Board's investigation. This material, which was classified
2 as naturally-occurring radioactive material, was transferred
3 to the Department of Health Services.
4 Although the site is fenced and posted, both
5 program and Sonoma County Environmental Health Department
6 staff have caught individuals digging in the burn ash for
7 antique bottles, indicating that the site continues to be an
8 attractive nuisance.
9 The project will include removing 10,000 yards of
10 burn ash from the slope and cap the dump site in place using
11 the program cleanup contractor. The estimate is $892,000.
12 The City of Sonoma has tentatively committed to
13 reimbursing the Board 20 percent of the removal cost up to
14 $200,000.
15 Additionally, the City has contributed over
16 $100,000 in engineering services, trail development, site
17 enforcement, fencing and other related and kind services to
18 date.
19 Staff are recommending a waiver from cost recovery
20 for the City of Sonoma on the following basis: The site is
21 publicly owned and maintained. Owner will not gain a
22 benefit due to the condition of the property, and hardship
23 to the property owner.
24 The McIlvaine Illegal Disposal Property is located
25 on private property in the Porter Creek area. The Board

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1 approved a 111,300 disposal site cleanup grant to the Sonoma
2 County LEA in November of 2000.
3 During the initial phase of the cleanup the LEA
4 had found that the property owner had dumped 20 feet of
5 debris in a tributary, doubling the amount of debris. At
6 that time the LEA had removed over 300 tons of solid waste
7 and recycles and implemented control measures at a cost of
8 $59,000.
9 The Board paid the incurred expenses from the
10 authorized grant, and the County is requesting a new grant
11 due to the unforeseen conditions at the site. The revised
12 estimate for the cleanup is 355,341.
13 Just as an update, the LEA informed us last week
14 that the Sonoma County Sheriff's Department raided the
15 property and discovered two illegal drug labs and
16 structures. It appears that the people were in the initial
17 stages of drug production, and no evidence of any illegal
18 hazardous waste disposal is there or outside of the
19 structures. As a result, the LEA will implement all health
20 and safety measures during the cleanup as a precaution.
21 City of Clearlake Community Development Illegal
22 Disposal Site Cleanup Grant, the City has targeted 25
23 illegal disposal sites for abatement under the proposed
24 grant. The illegally dumped waste has become an attractive
25 nuisance and blights on the property.

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1 Since most of the owners are absent, they have
2 been targeted for arson, illegal dumping. As you can see in
3 the photos here, the project involves cleanup of an
4 estimated 1500 cubic yards of solid waste at a cost of
5 207,816. The City has obtained all the necessary abatement
6 orders through the City Council. Each property owner has
7 been notified of the pending abatement, and the City will
8 file a lien on behalf of the Board against the property
9 owners.
10 City of Oakland Illegal Disposal Sites. As you
11 may know, Oakland annually collects over 15,500 tons of
12 illegally-disposed solid waste, and conducts approximately
13 150 investigations annually at the cost of over $1 million.
14 The City is requesting grant funds to assist in an
15 innovative community-based program to eliminate illegal
16 dumping in the city. Using illegal disposal cleanup grant
17 funds from the Board for cleanup costs, it will focus its
18 resources on community and outreach programs and
19 strengthening their enforcements, thereby addressing the
20 root causes and eliminating dumping.
21 The City proposes to target 24 sites that the City
22 has identified for cleanup, and it will include mitigation,
23 monitoring and enforcement with the intention of completely
24 eliminating illegal dumping in those areas.
25 Table two on the agenda items presents an outline

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of the estimated project costs. All of the sites being remediated are on public easements or public property.

Staff are recommending a waiver of cost recovery for the City of Oakland because the sites are publicly owned and maintained for public use. The City of Oakland did not cause the disposal of waste, and the City of Oakland is providing in kind services valuing over $3 million.

The last project before you this morning is the City of Pomona Illegal Disposal Site Cleanup Grant. A recent increase in illegal dumping poses a challenge. The City has identified 17 illegal dumping hot spots and receives approximately 50 complaints daily, and collects over 2,000 tons of illegally disposed of garbage annually.

To date the City's response to illegal dumping has been to utilize City resources to clean it up. The City is trying to take a proactive approach to illegal dumping problems and trying to alleviate the illegal dumping. The City has focused on permanent staffing changes to focus their resources on the illegal dumping problem.

On March 19, 2001, the Pomona City Council approved $240,000 annually to fund the ongoing cleanup and maintenance of illegal disposal sites and authorize an addition $18,000 in public outreach. The City strategy includes two phases of cleanup, additional enforcement, prevention and public education and community outreach.

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1 The City is requesting $500,000 to fund the
2 initial one-time clean up of the 17 illegal disposal sites
3 as part of the prevention and part of the public education
4 portions of the plan.
5 Table 3 in your agenda item presents an overview
6 of the estimated costs which I will note includes $18,000 in
7 matching funds for community involvement and public
8 education. These costs under our current regulations are
9 neither specifically eligible nor ineligible pursuant to the
10 regulations, and, therefore, the Board can determine whether
11 or not to fund this element of the project.
12 All the sites being remediated are on public
13 easement or public property, and staff are recommending a
14 waiver of cost recovery because the sites are publicly owned
15 and maintained for public use. The City of Pomona did not
16 cause the illegal disposal of the waste, and the City is
17 providing a match of over $258,000 and in kind services
18 under the project under the proposal agreement with the
19 Board.
20 In conclusion, pursuant to disposal and codisposal
21 site cleanup, staff recommend adoption of 2001-177,
22 approving the Board-managed cleanup so that the Vidal,
23 Oakhurst, Folsom Prison Burn Dump and the City of Sonoma
24 Burn Dump, and illegal disposal site cleanup grants for the
25 McIlvaine Illegal Disposal Site, City of Clearlake Illegal

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1 Disposal Sites, City of Oakland Illegal Disposal Sites and
2 the City of Pomona Illegal Disposal Sites.
3 In addition, staff are recommending that the Board
4 waive cost recovery for the projects with Folsom, City of
5 Sonoma, City of Oakland and the City of Pomona. That
6 concludes my presentation.
7 The final slide here is a summary of the projects
8 before you for your reference, and I will just leave that up
9 there and be available to answer any questions.
10 BOARD CHAIR MOULTON-PATTERSON: Thank you.
11 BOARD MEMBER EATON: I just had a general
12 question. Could we get copies of the liens? Do you have
13 copies of the liens that have been filed within the last
14 year?
15 MR. MINDERMANN: I do not have those available
16 with me, but I can make those available to the members.
17 BOARD MEMBER EATON: Do you know what kind of
18 liens they are?
19 MR. MINDERMANN: I don't know.
20 BOARD MEMBER EATON: Are they tied to the property
21 so when the property is sold, they can't sell the property
22 unless they are paid?
23 MS. TOBIAS: That's correct. They are liens that
24 are put on by the jurisdiction. And if the property is
25 sold, then the lien attaches and it is paid off and the

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1 money is sent in. I think we received two -- I can't say
2 whether it is off 203 or off the tires, because we do them
3 for both.
4 BOARD MEMBER EATON: The reason it is a general
5 question, nothing to do with these projects, but as the
6 liens are -- I sure would like to have our Board keep an
7 inventory of the liens filed. Because if you sit on your
8 rights, you might not be able to file them.
9 MS. TOBIAS: No, they go through their own
10 jurisdictions. And we do make sure they are filed before
11 the 2136 program proceeds. So generally the agreement is
12 made with the City or County to do that first. Obviously we
13 can't do it until we spend the money, but we can provide you
14 with that.
15 BOARD CHAIR MOULTON-PATTERSON: Thank you.
16 Mr. Jones?
17 BOARD MEMBER JONES: Just a quick question for the
18 speakers, for Wes. The City of Pomona, that picture that
19 you showed up earlier, have they thought about going through
20 those loads to see if they can find an address? That one
21 load in that alley looks like it could have been dropped
22 from a debris box. Back up one more. That one. If that
23 wasn't stacked up, that looks to me like somebody could have
24 unloaded a debris box in that alley. They may want to look
25 for addresses. Because it could be a hauler that's beating

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1 out of -- making 100 percent profit.
2 MR. MINDERMANN: That's correct. As we specified
3 in the item, a lot of the problem in Pomona has been due to
4 the Spadra Landfill closing and lack of garbage disposal in
5 adjacent areas. There are also contractors who drop bins.
6 Collect materials, collect the disposal feels and then
7 illegally dump it. I know they have been active, along with
8 the City of Oakland, in going through and trying to identify
9 any addresses, and then also going back to the addresses and
10 finding out which contractors they used.
11 BOARD MEMBER JONES: That definitely looks like
12 that kind of a load.
13 And just one other quick comment. Any Board
14 member that wants to go look at Folsom, the prison, I went
15 out and looked at that. They have been dealing with -- DTSC
16 has been telling them the limits of the contamination. So
17 they kept doing it, and the limits kept growing and getting
18 deeper, and so they spent a million dollars.
19 When you look at the rainwater runoff, it is going
20 to take it right in the American River. I think one of the
21 things that would be interesting is that part of the prison
22 you can see the original Folsom Prison, Folsom Damn made out
23 of rock, and it is awesome. So if you haven't seen it, it
24 is worth seeing.
25 BOARD CHAIR MOULTON-PATTERSON: Senator Chesbro,

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1 welcome.

2 SENATOR CHESBRO: Good afternoon. I would say it

3 was nostalgic to be with you, but things have changed a

4 little bit.

5 I appreciate your willingness to give me the

6 chance to appear before you today and to take some of these

7 items out of order so that I could come over here. We are

8 in the middle of the budget. So among other things, I am

9 there trying to make sure that the Board's programs remain

10 whole and intact.

11 BOARD CHAIR MOULTON-PATTERSON: Thank you.

12 SENATOR CHESBRO: But I am here primarily to thank

13 the Board and the staff for the work you have been doing in

14 my Senate district. We all like to say we are known for all

15 the natural beauty in this state, starting with the wine

16 country, but just like everywhere else in the state, we have

17 problems that go back many, many years with illegal

18 disposal.

19 I continue to appreciate the ability of the AB

20 2136 program has to meet genuine and environmental public

21 health challenges that the state faces. There's a

22 tremendous amount of benefit that the people of the state

23 have achieved, and many widely-dispersed locations as a

24 result of this program.

25 I want to talk a little bit about three of the

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1 projects being considered today that do happen to fall in my
2 Senate district. There are two important projects in Sonoma
3 County and one in Lake County.
4 The City of Sonoma Burn Dump project, you know,
5 Board Member Jones talks about going up to Folsom, well, I
6 encourage you to go over to Sonoma, not just to see the
7 piles of solid waste. Sonoma is really a unique community
8 and has incredible history and has done a good job of
9 preserving it, a lot of natural beauty.
10 But also has this burn dump that's located within
11 the city less than 100 feet from the City's cemetery and
12 directly adjacent to a steep ravine. This is a very old
13 site that is slowly slipping down the canyon above the
14 Sonoma Cemetery.
15 General Vallejo, one of California's earliest
16 non-native immigrants, originally deeded this property to
17 the City of Sonoma. So it is a historic piece of property
18 in a way that most of us Californians have a hard time
19 thinking about or even realizing.
20 As good stewards of this property, for the people
21 of the state and the City of Sonoma, it is critical we get
22 it cleaned up. Eventually the City of Sonoma hopes to see
23 this area -- and I am working with them on this -- part of
24 an open space development around the city. So this is a
25 very important project for that.

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1 The McIlvaine site in the Porter Creek area, this
2 second site has been one that Sonoma has been working on and
3 has progressed. The amount of waste was found to be greater
4 than originally anticipated. This item adds additional
5 funds to the County to get this property fully abated. The
6 proposal grant of $350,000 will allow the County to complete
7 this work.
8 Then we come to the City of Clearlake, and they
9 take great pride in being known as the comeback city. It is
10 a city that has had severe economic difficulties, and I know
11 we tend to think of poverty as an urban problem in
12 California. Clearlake has a long history as a low-income
13 community that in the last decade incorporated and has
14 developed a tremendous amount of pride and has been
15 endeavoring to clean the community up. And the Waste Board
16 has been very helpful in terms of the history of the illegal
17 disposal that has gone on there.
18 I have to say that the last project I had the
19 chance to personally help out with. They invited me up, and
20 I got to get in the tractor and move some of that illegal
21 disposal. So they indulged a little bit of my personal
22 enjoyment. I have always been a supporter of the Operating
23 Engineers, and it was nice to actually be one of them for a
24 few minutes.
25 These are all very important projects in my

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1 community. They represent partnerships between state and
2 local governments. They represent local communities.
3 One of the things I take the most pride in as a
4 former Board member is this Board's understanding of local
5 partnerships. And these are communities that are doing
6 that.
7 And so your consideration of supporting those
8 partnerships is very much appreciated by me personally. Not
9 just because they are in my district, but because I support
10 this program, and I support the Board being so active in
11 encouraging local communities to take these very important
12 steps to clean up the environment.
13 There's a couple people representing these
14 projects here. One of them would like to speak to you.
15 Representing the City of Clearlake is Bob Mallor, the mayor,
16 and he would like to say a few words to you. And then we
17 have Michael Kahill, the fire chief of the City of Sonoma,
18 who is able to answer any questions you have about the City
19 of Sonoma's project.
20 Once again, great to see all of you, and keep on
21 doing the work that you are doing.
22 BOARD CHAIR MOULTON-PATTERSON: Thank you,
23 Senator. Welcome to the mayor.
24 MR. MALLOR: Madam Chair and fellow Board members,
25 I am going to speak briefly just to let you know the City of

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1 Clearlake has been incorporated 20 years this year. It goes
2 back with a 50-year history, and the County of Lake, as
3 being known as a depressed area of the county.
4 Over the last seven years we have undertaken a
5 comeback program which is reclaiming the city, and we are
6 very proud of the work we've done, the help you have given
7 us, the help other people have given us. Todd has been
8 instrumental in getting the program started last year, and
9 hopefully continuing things this year to get more done in
10 one year than we would be able to do in probably 20.
11 One of the fellow Council members jokingly
12 referred to the fact that the city flower is probably called
13 a Kemlar [phonetic]. So just a real problem that is
14 overwhelming, and we just want you to be aware that we are
15 truly thankful for the efforts you have given.
16 BOARD CHAIR MOULTON-PATTERSON: Thank you very
17 much for coming and telling us. We appreciate you giving
18 comments to our staff. Thank you.
19 Barry Weiland, City of Oakland.
20 MR. WEILAND: Good afternoon, Madam Chair and
21 members of the Board. I just want to state my support for
22 the project. I want to thank you for your support. We have
23 been battling this for a long time in Oakland, and we
24 certainly can use the extra help. Thank you very much.
25 BOARD CHAIR MOULTON-PATTERSON: Thank you.

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1 Manuel Ruiz, Madera County.
2 MR. RUIZ: Madam Chair and members of the Board, I
3 want to thank you for your consideration of this project.
4 Oakhurst is a quaint little village town set in the Sierra
5 hills. Have any of you been there? It is very nice, isn't
6 it? We would like to thank you to help keep it that way.
7 We really appreciate your attention to this matter.
8 BOARD CHAIR MOULTON-PATTERSON: Joseph Franz,
9 Folsom State Prison.
10 MR. FRANZ: Madam Chair, my name is Joe Franz. I
11 am the environmental manager at Folsom State Prison. I want
12 to thank you for your consideration of this project, and I
13 also wanted to make myself available for any questions or
14 tours if you're interested in coming out and looking at it.
15 BOARD CHAIR MOULTON-PATTERSON: Thank you.
16 Susan Kattchee?
17 Was the fire chief wanting to speak?
18 MR. KAHILL: Thank you, Madam Chair and Board
19 members. I am just here to answer any questions, but I
20 would also like to make one clarification. The City Council
21 is very interested in participating with the Board on this
22 project and is willing to commit the resources financially
23 that will be needed to make this partnership happen between
24 us and the Board. So we appreciate your help.
25 BOARD CHAIR MOULTON-PATTERSON: Thank you very

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much.

MR. KAHILL: Michael Kahill, fire chief.

BOARD CHAIR MOULTON-PATTERSON: Okay. That closes our speakers.

BOARD MEMBER PAPARIAN: I visited the two sites in Sonoma County, and they are impressive as well in terms of what we have to deal with at both those locations. And for the Sonoma City site, the mound of material that's likely to have to be moved is mind-boggling, but the staff, I think, has come up with some pretty creative ways of dealing with the site and potentially is going to leave the site in a way that's going to become a real nice place for recreational opportunities just a few blocks from the City center.

I wanted to bring up a tangential issue. But in touring the sites and talking to the staff about how they deal with cleanups and the situations they face and so forth, I don't think the staff maybe thought this was as much of an issue as I'm thinking it may be, but I worry about the security and safety of our staff at some of these locations.

As you heard at one location, it is on private property. There was an illegal drug lab operation on that property. I think in other situations you do have either disgruntled or upset property owners who have interests where they may not be entirely happy that our staff is there

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1 doing what they do.
2 What I was going to ask is just maybe I'll have
3 some conversations with the executive staff about this, that
4 maybe we look at whether it is appropriate to take any
5 additional measures to assure the safety of our staff as
6 they engage in some of their investigations and cleanup.
7 I don't think we need to take much more time of
8 that here, but I'll talk to the executive staff about
9 whether that might be appropriate. I sure hate to see
10 anything happen to our good folks out there doing good work.
11 BOARD CHAIR MOULTON-PATTERSON: I certainly agree
12 with you.
13 BOARD MEMBER PAPARIAN: If there's no other
14 questions, I am ready to move the item.
15 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
16 motion by Mr. Paparian, seconded by Mr. Medina to approve
17 Resolution 2001-177.
18 Please call the roll.
19 SECRETARY VILLA: Eaton?
20 BOARD MEMBER EATON: Aye.
21 SECRETARY VILLA: Jones?
22 BOARD MEMBER JONES: Aye.
23 SECRETARY VILLA: Medina?
24 BOARD MEMBER MEDINA: Aye.
25 SECRETARY VILLA: Paparian?

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BOARD MEMBER PAPARIAN: Aye.

SECRETARY VILLA: Moulton-Patterson?

BOARD CHAIR MOULTON-PATTERSON: Aye. The motion is approved. Thank you very much.

Now we are going back to item 5.

MS. NAUMAN: Item 5 is a consideration of a revised solid waste facility waste permit for the Holtville Solid Waste Site.

Leslie Newton-Reed will report.

MS. NEWTON-REED: Leslie Newton-Reed. The Holtville Solid Waste Site permit is revised and updated from their original permit issued in 1979. The permit will allow for the following changes: A decrease in tonnage from 22 per day to 20 tons per day, a defined disposal footprint of 24.5 acres out of 40 total acres, a change in permitted hours of operation from 24 hours a day, seven days a week to Tuesday and Saturday from 7:00 a.m. to 4:00 p.m., less holidays, and eliminate acceptance of septic tank pumpings, chemical toilet waste and geothermal drilling muds.

As presented in table -- in the table on page 4 -- excuse me, 5-4 of the agenda item, Board staff have determined that the following requirements for the proposed permit have now been met: Based on the evaluation of their financial assurances staff, the financial assurances mechanism submitted by Imperial County has met the

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1 requirements for support of closure/post-closure and
2 third-party operating liability coverage.
3 On June 5th, 2001, Board staff performed a
4 pre-permit inspection of the facility.
5 At that time the operator was in the process of
6 correcting a grading violation. That work was finished on
7 Friday, June 8th. The LEA visited the site on June 12th and
8 reported that the required grading had been completed.
9 I'll pass it over to Mark.
10 MR. DeBIE: As Leslie indicated, as this permit
11 was going through process, there was an outstanding
12 violation of standards relative to grading. So the version
13 of the permit in your agenda package actually has a finding
14 13-C that does indicate that the facility is in violation of
15 State minimum standards.
16 But as Leslie indicated, we have new information
17 now that the facility is in compliance. It is our
18 understanding that the LEA will modify this finding in the
19 permit prior to issuing to indicate that the facility is in
20 compliance with the State minimum standards. So I would
21 like to ask the LEA to step up and verify that for this
22 meeting on the record, that it is their intent to modify
23 that.
24 MR. QUICK: Members of the Board, my name is
25 Gerald Quick. I am the contact person for the Imperial

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1 County LEA. It was getting kind of close, but on the 19th
2 of June the LEA inspected the facility and found it in
3 compliance.
4 We had written a scoped inspection report and
5 photographed and submitted it to your staff. And all I can
6 say is you got to believe we did it. The pictures are
7 real. When the permits and our issues have it, we'll show
8 the compliance with the State minimum standards in item
9 13-C.
10 BOARD CHAIR MOULTON-PATTERSON: Thank you,
11 Mr. Quick.
12 MS. NEWTON-REED: Therefore, staff recommends that
13 the Board adopt solid waste facility permit No. 2001-181,
14 concurring with the issuance of solid waste facility permit
15 13-AA-0006.
16 BOARD CHAIR MOULTON-PATTERSON: Thank you very
17 much. We have no speakers.
18 BOARD MEMBER JONES: Move adoption of Resolution
19 2001-181, consideration of a revised solid waste facility
20 permit for the Holtville Solid Waste Site.
21 BOARD CHAIR MOULTON-PATTERSON: Moved by
22 Mr. Jones, seconded by Mr. Medina to approve 2001.
23 Call the roll.
24 SECRETARY VILLA: Eaton?
25 BOARD MEMBER EATON: Aye.

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SECRETARY VILLA: Jones?

BOARD MEMBER JONES: Aye.

SECRETARY VILLA: Medina?

BOARD MEMBER MEDINA: Aye.

SECRETARY VILLA: Paparian?

BOARD MEMBER PAPARIAN: Aye.

SECRETARY VILLA: Moulton-Patterson?

BOARD CHAIR MOULTON-PATTERSON: Aye. The resolution is passed.

Item No. 6.

MS. NAUMAN: This is consideration of a revised solid waste facility permit for the Imperial Solid Waste Site.

Leslie Newton-Reed will present again.

MS. NEWTON-REED: The next proposed permit is for Imperial Solid Waste Site. The permit is Imperial County's fifth to be updated. The original permit for this facility was issued in 1979.

The proposed permit will allow for the following changes: An increase in tonnage from 25 tons per day to 130 tons per day, a defined disposal footprint of 18 acres out of 69.1 total acres, a change in the permitted hours of operation from seven days a week, 24 hours a day to Tuesday and Sunday, 8:00 a.m. to 4:00 p.m., less holidays, prohibit the acceptance of septic tank pumpings and chemical toilet

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1 waste and allow the disposal of small dead animals.
2 As presented in the table on page 6-4 of the
3 agenda item, Board staff have determined that the
4 requirements for the proposed permit have now been met.
5 Based on the evaluation of the financial
6 assurances, staff determined the financial assurances
7 mechanism submitted by Imperial County met the requirements
8 for support of closure/post-closure maintenance and
9 third-party operating liability.
10 Therefore, staff recommends that the Board adopt
11 solid waste facility permit decision No. 2001-182,
12 concurring with the issuance of solid waste facility permit
13 No. 13-AA-0001. And, again, Gerald Quick of the County of
14 Imperial local enforcement agency is here to answer your
15 questions.
16 BOARD CHAIR MOULTON-PATTERSON: Thank you very
17 much. Any questions?
18 BOARD MEMBER JONES: Madam Chair, I have a feeling
19 that our number of facilities under PEP has just gone down
20 by two or maybe three. I'll move adoption of Resolution
21 2001-182, consideration of a revised solid waste facility
22 permit for the Imperial Solid Waste Site in Imperial County.
23 BOARD MEMBER MEDINA: Second.
24 BOARD CHAIR MOULTON-PATTERSON: Did you have a
25 comment, Mr. Paparian?

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1 BOARD MEMBER PAPARIAN: More just a curiosity.
2 They are allowed to take small dead animals. I am curious,
3 in the permit it just refers to "small dead animals." Is
4 that clear enough?
5 MR. DeBIE: The typical scenario in the landfill
6 is the distinction between the road-kill kind of situation
7 as opposed to, you know, a rancher or a farmer bringing his
8 dead horse or cow of significant size to the site to be
9 disposed of. So it would be the rabbit, dog, cat, those
10 sorts of things.
11 BOARD CHAIR MOULTON-PATTERSON: We have a motion
12 by Mr. Jones, seconded by Mr. Medina to approve Resolution
13 2001-182.
14 Please call the roll.
15 SECRETARY VILLA: Eaton?
16 BOARD MEMBER EATON: Aye.
17 SECRETARY VILLA: Jones?
18 BOARD MEMBER JONES: Aye.
19 SECRETARY VILLA: Medina?
20 BOARD MEMBER MEDINA: Aye.
21 SECRETARY VILLA: Paparian?
22 BOARD MEMBER PAPARIAN: Aye.
23 SECRETARY VILLA: Moulton-Patterson?
24 BOARD CHAIR MOULTON-PATTERSON: Aye.
25 Item No. 7.

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1 MS. NAUMAN: Item 7 is a consideration of a new
2 solid waste facility permit for Big Bear Transfer Station
3 which is located in San Bernardino County.
4 And Dianne Ohiosumua will make the presentation.
5 MS. OHIOSUMUA: The proposed permit is to allow
6 the operation of a large -- a new large volume transfer and
7 process facility. The owner and operator of the proposed
8 transfer and processing facility is the County of San
9 Bernardino Solid Waste Management Division.
10 At the time this item was written, findings
11 relating to the CEQA were outstanding. Now those issues
12 have been resolved. Therefore, staff would recommend the
13 adoption of the decision No. 2001-178, concurrence in the
14 issuance of the proposed new permit No. 36-AA-0417 for the
15 Big Bear Transfer Station.
16 Jim Trujillo from San Bernardino County local
17 enforcement agency is in the audience and available to
18 answer any questions.
19 BOARD CHAIR MOULTON-PATTERSON: Thank you. I had
20 one. Is the waste presorted for recycables and through what
21 type of programs? I don't know if you know.
22 MR. TRUJILLO: Madam Chair, the materials,
23 recycables are mainly brought in and separated by the
24 residents of the area. We have a pretty good recycling
25 ethic. So there's containers there for recycling materials.

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BOARD CHAIR MOULTON-PATTERSON: You don't have a MRF there?

MR. TRUJILLO: No, there's not.

BOARD CHAIR MOULTON-PATTERSON: Mr. Jones?

BOARD MEMBER JONES: Madam Chair, I'll move adoption of Resolution 2001-178 for a new full solid waste facility permit for the Big Bear Transfer Station in San Bernardino County.

BOARD MEMBER MEDINA: Second.

BOARD CHAIR MOULTON-PATTERSON: Motion by Mr. Jones, seconded by Mr. Medina to approve Resolution 2001-178.

Please call the roll.

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: Moulton-Patterson?

BOARD CHAIR MOULTON-PATTERSON: Aye.

And we did No. 9, so now we are on No. 10 -- eight.

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1 MS. NAUMAN: Item 8 is consideration of a revised
2 solid waste facility permit for the Corinda Los Trancos
3 Landfill, the Ox Mountain, in San Mateo County. And
4 Reinhard Hohlwein will make the presentation.
5 MR. HOHLWEIN: Good afternoon. Item No. 8 regards
6 consideration of a revised solid waste for the Corinda Los
7 Trancos Landfill, otherwise known as the Ox Mountain
8 Landfill. This landfill is located just north of Highway
9 92, two miles east of Half Moon Bay in the western hills.
10 The essence is to sanction a lateral expansion on
11 the western side of the landfill as well as to make a modest
12 adjustment on the footprint on the east side of the
13 facility. There will be an increase in acreage from 173 to
14 191 acres, and the closure will advance from 2018 to 2023.
15 There will be no increase in tonnage through the gate.
16 The Bay Area Regional Water Quality Control Board
17 has previously adopted revised waste discharge requirements
18 which also address this lateral expansion. San Mateo County
19 Planning Commission reviewed the project, issued a mitigated
20 declaration for a change.
21 The review of CEQA was found to be satisfactory by
22 the staff here. The facility was inspected by myself and
23 the LEA last week and is observed to be in compliance with
24 State minimum standards at that point. There is no known
25 public opposition to this expansion, and Board staff

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1 recommend concurrence on the site.
2 The operator is here today, but the LEA is not
3 available.
4 BOARD CHAIR MOULTON-PATTERSON: Thank you.
5 Mr. Jones?
6 BOARD MEMBER JONES: Madam Chair, I'll move
7 adoption of Resolution 2001-179, consideration of revised
8 solid waste facility permit for the Corinda Los Trancos
9 Landfill, Ox Mountain.
10 BOARD MEMBER MEDINA: Second.
11 BOARD CHAIR MOULTON-PATTERSON: Motion by Jones,
12 second by Mr. Medina to approve Resolution 2001-179.
13 Please call the roll.
14 SECRETARY VILLA: Eaton?
15 BOARD MEMBER EATON: Aye.
16 SECRETARY VILLA: Jones?
17 BOARD MEMBER JONES: Aye.
18 SECRETARY VILLA: Medina?
19 BOARD MEMBER MEDINA: Aye.
20 SECRETARY VILLA: Paparian?
21 BOARD MEMBER PAPARIAN: Aye.
22 SECRETARY VILLA: Moulton-Patterson?
23 BOARD CHAIR MOULTON-PATTERSON: Aye.
24 BOARD MEMBER MEDINA: In regard to these type of
25 items on the site where we have the summary, I wonder if

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1 staff could put their -- whether there are any violations.
2 If they could put whether there are any violations and see
3 if there are any past violations. Is it possible to add a
4 column that says "Violations"?
5 MS. NAUMAN: Would these be notations of
6 violations on monthly inspection reports?
7 BOARD MEMBER MEDINA: Or if there's a current
8 violation you would indicate it.
9 MR. DeBIE: Certainly if there's a current
10 violation when the Board is hearing the item, we would note
11 that in our analysis. When the item does not recognize or
12 does not indicate that there's a State minimum standard, it
13 is because the most recent inspection done by the Board and
14 the LEA indicate that. Are you asking to go back in time
15 and maybe report previous violations or just what the
16 current state is?
17 BOARD MEMBER MEDINA: I would like to see an
18 indication on the side that says "Violation," and just if
19 there's a current one and if there's a history of a lot of
20 violations. Just so you can look at it at a glance as you
21 read through. And if you see current violations, then that
22 would trigger you to pay closer attention to that.
23 MR. DeBIE: We will look at reformatting that to
24 include more information about the compliance situation.
25 BOARD CHAIR MOULTON-PATTERSON: Thank you,

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1 Mr. Medina.
2 No. 10.
3 MS. NAUMAN: Consideration of a revised solid
4 waste facility permit for the Western Regional Sanitary
5 Landfill, Placer County. And Christine Carlson will make
6 the presentation. I think Mary Madison-Johnson will make
7 the presentation.
8 MS. MADISON-JOHNSON: Mary Madison-Johnson with
9 the Permitting and Inspection Branch. This is an existing
10 landfill in Placer County. It is located in Lincoln.
11 The changes -- the proposed changes are
12 essentially just an hour change to coincide with a MRF.
13 There is a problem at the site with respect to a long-term
14 violation. It has a gas violation in one of the probes.
15 There is a system in place to correct -- excuse me. Mark's
16 motioning to me.
17 MR. DeBIE: We are scrambling here because the
18 staff person who has the most up-to-date information isn't
19 available right now, and Mary is unaware that I have been
20 talking to the LEA and the operator. And currently they are
21 in compliance with the gas situation.
22 The operator's done some monitoring in the last
23 few months, and the LEA has verified that all of the
24 monitoring probes, the points of compliance, are now below
25 the 5 percent. Most of them are nondetectable at this

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1 time. So the tweaking of the system that Mary was talking
2 about just now has worked. So the latest information is
3 that there is no more violation at this facility for gas.
4 BOARD CHAIR MOULTON-PATTERSON: Thank you,
5 Mr. DeBie.
6 MS. MADISON-JOHNSON: Thank you, Mark. Because
7 that issue has been resolved for the Board's consideration,
8 there would be no need for you to ascertain whether or not
9 you found that it meets minimum standards.
10 So staff recommends -- all the findings have been
11 met and staff recommend that the Board concur with the
12 issuance of this permit and adopt Resolution 2001-108.
13 There are representatives from the operator and
14 the LEA if there are any questions.
15 BOARD CHAIR MOULTON-PATTERSON: Thank you. Jim
16 Durfee followed by Scott Hammel.
17 MR. DURFEE: Thank you, Madam Chair and members of
18 the Board. I am Jim Durfee. I am the assistant director of
19 the Western Placer Waste Management Authority. That's the
20 entity that operates the landfill and the material recovery
21 facility.
22 The authority's a joint powers authority that
23 provides diversion and disposal services to the South Placer
24 County region. We provide services to about 550,000
25 residents. We represent the Western Sanitary Landfill and

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1 the Western Regional Recovery Facility.
2 I wanted to thank the Board, and in particular
3 thank staff for working with us during this permit issue.
4 We have, I think, a long-standing history of having a
5 cooperative relationship with Board staff and with the LEA
6 staff, and I think we are seeing the truth of that today
7 here at this hearing.
8 As was mentioned, we've had some historic problems
9 with gas migration on the site. The problems that we've had
10 seem to coincide with times when we have to take wells out,
11 extraction wells out of operation for construction projects,
12 whether it is to do closure projects or other similar types
13 of construction projects. I think we have a very long
14 history of pro-actively dealing with those problems in a
15 rarely systematic approach.
16 Back in March, we did about $60,000 worth of
17 repairs and modifications to our system, and then in early
18 May we added an additional six or seven, I believe it was
19 six, extraction wells to the system. And as was reported
20 earlier by staff, we now have the gas system in compliance
21 all the way around the perimeter of the landfill.
22 We are here to answer questions if you have any.
23 And, again, I would like to thank you in advance for your
24 consideration of the permit.
25 BOARD CHAIR MOULTON-PATTERSON: Thank you.

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1 BOARD MEMBER PAPARIAN: Just one quick question.
2 This permit, basically all it does is it gives you two and a
3 half more hours of operating time at night.
4 MR. DURFEE: That's correct. And it allows us to
5 coincide with the operation of our MRF. If we are not
6 granted these additional two hours, we won't be able to
7 continue to process the percentage of the waste stream that
8 we currently process through the MRF. We will have to start
9 direct hauling to landfills, and that will hurt all of the
10 jurisdictions that are involved and hurt our diversion
11 efforts.
12 BOARD MEMBER JONES: This effort to add two and a
13 half hours to the program took how long? How long did your
14 permit revision take?
15 MR. DURFEE: We started the process back in August
16 of last year, working with the LEA back at that point in
17 time, and I believe the paperwork has been here at the Board
18 for approximately six months.
19 BOARD MEMBER JONES: So ten months to add two and
20 a half hours. I do that just because a lot of people think
21 it takes 120 days.
22 BOARD CHAIR MOULTON-PATTERSON: Thank you,
23 Mr. Jones.
24 BOARD MEMBER PAPARIAN: At some point I understand
25 you have some opposition to the facility generally. At one

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1 point it was asserted to me that the opposition was
2 basically from one large landowner adjacent to the
3 facility. Would that be your characterization?
4 MR. DURFEE: Yes.
5 BOARD MEMBER PAPARIAN: No other community
6 concerns that you are aware of?
7 MR. DURFEE: No.
8 BOARD MEMBER PAPARIAN: Thanks.
9 BOARD CHAIR MOULTON-PATTERSON: Thank you. We had
10 another speaker slip. I am not sure if you wanted to
11 speak. Scott Hammel, we did receive your written comments,
12 but you are welcome to speak also.
13 MR. HAMMEL: Good afternoon, Madam Chair. My name
14 is Scott Hammel. I represent Placer Ranch, Inc., the large
15 landowner that you just spoke of. My client owns 2200 acres
16 adjacent to this landfill. We have been in litigation with
17 this landfill for six years now because of ongoing and
18 repeated violations of their permits, including their solid
19 waste facility permit, their conditional use permit, various
20 State regulations that have involved the regulation of
21 groundwater contamination and migrating landfill gas from
22 this landfill.
23 I am here today in opposition to this
24 application. My client is in opposition to this
25 application. I was going to describe for you the history of

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1 the gas violations at this landfill, but apparently a
2 miracle has occurred on the eve of this hearing.
3 Because for every month dating back to January of
4 2000, a 16-month period, in every single month that the LEA
5 has conducted inspections of this landfill, they have found
6 gas violations in at least one of the probes on the
7 perimeter of this landfill.
8 Despite all the efforts that this landfill has
9 undertaken to improve and upgrade and repair its landfill
10 gas collection and extraction system and control system, and
11 despite all the assurances that this operator and owner have
12 made to the LEA and the general public that they are doing
13 everything possible to fix the gas problem, they haven't
14 been able to do it until apparently just recently.
15 Now we are in the middle of discovery depositions
16 in a nuisance case we have pending against the landfill --
17 and I will be following up on this recent inspection with
18 the representatives of the landfill in depositions. But I
19 just find it very ironic that after a 16-month history of
20 repeated gas violations, the most recent period of gas
21 violations, 16 months, dating back to January of 2000, on
22 the eve of this hearing the LEA says they are in compliance.
23 If you look at Exhibit 28 that we submitted in our
24 second set of comments to opposition of this application,
25 you will note that in the March inspection by the LEA of

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1 this landfill they found gas in excess of 23 and a half
2 percent. In April of this year the LEA conducted another
3 inspection and found in excess of 10 percent. But
4 miraculously on the eve of this hearing the readings have
5 dipped below 5 percent for the first time in 17 months.
6 I believe that this landfill, since it has been
7 out of compliance with its permits for at least a 16-month
8 period, has been in violation of its conditional use permit,
9 has been in violation of its solid use permit. It is on the
10 State list in violation of State minimum standards. At
11 least until recently they haven't found gas below 5 percent
12 in one of the perimeter wells. I think it would be entirely
13 inappropriate for this Board to approve this permit.
14 There's ongoing litigation against this landfill
15 based on a history dating back at least six years of ongoing
16 violations, stipulated words of compliance, where the
17 compliance deadlines get continued and continued and
18 continued and the landfill operator keeps saying, "We're
19 fixing the problem. We're fixing the problem." The problem
20 is they haven't fixed the problem.
21 And as recently as March 8th the Planning
22 Commission hearing in Placer County, when they sought to get
23 approval of a modification of a conditional use permit and a
24 certification of their EIR, at that point in time they were
25 in violation of the gas standards in California and failed

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1 to disclose that to the Planning Commission even though they
2 had been placed on the State inventory.
3 The conduct of this landfill over the past five
4 years has not been in the interest of my client or the
5 general public or any of the other citizens in Placer
6 County.
7 We oppose the application, and I would request
8 that you deny the request for revision of the permit,
9 keeping in mind that even though this application apparently
10 only involves the extension of the useful life of this
11 landfill by approximately eight years, I believe, and the
12 extension of the operating hours for a couple hours a week,
13 this is an incremental process that this landfill has
14 undertaken in this permit review process.
15 Because what they really want and what would be
16 before you in the near future, I suspect, is the application
17 to revise the permit once again to double the size of this
18 landfill by adding an additional 18 million cubic yards of
19 waste. That is what is really at issue in this case.
20 And for some reason the landfill authority decided
21 not to bring that issue before you today. And what they
22 have done apparently is agreed to undertake an incremental
23 approach to revising their permit, to see how things will go
24 at the local level, to see how whether or not these
25 collateral extensions to the landfill will hold up in

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1 court. Once again, I request that you deny the application,
2 and I will be happy to answer any questions that you have.
3 BOARD MEMBER JONES: Mr. Hammel, if we were not to
4 concur with this permit, how do you think that the waste in
5 Placer County should be treated?
6 MR. HAMMEL: This landfill could be converted to a
7 transfer station. There are a number of landfills in the
8 area that have already agreed in principle, based on
9 discussions that I have had, to take all the waste out of
10 Placer County and take that waste to regional landfills.
11 That's a matter that was brought before the
12 landfill authority during the EIR process. They failed to
13 consider that as an alternative measure, mitigation measure
14 to avoid environmental impacts that will be caused by
15 doubling the size of this landfill.
16 BOARD MEMBER JONES: I appreciate that. I knew I
17 read it somewhere, that Placer Ranch's option was to shut
18 down the landfill and put a transfer station in there. This
19 landfill is owned by all of the cities and the County of
20 Placer with the exception of the City of Auburn, and I think
21 that's it. I think it was just the City of Auburn that's
22 not an owner to take care of that whole area.
23 Now, you say that your client owns all that land
24 next to it. What is that land zoned?
25 MR. HAMMEL: That land is in the process of being

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rezoned as light industrial.

BOARD MEMBER JONES: When he bought it what was it zoned?

MR. HAMMEL: Agricultural.

BOARD MEMBER JONES: Ag. So the zoning is being changed from an agricultural reserve or an agricultural/industrial reserve to industrial, so we're eating up the farmland. But it is interesting because the waste of Placer Ranch -- of Stanford Ranch, that landfill was taking in 315 tons a day before that Stanford Ranch started being built.

Today it takes in about 1,000, and a lot of it is due to the success and the growth within Stanford Ranch. But I find it kind of ironic that, in fact, that landfill which has grown and has had to change its permit conditions to handle the growth of Stanford Ranch, which is owned by Placer Ranch now, Placer Ranch would prefer it be closed and everything be shipped to Reno or to some other facility.

I don't know where that's in the best interest of the Placer County residents. And I say that because I am a Placer County resident, and I am also personally involved with Western Regional Landfill for about 15 years prior to my four and a half years -- or seven and a half years ago.

So I have a little bit of history, and I do wrangle a little bit when I read your descriptions, but I

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have been intrigued by the English language. But I do think it is kind of ironic that that agricultural reserve is being changed in the zoning to commercial and then the landfill that takes care of the whole county, the option of the developer is to shut it down. Doesn't make sense for long-term planning.

MR. HAMMEL: If I might respond briefly. I wasn't aware that this Board's primary objection and goal and direction by statute or by regulations was to get involved in land planning issues. I thought it was the purpose of this Board to protect the environment.

BOARD MEMBER JONES: Actually, one of the purposes of the Board is to make sure that the County has 15 years of disposal capacity, and that's why a County does a disposal facility element as well as a CWIN. So we have an integrated approach to looking at all of it, including making sure the environment is protected.

MR. HAMMEL: And I would ask you, sir, are you aware that this landfill has the highest tipping fees of all landfills in the state of California, by the last survey of tipping fees posted on your website? I question whether or not that is in the best interest of the residents of Placer County when they could have that same waste shipped to a regional facility at less than half the cost.

I believe that is an economic benefit to each and

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every resident of Placer County, not only my client, but each and every resident of Placer County.

BOARD MEMBER JONES: Rates do not fall into our purview. So I think those elected officials from Placer County, City of Rocklin, City of Loomis, City of Roseville who make the determinations as to what the rate will be for their constituents probably need to hear your arguments to determine what's best for the people of Placer County.

MR. HAMMEL: Are there any other questions?

BOARD CHAIR MOULTON-PATTERSON: Yes, there are.

Mr. Paparian.

BOARD MEMBER PAPARIAN: Thank you, Madam Chair. One of the things that I learned sitting on the Board is that we have quite a few restrictions in terms of the reasons we could turn down a permit. We would have to make some very specific findings. They are spelled out in Section 44009 of the Public Resources Code.

One of the main reasons we might object to a permit would be violation of State minimum standards. If the facility had a 5-percent violation at the border, I believe we would be having a very spirited discussion about whether that 5 percent was, indeed, a violation of State minimum standards or not. But we've heard that this is not an issue, that there is not today a 5-percent violation at the border, and I have got no reason to believe that there's

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1 going to be a 5-percent violation if we go ahead and vote
2 for this permit.
3 So I guess what I am getting to is, I don't see
4 under our statutes where we have a leg to stand on in terms
5 of turning down this application.
6 MR. HAMMEL: This issue came up a number of years
7 ago. I believe it was 1997, '98 time frame, when the
8 authority applied for a revision of its permit to go from, I
9 believe it was 800, 900 tons a day to 1200 tons a day.
10 There were gas violations back during that period of time
11 also.
12 They were under a stipulated order. They were
13 given 90 days to correct the gas violations, which had
14 occurred for a many, many consecutive-month period prior to
15 that. They were told if they got their gas violations
16 within minimum standards, within a 90-day period, three
17 consecutive months, that the order would be lifted.
18 Well, after about a year of continued gas
19 violations, month after month after month, the order goes
20 into effect, and guess what, another miracle occurred back
21 then because for three consecutive months, the gas
22 violations drop below 5 percent. The order was lifted. And
23 guess what happened next month? Shot up again, in violation
24 of State standards, and it went on for a number of months.
25 So this isn't the first time that this type of

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1 miracle has occurred on the eve of some sort of enforcement
2 action or regulatory approval of a permit by this landfill.
3 I don't know whether or not they are in violation of the gas
4 standards in light of this new information. I haven't had a
5 chance to check it out, but I will be doing that. But as
6 far as I know, they are still on the State inventory.
7 This Board put them on the State inventory. They
8 haven't been released from that, as far as I know, and I am
9 supposed to be getting notice from this Board and from the
10 LEA and from the County of anything that involves the
11 regulation of this landfill. I haven't been provided any
12 notice whatsoever that they have been removed from the State
13 inventory.
14 So I would suggest to you that as we sit here
15 today arguing this matter, they are still in violation of
16 State minimum standards or they are still on the inventory.
17 Until they are removed from the inventory, then I suspect
18 that they should be considered in violation of State minimum
19 standards.
20 BOARD CHAIR MOULTON-PATTERSON: Thank you,
21 Mr. Hammel. Before we vote on this -- did you have a
22 question, Mr. Medina?
23 BOARD MEMBER MEDINA: I had one question that was
24 in regard to the proximity of the nearest residence.
25 MR. HAMMEL: A little over a mile and a half or

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so. And to state that there's been no opposition to this landfill is not accurate. There may not have been additional opposition beyond my client to this particular permit revision, but there has been public opposition from homeowners in a subdivision close to the landfill, opposition to the expansion of the landfill by doubling the size and extending the useful life of the landfill. There has been opposition.

Unfortunately many of the people who live around the landfill don't have the resources or the ability or the knowledge or information to be able to mount their own challenges to the operations of this landfill.

And fortunately I represent a client who does have those resources who has been able to bring to the attention of not only the LEA, Placer County, the landfill authority, this Board, the Regional Water Board and all the other various state and local regulatory agencies having regulatory authority over this landfill, all of the repeated violations of State law of this landfill over the past six years.

And, frankly, I believe it is because of these challenges to the operations at this landfill that the landfill has undertaken efforts to clean up its act, and that's reflected by the extensive efforts they have undertaken to install additional landfill gas collection

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1 systems, infield gas extraction wells, landfill gas
2 monitoring wells, groundwater monitoring wells.
3 Those were all installed as a result of our
4 challenges to their operations at the landfill. They didn't
5 do that voluntarily, and that is a benefit not only to my
6 client, but everybody in the surrounding community around
7 that landfill and all residents of Placer County.
8 BOARD CHAIR MOULTON-PATTERSON: Thank you,
9 Mr. Hammel. I just wanted to ask, before we vote, in April
10 I believe I asked Senator Roberti and Mr. Jones to come up
11 with proposed solutions of a long-term violation policy and
12 bring it back to the Board. And I know you have been ill,
13 Mr. Jones. Have you and the Senator had a chance to meet on
14 this, or you want to update us?
15 BOARD MEMBER JONES: We met that one time, and we
16 haven't met since then because I was ill, but I think Julie
17 was working with the Senator's office trying to figure out,
18 now that I am back, to get it done.
19 BOARD MEMBER PAPARIAN: Madam Chair, on that
20 point, I am just concerned about the issue of underground
21 regulations, and I am wondering if the landfill gas policy
22 that was just referenced would qualify as an underground
23 regulation.
24 MS. TOBIAS: As I mentioned before, the so-called
25 policy that we use is really clarification of an existing

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1 minimum standard. So to the extent that if it went for a
2 court test, I guess we could see what a court decided if it
3 was. I think it might stand up as a clarification.
4 It probably, if the Board wants to continue on
5 with it, it is always better if it is in regulations.
6 That's where the direction is supposed to be.
7 But I am not so sure that it wouldn't stand up as
8 a clarification. Because I don't really -- what it really
9 does is it clarifies the criteria that we use when we are
10 issuing a permit based on a minimum standard itself.
11 So I don't think that it really necessarily adds
12 too much that's new. It really just says what staff looks
13 at as far as clarification. So I think, you know, almost
14 anything could be subject to a challenge, but I can also say
15 generally it is better that these things are in regs.
16 BOARD MEMBER PAPARIAN: So all the more reason to
17 push that process along?
18 BOARD MEMBER JONES: Yes, absolutely. Madam
19 Chair, just two quick things, one to answer Mr. Medina
20 before I make a motion.
21 This landfill has a one-mile buffer around it. So
22 we are not going to see homes at the toe of this site. That
23 was a decision made by those elected officials I think in --
24 I want to say '94, '93 or '94 so there wouldn't be
25 encroachment on the landfill by development.

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1 I think that's an important issue. Because we see
2 complaints all the time of people that are building right up
3 to the toe of a landfill.
4 And the other thing is that in 1991 my company
5 wanted to put in a gas extraction system at that facility,
6 but we were fighting to make sure that we were getting the
7 congressional tax credits, and we were up against the
8 deadline. They did the extension and the authority at that
9 time. So let's hold off and make sure what we're doing, but
10 I think that was 1991 or '92.
11 Madam Chair, I am going to move adoption of
12 Resolution 2001-108, consideration of a revised solid waste
13 facility permit for the Western Regional Sanitary Landfill
14 in Placer County.
15 BOARD MEMBER MEDINA: Second.
16 BOARD CHAIR MOULTON-PATTERSON: Motion by Jones,
17 seconded by Mr. Medina to approve Resolution 2001-108.
18 Please call the roll.
19 SECRETARY VILLA: Eaton?
20 BOARD MEMBER EATON: Aye.
21 SECRETARY VILLA: Jones?
22 BOARD MEMBER JONES: Aye.
23 SECRETARY VILLA: Medina?
24 BOARD MEMBER MEDINA: Aye.
25 SECRETARY VILLA: Paparian?

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1 BOARD MEMBER PAPARIAN: Aye.
2 SECRETARY VILLA: Moulton-Patterson?
3 BOARD CHAIR MOULTON-PATTERSON: Aye.
4 MS. NAUMAN: Consideration of award of grants for
5 the farm and ranch solid waste cleanup and abatement grant
6 program. We have a revised agenda item in your packet.
7 Georgianne Turner will make the presentation.
8 MS. TURNER: Good afternoon. This item is in
9 consideration for seven applications of the solid waste
10 cleanup. Staff have reviewed, and recommend, approval of
11 the grants from the City of Clearlake, the Counties of
12 Lassen, Los Angeles, Madera, San Bernardino, Yolo and Yuba
13 Counties for the fourth quarter of this fiscal year.
14 The grant application applicants are requesting
15 200,409.47 to clean up 32 sites within these jurisdictions.
16 To date approximately $525,000 in grants have been awarded
17 to 21 jurisdictions for cleanup projects under this
18 program.
19 The award of these grants would bring this grand
20 total to $755,000 funding 27 different jurisdictions and
21 cleaning up 107 different sites throughout California, of
22 which $425,000 was awarded this fiscal year, and that's
23 twice as much as we did last year.
24 As you know, I have been working diligently to
25 promote the use of this program. And just to give you a

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1 perspective, next fiscal year I am already looking at 11
2 different applicants for over $300,000.
3 There were some minor changes to reflect the
4 scoring and ranking of Los Angeles County in your item, and
5 also in the resolution, and I am here and available to
6 answer any questions that you might have about that.
7 Based on the fact that all the applicants meet the
8 eligible requirements set forth in the statute, I am
9 recommending that the Board adopt Resolution 2001-174
10 authorizing the award up to $230,481.47 for grant
11 applications from the City of Clearlake, Lassen County, Los
12 Angeles County, Madera County, San Bernardino County, Yolo
13 and Yuba Counties and direct staff to execute -- develop
14 grant agreements with the grant recipients for the amount
15 specified in the resolution.
16 This concludes my presentation, and I will be
17 happy to answer any questions.
18 BOARD CHAIR MOULTON-PATTERSON: Thank you.
19 BOARD MEMBER JONES: I will move adoption of
20 Resolution 2001-174, revision No. 2, I think, for the
21 consideration of award of grants and abatement grant
22 program.
23 BOARD CHAIR MOULTON-PATTERSON: I'll second that
24 move by Mr. Jones. Second by Moulton-Patterson to approve
25 Resolution 2001-174, revision No. 2.

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1 Call the roll.
2 SECRETARY VILLA: Eaton?
3 BOARD MEMBER EATON: Aye.
4 SECRETARY VILLA: Jones?
5 BOARD MEMBER JONES: Aye.
6 SECRETARY VILLA: Medina?
7 BOARD MEMBER MEDINA: Aye.
8 SECRETARY VILLA: Paparian?
9 BOARD MEMBER PAPARIAN: Aye.
10 SECRETARY VILLA: Moulton-Patterson?
11 BOARD CHAIR MOULTON-PATTERSON: Aye.
12 Okay. No. 13.
13 MS. NAUMAN: That is discussion and consideration
14 of approval to formally notice proposed regulations for
15 local enforcement agency enforcement assistance grants.
16 Gabe Aboushanab will make the presentation.
17 MR. ABOUSHANAB: My name is Gabe Aboushanab of the
18 LEA Assistance and Evaluation Section. We are here for you
19 today to bring for your consideration proposed regulations
20 that essentially establish a framework for the enforcement
21 assistance grant disbursement and oversight. These regs
22 will fill a statutory mandate to adopt regulations to
23 implement existing local agency enforcement assistance
24 grants.
25 Basically the background of the EA program is

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1 mandated through PRC 46504. It is a noncompetitive block
2 grant used by LEAs to carry out solid waste facility permits
3 and inspection duties. The Board initiated this grant
4 program back in 1991. LEA spent the money on staffing,
5 training, travel, consulting services and purchases of
6 equipment or materials.
7 The Board annually awards a total of one and a
8 half million in LEA grants. Each LEA receives an annual
9 grant derived from a June 1990 Board-adopted process. The
10 criteria to determine the grant amount is based on the
11 jurisdiction's population. The number of currently
12 permitted facilities plus a base amount of $15,000 and
13 individual grants range from approximately 15,000 to 90,000
14 per grant cycle, and the process includes financial control
15 mechanisms.
16 Basically the proposed regulations are provided
17 for you as an attachment to this agenda item. They are
18 intended to clarify the grant process, assist LEAs in
19 applying with the grant application, spending criteria and
20 record-keeping requirements. This will also ease Board
21 administration of the enforcement assistance grant
22 programs.
23 Board staff recommend option one to direct us to
24 notice the proposed regulations for a 45-day public review
25 and comment period through OEL. And I believe also present

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at this time are staff counsel and Board staff who administered a grant program. This concludes my description and presentation. I would be happy to answer any questions.

BOARD CHAIR MOULTON-PATTERSON: Thank you. We have one speaker on this, Paul Manasjan.

MR. MANASJAN: Good afternoon, Madam Chair, distinguished Board members. My name is Paul Manasjan with the City of San Diego LEA and Enforcement Advisory Council member. I am here on behalf of Mike Schmelling, the chair of the EAC, who regrets he was unable to attend this hearing but asked me to share his and the EAC's concerns on the importance of the LEA grants to an effective LEA enforcement program.

Madam Chair and fellow Board members, we fully support staff's recommendation. The use of this grant has significantly assisted LEA in meeting the certification requirements and in working with Board staff in the development of the nation's most effective solid waste enforcement program.

It continues to strengthen the partnership between LEAs and the Board by providing additional funds that allow LEAs to attend state-of-the-art training sessions, purchase equipment and attend meetings and hearings.

In closing, we want to thank you for having worked with us during the last several years and hope that you will

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1 agree with staff's recommendation to notice these proposed
2 regulations, sincerely Mike Schmelling.
3 BOARD CHAIR MOULTON-PATTERSON: Thank you very
4 much.
5 BOARD MEMBER JONES: Just that we move this to a
6 45-day comment period?
7 BOARD CHAIR MOULTON-PATTERSON: That's what I was
8 going to say. So is that the direction you need, just to
9 move the notice of proposed regulations for a 45-day comment
10 period?
11 MS. NAUMAN: We will move ahead. Thank you.
12 BOARD CHAIR MOULTON-PATTERSON: Okay. No. 15.
13 MS. NAUMAN: Consideration of Bureau of State
14 Audits report recommendation regarding legislation to
15 streamline the current process for imposing civil penalties,
16 recommendation No. 10, which you discussed at your last
17 Board meeting. This brings forward your directions for
18 consideration.
19 Scott Walker is making the presentation.
20 MR. WALKER: Scott Walker again. To reiterate the
21 purpose of this item, is to implement the Board's direction
22 to staff at the May Board meeting concerning recommendation
23 No. 10, specifically the direction was to bring forth for
24 consideration a statement of findings of statutory barriers
25 to an effective civil penalties process. Recommendation ten

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is that the Board should seek legislation to streamline the current process for imposing civil penalties.

There were some other issues that were -- the Board directed staff to report on, and I am going to go through them briefly now to go over that. The first is to further report on the reasons why the existing authority is not being used. Board staff has confirmed with LEAs, and in addition, we do have LEAs present today to present testimony and answer questions for the Board concerning some of these reasons.

And in general, we found several factors that are common, one is that in the permit enforcement policy, or PEP policy, has been applied in cases to allow for permit changes in terms and conditions where the operators made a good-faith effort to apply, and for public health and safety reasons.

In other words, there's no alternative facility available for lesser impacts to the environment. Application of PEP in this particular category of cases has resulted in extended or lapsed compliance.

The second point is that in some cases civil penalties are not believed to have a deterrent value, would be financially burdensome and may lead to divert facilities away. For example, being the rural public facilities.

The third is that the due process for the

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1 administrative orders and appeals is time and resource
2 intensive because the statute requires that all feasible
3 efforts to achieve compliance must be completed before civil
4 penalties are imposed. And some LEAs believe there has been
5 a lack of clear and concise enforcement procedures and
6 criteria.
7 The fourth theme is that the amount of civil
8 penalty is believed too low to act as a credible deterrent
9 and to also justify the expenditure of resources to impose
10 administrative civil penalties.
11 And finally, the factors involved as discussed
12 include that there is a belief on the part of some LEAs that
13 clear enforcement authority is lacking for closed illegal
14 and abandoned disposal sites.
15 The next item for -- that the Board directed us to
16 report on is a further analysis of potential options to
17 utilize existing authority without legislative changes.
18 Based on consultation with Board legal staff,
19 program staff is not able to identify any administrative
20 actions that we are not already implementing to streamline
21 the civil penalties process, other than to seek the
22 legislative changes.
23 I wanted to remind the Board there's several
24 activities that are ongoing now and recent that should
25 facilitate and streamline this process. The first of them

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is the Board's enforcement regulations. These became effective just in May of 2001. This should clear up a lot of the clear guidance and procedures in terms of administrative actions.

The second is that compliance issues related to permit terms and conditions, examples being tonnage and hours of operation and not State minimum standards, such as gas, etcetera, may also be further addressed by the Board's consideration of the revised PEP policy, and that will be an upcoming item here at the Board. So we anticipate that that effort will further facilitate some of these issues with civil penalties.

And, again, another factor is the Board is continuing to address the inventory of solid waste facilities which violate State minimum standards through the rulemaking process, and this should continue to enhance the enforcement for chronic violators of State minimum standards.

And, also, another point being at least with the category of solid waste facilities, particularly landfills, we have made a lot of progress. The inventory has shown significant reduction of chronic violators of 47 facilities in January 1997 to 14 in April 2001. So that has been a good incentive for compliance.

A brief mention of the next point that the Board

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1 directed us to report on was a comparison of the Board's
2 civil penalty process with our CalEPAs of the Coastal
3 Commission.
4 And in the table in the item on page 15-4 we
5 attempted to give a brief summary of those civil penalties,
6 some other aspects, which are under consideration here
7 versus judicial civil penalties and criminal penalties.
8 I just want to point out if you look at the
9 general solid waste facilities, our administrative civil
10 penalties are capped at 5,000 per day and $15,000 per year.
11 By comparison, we look at the State Water
12 Resources Control Board, and they have fines to not exceed
13 $5,000 per day. There's no cap there, as we have. So it is
14 substantially higher.
15 Department of Toxic Substances Control it is up to
16 25,000 per day, and there's no identified -- no cap. And
17 the Air Resources Board has a cap of $300,000 but up to
18 $25,000 per day. So they are all substantially greater than
19 the civil penalties authority that the Waste Board has for
20 solid waste facilities.
21 Another point being that the State Water Resources
22 Control Board Department of Toxic Substances Control and the
23 Air Resources Board also have criminal penalties that we
24 don't have for solid waste facilities.
25 And finally, the California Coastal Commission, we

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1 didn't find that they had an administrative civil penalties
2 process, and, again, this is just general screening through
3 those requirements, but they do have substantial judicial
4 civil penalties, and our experience is they have not
5 normally been involved in a lot of regulation and
6 enforcement of solid waste facilities and illegal disposal
7 sites. It has been more toward legal development projects
8 and things like that. So a little bit different, but still
9 the judicial benefits are pretty substantial.
10 And then the final issue that was requested by
11 Board Member Jones is that the Board directs its staff to
12 reflect in the statement of findings the need to categorize
13 increased civil penalties based on a consideration of the
14 nature, extent and gravity of the violation so that we --
15 the idea being that we need to differentiate between
16 penalties for much higher priority issue, such as chronic
17 violations of leaching of gas, and also illegal disposal
18 sites versus minor violations, such as periodic on-site
19 litter. So we have proposed the findings to reflect that
20 concern.
21 Finally I'd like to just go through the specific
22 key statutory barriers to effect a civil penalties process,
23 and these are recommended in the resolution.
24 The first being that civil penalties are too low
25 to act as a credible deterrent to the facility and closed

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1 and abandoned and on-site compliance and should be
2 consistent with other CalEPA agencies and commensurate with
3 the nature, extent and gravity of the violation. The second
4 one is criminal penalties are needed to strengthen
5 enforcement of the legal and abandoned disposal sites.
6 Third is that clarification is needed that the
7 Board's enforcement authority and civil penalties process
8 applies to closed illegal and abandoned disposal sites, not
9 solely solid waste facilities. The next is that enforcement
10 authority is needed against prior owners or operators of
11 disposal sites who are responsible for the noncompliance or
12 illegal disposal activity.
13 The next is that enhanced site access authority is
14 needed for post-closure maintenance of disposal sites. Next
15 being, the next bullet is that the law should clearly
16 prohibit disposal to any property other than a permitted or
17 otherwise exempt facility.
18 BOARD MEMBER JONES: We have that in statute now,
19 part of the enforcement regs that you can't dispose on
20 anything that isn't permitted.
21 MR. WALKER: On that one I would have to defer to
22 legal staff. Because I know that they have recommended that
23 we bump that up in the statute. I know that's one topic
24 that they have suggested. So that's why we have included it
25 there.

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1 Finally, time limits are needed for some appeals
2 to the local hearing panel and under which petition for writ
3 of mandate may be filed challenging the decision of the
4 Board.
5 Conclusions: In conclusion, staff is recommending
6 the Board adopt Resolution No. 2001-176, to adopt the
7 statement of findings of statutory barriers to effect a
8 civil penalties process. This statement of findings would
9 be a basis for seeking legislative changes either proposed
10 by the Board through a legislative concept or by another
11 party or sponsor on their own mission. That concludes
12 staff's presentations.
13 We are available for questions. And in addition,
14 LEA representatives are here to present testimony and answer
15 questions.
16 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian, you
17 want to speak first or wait for the speakers?
18 Mr. Dan Avera.
19 MR. AVERA: Good afternoon, Madam Chair, members
20 of the Board. My name is Dan Avera. I am with San
21 Bernardino County Environmental Health local enforcement
22 agency, and I am here to support staff's recommendation.
23 Scott gave a very comprehensive report. I just think a
24 couple things I would like to restate.
25 First of all, the administrative civil penalties

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1 from 5,000 with a cap of 15,000 per year is very minimal
2 compared to other regulatory agencies and what their maximum
3 amount of penalties should be or could be.
4 The other issue is criminal penalties for illegal
5 disposal of solid waste. We have criminal penalties in the
6 waste tire section. There's criminal penalties in other
7 CalEPA agencies.
8 As we have -- you have taken action today on
9 several illegal disposal activities of cleaning it up. I
10 believe there needs to be stronger penalties, criminal
11 penalties for illegal disposal of solid waste and
12 unpermitted facilities.
13 After seeing some of the illegal disposal sites
14 throughout the state, we have had discussion about whether
15 they were misdemeanors or felonies. Felonies may be too
16 extreme.
17 However, if there are licensed contractors,
18 licensed haulers who are avoiding the tipping fee and
19 illegally disposing of solid waste at unpermitted
20 facilities, I believe that cause of action is subject to
21 felony penalties, and I believe if we had a felony for
22 illegal disposal of solid waste by contractors, people who
23 are in the business and should know better, I think we would
24 see a great reduction in the amount of illegal disposal of
25 solid waste.

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1 There was one other issue as far as the process
2 that's currently in place for the administrative civil
3 penalties, if you look at the sections in the PRC, the
4 process, the appeal process, the notification is very
5 time-consuming, and I am sure we can come up with a
6 streamlined approach to administer civil penalties. Thank
7 you very much.
8 BOARD CHAIR MOULTON-PATTERSON: Thank you.
9 Paul Manasjan.
10 MR. MANASJAN: Madam Chair, distinguished Board
11 members, Paul Manasjan representing the City of San Diego
12 LEA. I agree with the comments of my colleague Dan Avera.
13 In support of staff's recommendation, administrative fines
14 are too low. If you -- when you go to either your city
15 attorney or district attorney and you explore this course of
16 action for enforcement and they see that you are capped at
17 $15,000 a year, they even question the effort of going into
18 this.
19 As Mr. Avera mentioned, it is an arduous process.
20 There's no less than 14 different considerations that the
21 LEA has to consider when looking into civil penalties. The
22 level of due process is one that wasn't mentioned, is much
23 higher than I would say of the other CalEPA agencies.
24 I mean, this has to go before -- to allow due
25 process, you have to go through your own administrative

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1 hearing process, then it goes before your own governing
2 body. The governing body can then turn it over to the
3 hearing panel, and we know about the appeals process through
4 the hearing panel. And it could take months and months and
5 months. And, indeed, that $15,000 isn't going to cover that
6 cost. Indeed the $15,000 is directed to go back to
7 compliance efforts directed to the operators.
8 These are just some of the reasons as to why these
9 LEAs don't pursue this course of action for enforcement, is
10 because it is so arduous. And in the end, it is not worth
11 it with this limitation of fines.
12 That concludes my presentation. If you have any
13 questions in particular about the LEAs' concerns with regard
14 to civil penalties, why we are not -- I know the issue has
15 come up that LEAs haven't been using it. I am here to
16 answer in detail why we haven't thus far at our agency.
17 BOARD CHAIR MOULTON-PATTERSON: Thank you very
18 much.
19 Mr. Paparian?
20 BOARD MEMBER PAPARIAN: Thank you, Madam Chair.
21 And I agree that we should seek harmonization with other
22 CalEPA agencies in terms of the types of fines we have
23 available to us and the potential for criminal penalties.
24 At the same time, I also think we ought to kind of
25 rethink and relook at our existing authority and see if

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there's anything we can do to use our existing authority more effectively. $15,000 in a lot of ways is not a whole lot, but I question whether the $15,000, even for some of the bigger operators out there, might indeed be a deterrent for those who don't want the stigma of any fine levied against them. I think any fine levied against you can be problematic.

The question of the DA's unwillingness, if that's an issue, I think we ought to know about that and see if there's something we can do to work with the DAs to improve their willingness to take on some of these cases. I know the DAs have some kind of statewide environmental task force that meets pretty regularly.

I know that in some cases it is just a matter of priorities for the DA, the types of things that they want to pursue. I will give you a very important example. I was involved in a traffic accident last fall. Somebody ran a red light, and there was only one witness. And the DA was willing to go after that person for running that red light for the $270 fine, I think it is.

Probably cost them much more in terms of their staff time, but running red lights or going after those who run red lights is a priority for the district attorney. I think maybe there are some things that we can do to make some of the violations that we are concerned about a higher

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1 priority for some of the DA.
2 There was a mention of some of the lack of clear
3 enforcement procedures. And per the criteria, that's
4 certainly something we could work on.
5 So what I would like to see -- I would like to
6 actually support this resolution with one minor
7 modification, but I would like to see, perhaps, our legal
8 office come back in a few months with some recommendations
9 about the sorts of things that we could do to improve our
10 enforcement capacity using our existing authority. And,
11 again, if it concludes things like encouraging the DA to
12 make this a high priority, we should know that. I think
13 some of us might be able to help pursue that.
14 The one modification I would like to make on the
15 resolution is the first bullet where it says "Civil
16 penalties are too low to act as a credible deterrent."
17 Again, I question whether they are, indeed, too low to act
18 as a deterrent in all cases. So what I would like to do is
19 simply add the phrase at the beginning of that bullet, "in
20 many cases." So it will read "In many cases civil penalties
21 are too low to act as a credible deterrent," etcetera.
22 With that modification, I would move Resolution
23 2001-176.
24 BOARD MEMBER EATON: Madam Chair, I have a
25 question.

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1 BOARD CHAIR MOULTON-PATTERSON: Let's get a
2 second, and then I have a comment, too.
3 BOARD MEMBER EATON: I was just wondering,
4 Mr. Walker, this morning we had a situation in Yolo County.
5 What are you recommending to streamline this process that
6 would have helped us with that situation?
7 MR. WALKER: That's a good question. That was a
8 complex case.
9 BOARD MEMBER EATON: But that's what the auditor
10 hit us on, and I think Mr. Paparian hit the point. I think
11 what we hear is that a lot of these -- I am not belittling
12 any work that was done by any of us, but the whole issue is
13 what authority do you have now and are we exercising it, and
14 are there various ways as to why we can't exercise it.
15 There's a perfect situation where over the course
16 of two years you had five series of violations. There were
17 no fines, no "What are you recommending to us," the
18 auditor. That's what the auditor is going after. That's
19 the kind of situation that he or she is looking at.
20 I am looking for things that we can hang our hat
21 on so we can do better. What are you recommending would be
22 applicable to that situation that would help us solve that?
23 Increasing the penalty wouldn't have.
24 MR. WALKER: I would say that's possible that's
25 the type of case that will benefit from our enforcement

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1 regulations which tighten what the LEA's supposed to do, and
2 it will improve our ability and evaluation process to make
3 sure that they do that. That's an area that I think we
4 probably already -- again, the enforcement regs are
5 effective this past May. So hopefully that type of
6 situation will benefit from the Board's enforcement
7 regulations.
8 BOARD CHAIR MOULTON-PATTERSON: Thank you.
9 Mr. Medina?
10 BOARD MEMBER MEDINA: Thank you, Madam Chair. I
11 actually was in agreement with the findings and
12 recommendations of staff. And I have also proposed a
13 modification to the resolution. Mine, however, went beyond
14 a minor language change, and I would make some extensive
15 changes to the resolution, and I have asked my staff to pass
16 some of that language around just so the Board can review
17 it.
18 I will read it for you. Just, again, in keeping
19 with the questions that the Board Member Eaton asked in
20 regard to our ability to take some certain actions.
21 We would propose the following resolution
22 beginning at the now, therefore, be it resolved that the
23 California Integrated Waste Management Board elected staff
24 to develop a legislative proposal for consideration at the
25 July 2001 Board meeting to No. 1, eliminated from Public

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1 Resources Code 4511.A1 to eliminate the following language
2 and not to exceed a total of $15,000 in any one calendar
3 year. If compliance is not achieved in accordance with that
4 time schedule, and, again, that would not limit the Board to
5 an amount of $15,000.
6 The second would be to impose criminal penalties
7 on individuals and organizations that conduct illegal
8 dumping on abandoned dump sites. The next bullet would read
9 enhance the authority of LEAs and Board staff to access for
10 inspection, investigation or remedial action or post-closure
11 maintenance of disposal sites.
12 Further, be it resolved the California Integrated
13 Waste Management Board staff bring before the Board by
14 August 2001 specific proposals to clarify the Board's
15 enforcement authority and civil penalties process that
16 applies to closed illegal and abandoned disposal sites not
17 solid waste facilities and enhance the enforcement authority
18 against prior owners or operators of disposal sites who are
19 responsible for the noncompliance or illegal disposal
20 activity, prohibit disposal to any property other than a
21 permit or otherwise exempt facility.
22 And, finally, provide time limits for some appeals
23 to the local hearing panel under which petition for writ of
24 mandate may be filed, challenging a decision of the Board.
25 Those are some of the actions that I would like to

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1 propose.
2 MS. NAUMAN: Since we don't have a copy of the
3 language --
4 BOARD CHAIR MOULTON-PATTERSON: We are going to
5 take a little break, I think, so you can have a copy and
6 have a few minutes to look at it.
7 BOARD MEMBER MEDINA: I apologize for not having
8 copies made.
9 BOARD CHAIR MOULTON-PATTERSON: We are going to
10 have a break, so let's take our 15-minute break.
11 (Recess was taken.)
12 BOARD CHAIR MOULTON-PATTERSON: Ex partes,
13 Mr. Paparian?
14 BOARD MEMBER PAPARIAN: None.
15 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina?
16 BOARD MEMBER MEDINA: Yvonne Hunter, League of
17 Cities in regard to the PEP policy.
18 BOARD CHAIR MOULTON-PATTERSON: And I have none.
19 Mr. Jones?
20 BOARD MEMBER JONES: Chuck White, Curt Fuji,
21 Denise Delmatier, PEP.
22 BOARD CHAIR MOULTON-PATTERSON: Thank you. We
23 needed a second on Mr. Paparian's original motion, and I am
24 going to call on Mr. Medina.
25 BOARD MEMBER MEDINA: I would like to have

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1 Mr. Paparian restate his motion and then I will second.
2 BOARD CHAIR MOULTON-PATTERSON: Okay.
3 BOARD MEMBER PAPARIAN: Again, it is Resolution
4 2001-176. The first bullet under the "Resolved" I wanted to
5 add the words at the very beginning, "In many cases," so it
6 will read "In many cases, civil penalties are too low,"
7 etcetera.
8 Now, one of the things we wanted staff to do was
9 come back with recommendations about use of existing
10 authority and perhaps more clarification about legislative
11 remedies and proposals. Would you like that in the
12 resolution?
13 MS. TOBIAS: That's not necessary. I think we can
14 take that direction. It will be on the transcript. So the
15 direction will be to come back with an agenda item
16 discussing how to enhance the use and better use our
17 existing authority more effectively and then any additional
18 recommendations you might have as to legislative solutions
19 in the enforcement area.
20 MS. TOBIAS: I might just point out that I think
21 that the reason that the staff had the resolution in here is
22 that they were on the first page adopting a statement of
23 findings of statutory barriers. If the Board is changing
24 that to more of a direction, then you really don't need the
25 resolution. You can just give us the direction that you

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1 want us to -- Ms. Nauman is giving me the puzzled look.
2 MS. NAUMAN: I thought they were two separate
3 actions that the Board wanted to go on record for purposes
4 of being able to respond to the auditor's recommendation
5 that you would adopt this statement of findings, and then in
6 addition to those. Member Paparian's direction of let's
7 take a deeper look at what else we might be able to do.
8 They are not mutually exclusive.
9 MS. TOBIAS: Maybe there are two different
10 reactions you would like to have to respond to the auditor's
11 report, one is the adoption of the resolution as is, and
12 then your motion of what you would like to see staff come
13 back with.
14 MS. NAUMAN: So that in our next report to the
15 auditor, we would report both of these actions, if you will,
16 directions.
17 BOARD MEMBER PAPARIAN: I'll come up with a second
18 motion in a minute. It wasn't the original motion as is.
19 MS. TOBIAS: Right, with your change of "in many
20 cases."
21 BOARD MEMBER PAPARIAN: So with that, I move in
22 Resolution 2001-176, with the addition of the three words.
23 BOARD MEMBER MEDINA: Second.
24 BOARD CHAIR MOULTON-PATTERSON: We have a motion
25 by Mr. Paparian, second by Mr. Medina to approve Resolution

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1 2001-176 with the three-word changes.
2 Call the roll.
3 BOARD MEMBER JONES: Let me ask a quick question.
4 In the presentation it basically said that either we would
5 either develop a legislative proposal or somebody else
6 would. This resolution basically says we will, correct, or
7 is it silent to it?
8 MS. NAUMAN: It is silent. It is out there for
9 whatever further action any party wants to take.
10 BOARD MEMBER JONES: Because I think my question
11 is: You know, some of the issues that Mr. Medina's brought
12 up in his substantive could be used if we were to develop
13 the legislative. So I would like to know if the making of a
14 motion would include language that the Board would develop
15 the legislative proposals that would come out of this.
16 MS. TOBIAS: That would be in the second motion.
17 BOARD MEMBER PAPARIAN: I am hoping to put an end
18 to the second motion.
19 BOARD MEMBER JONES: I apologize.
20 BOARD MEMBER PAPARIAN: We talked about a second
21 motion that would direct staff to come back with enhanced
22 uses of our existing authority plus the proposals for
23 additional authority that might be necessary for
24 legislature.
25 BOARD MEMBER JONES: My only concern is that I

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1 agree with everything that's in this. I have no problem
2 with that. But in the wrong hands, the Board members
3 wouldn't have any input. So why would we want to be silent
4 to that, you know.
5 But if it takes care of it in the second motion
6 and staff has that understanding, then I don't have a
7 problem with it. I just really think this Board should be
8 making those legislative proposals.
9 MS. NAUMAN: If that's the Board's intent, then I
10 would suggest that you change the resolution. Because
11 that's not what the resolution provides.
12 As I am understanding Mr. Paparian's proposed
13 second motion, it is a little bit different than what's in
14 this first resolution. So if you want to direct staff to
15 prepare a legislative proposal for you that reflects these
16 findings, that needs to be stated in the first resolution.
17 Then if there are additional things that we
18 discover along the way, that I think could be included in
19 the subsequent item.
20 MS. TOBIAS: I think that was the intent of
21 Mr. Medina's suggestion, which was that he was putting in
22 action to this existing resolution. So we have really two
23 different approaches here.
24 BOARD MEMBER PAPARIAN: If the Board feels it
25 should be part of this resolution, I am fine with that.

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1 Maybe we need to delay action for a few minutes on this so
2 that I can come up with another resolve that would cover
3 that.
4 BOARD CHAIR MOULTON-PATTERSON: I would prefer
5 that we go ahead with this motion that you moved and
6 Mr. Medina seconded. And then Mr. Medina, I think, was
7 going to address something on his suggestion, and I think he
8 was going to talk about a delay of a month; is that correct,
9 Mr. Medina?
10 BOARD MEMBER MEDINA: Yes.
11 BOARD CHAIR MOULTON-PATTERSON: I hate to change
12 the whole resolution at this time myself.
13 Mr. Medina?
14 BOARD MEMBER MEDINA: Certainly we could rework
15 it, but I see essentially what Mr. Jones is saying is that
16 we have a statement in there that would allow this Board to
17 develop the legislative language. And as part of that
18 process, we can come back with some of the actions that I
19 had previously stated.
20 BOARD CHAIR MOULTON-PATTERSON: Okay. Well, in
21 making a motion, do you want to insert that in your motion,
22 then?
23 BOARD MEMBER PAPARIAN: I am just trying to come
24 up with some language that just might accomplish that.
25 BOARD MEMBER JONES: Mr. Paparian, in the "now,

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1 therefore, be it resolved that the Board hereby adopt
2 statement of findings of statutory barriers to effect the
3 civil penalty process and to facilitate specific legislative
4 changes correcting those barriers," could we say,
5 "Board-offered legislative changes"?
6 BOARD MEMBER PAPARIAN: Fine with me.
7 BOARD MEMBER JONES: Would that work? That
8 doesn't dilute anything. It just makes it clear.
9 BOARD MEMBER EATON: Madam Chair, I think everyone
10 seems to be -- and I came late, and I apologize. It is just
11 the devil's in the details. We all agree to do a motion,
12 and then tomorrow adopt the resolution if the staff or
13 whomever just works it that way.
14 Your point you raised, all that good work that
15 went in the resolution will not have gone past us, because
16 just simply put it -- avoid the resolution, but the motion
17 can be made, and then just do the resolution separate.
18 That's one way if all of you don't feel comfortable with the
19 language. There's enough cooks for this soup.
20 BOARD MEMBER PAPARIAN: I think we know where we
21 are coming from at this point. I think with Mr. Jones'
22 change the resolution could go as is, and then we have the
23 understanding about the staff coming back with the two items
24 at a future Board meeting. I think we are ready to go.
25 BOARD CHAIR MOULTON-PATTERSON: Okay. So you

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stated it as you want it?

BOARD MEMBER PAPARIAN: Yeah. So the resolution now reads as written, 2001-176, with the following changes in the "resolved" sentence between "specific" and "legislative" we are adding "Board," what was your second word, Steve, sponsored?

BOARD MEMBER JONES: "Offered," whatever one you want.

BOARD MEMBER PAPARIAN: "Board-offered," those two words. It will read: "Specific Board-offered legislative changes." And, again, in the first bullet start by saying "In many cases."

BOARD CHAIR MOULTON-PATTERSON: Is that agreeable to the seconder, Mr. Medina?

BOARD MEMBER MEDINA: Yes.

BOARD CHAIR MOULTON-PATTERSON: Okay. We have a motion by Mr. Paparian, seconded by Mr. Medina to approve Resolution 2001-176 with the changes read into the record.

Call the roll.

SECRETARY VILLA: Eaton?

BOARD MEMBER EATON: Aye.

SECRETARY VILLA: Jones?

BOARD MEMBER JONES: Aye.

SECRETARY VILLA: Medina?

BOARD MEMBER MEDINA: Aye.

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1 SECRETARY VILLA: Paparian?
2 BOARD MEMBER PAPARIAN: Aye.
3 SECRETARY VILLA: Moulton-Patterson?
4 BOARD CHAIR MOULTON-PATTERSON: Aye.
5 No. 16, PEP.
6 MS. NAUMAN: Item 16 is consideration of revision
7 of the Board's permit enforcement policy.
8 And Mary Madison-Johnson will make the
9 presentation.
10 MS. MADISON-JOHNSON: Mary Madison-Johnson of the
11 Board Permitting and Inspection Branch.
12 As you recall, we have been reviewing through the
13 use of a stakeholder work group and imposing modifications
14 of the permit enforcement policy since August of 2000.
15 At your March 2001 meeting we discussed the
16 options, and you directed staff to return with a draft
17 modified policy to take into account the following:
18 Narrowing the policy for emergencies only. Allow the
19 Board's executive director to authorize the use of the
20 policy. The length of time of the current violation begins
21 the day of the violation. Place a 45-day limit on the
22 amount of time the permit can be violated with penalties
23 automatically imposed if exceeded, and place the policy in
24 regulation.
25 Board staff have reviewed the direction and have

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1 crafted a modified policy which is included in the item as
2 attachment one. The item contains an explanation of the key
3 components of the draft modified policy. Unless you have
4 questions, I will not review these components verbally,
5 given the lateness of the day.
6 The draft modified policy staff worked with Board
7 members' offices to narrow down the list of situations or
8 temporary emergencies which we believe responded to the
9 intent of the motion made at the March meeting.
10 There are regulations in place that allow for
11 temporary waiver of permit conditions during a temporary
12 emergency, such as floods, earthquake, etcetera.
13 These regulations concerning a 120-day limit which
14 can be renewed, the Board may wish to consider other time
15 frames that are consistent with existing regulations and
16 which are appropriate with the type of emergency being
17 addressed.
18 On June 12 we received a fax signed by various
19 representatives of industry containing an alternative
20 modification. Staff analyzed their proposal. Their
21 proposal would allow PEP to be used in temporary emergencies
22 as determined by an LEA.
23 And once determined, the LEA would issue a
24 stipulated agreement with actions and time schedules. I
25 just wanted to know that advisory 38 does discuss a

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1 stipulated agreement. This term has not been defined in
2 regulations. And if that mechanism was used, it would need
3 to be defined.
4 In the interest of time, I will not review further
5 detail of industry's proposal unless you have questions.
6 We are now seeking clarification from the Board as
7 to whether the draft modified the permit enforcement policy
8 meets the desires of the Board or if there are further
9 modifications needed to the policy.
10 This completes staff presentation, and I am
11 available to respond to any questions you may have.
12 BOARD CHAIR MOULTON-PATTERSON: Thank you. I
13 don't see any right now. We will go straight to the
14 speakers. I ask that you be concise, please.
15 Yvonne Hunter.
16 MS. HUNTER: Yvonne Hunter with the League of
17 California Cities. It is good to be back talking about
18 solid waste, I think.
19 The League is in a somewhat different position
20 than a number of the other interest groups testifying on PEP
21 and who have sent letters. We are -- we wear three
22 different hats, and to that extent, we try to balance a
23 number of perspectives. We have cities that are local
24 enforcement agencies. We have cities that operate solid
25 waste facilities, and we have cities that are neither

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1 operators or LEAs, but are host jurisdictions. So our
2 position tries to encompass a number of different
3 perspectives.
4 We believe that there needs to be flexibility in
5 whatever policy is developed as a way of dealing with very
6 real-world situations. We do strongly disagree with the
7 proposal in the modified PEP policy. I guess that's
8 redundant. The modified PEP that's in the packet for the
9 executive officer to approve any agreement, whatever it is,
10 that's a very important issue with us, and we feel very
11 strongly about that and support the position of the LEAs on
12 it.
13 Rather than go into a lot of detail, we have sent
14 a letter. I have been involved, as have a number of other
15 stakeholders, in very, very productive discussions with some
16 of the Board members and the advisors most of the day, and I
17 think they have been very, very productive.
18 So rather than continue now, what I would like to
19 do is reserve my time if I need to comment further. Because
20 I think the discussions have been very productive, and I
21 just want to thank all the advisors and Board members who
22 worked on it.
23 BOARD CHAIR MOULTON-PATTERSON: Thank you,
24 Ms. Hunter.
25 Denise Delmatier.

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1 MS. DELMATIER: Madam Chair, members of the Board,
2 Denise Delmatier with NorCal Waste Systems, and I too want
3 to compliment the advisors and members of the Board in
4 trying to resolve this complex and somewhat contentious
5 issue.
6 In the interest of time, and I make notice of
7 Ms. Hunter's comments regarding new development in
8 proposals, I would like to reserve comments for any
9 discussion on that matter.
10 But just very briefly, the Board, I have met with
11 all of the Board members, as the Board members are well
12 aware as well as advisors, and we have repeatedly brought to
13 the attention of the Board members a couple of very specific
14 examples, real-world examples that Ms. Hunter mentioned that
15 the modified PEP policy as proposed in the agenda item would
16 not address satisfactorily as far as resolving issues that
17 are the real-world issues, as opposed to theoretical.
18 And so we have recommended in our proposal to the
19 Board that the Board add as an additional option for both
20 interim guidance as well as any emergency regulations that
21 would be promulgated, that a stipulated agreement be added
22 to both items.
23 And the reason for that is that in the two
24 examples that I have mentioned with all of you, those are
25 basically routine maintenance items. And it would be

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1 extremely onerous, and I think quite unfair, actually, to
2 apply an enforcement action on a company for merely
3 complying with routine maintenance matters. That just would
4 be extremely onerous and quite unfair.
5 So the stipulated notice and order, the notice of
6 violation, cease and desist, all of those enforcement
7 actions are always available to an LEA when the situation
8 warrants such an action. But for routine maintenance
9 matters, a stipulated agreement would be the appropriate
10 resolution to that situation, and we strongly urge the Board
11 to incorporate that action.
12 BOARD CHAIR MOULTON-PATTERSON: Thank you. Curt
13 Fuji.
14 MR. HELGET: As many of you may know, I am not
15 Curt Fuji. Madam Chair, members of the Board, Curt had to
16 leave for San Francisco, so I am a poor substitute, but
17 Chuck Helget representing Allied Waste. But, again, I would
18 also compliment the advisors.
19 I know this is getting redundant, but as all the
20 members and advisors know, this is an extremely complex
21 process and understanding PEP and the circumstances
22 surrounding the need for flexibility.
23 So just very quickly, I urge the Board, first of
24 all, to move quickly on this and would hope the Board would
25 consider adopting emergency regs on this type of an item to

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1 add some certainty and clarification to the future. And,
2 again, endorse what Denise Delmatier just noted.
3 The stipulated agreement, I think, could be a very
4 important aspect for this, particularly for routine
5 maintenance, those types of situations.
6 And with that, if there are additional comments, I
7 hope I would get another opportunity to speak.
8 BOARD CHAIR MOULTON-PATTERSON: Thank you.
9 Justin Malan followed by Chuck White.
10 BOARD MEMBER EATON: Is there a document that they
11 keep referring to that worked with the advisors?
12 BOARD CHAIR MOULTON-PATTERSON: Not that I know
13 of.
14 MR. MALAN: Madam Chair, Board members, Justin
15 Malan with the local environmental health directors. I
16 don't believe we have congratulated you and Board Member
17 Paparian, formerly of our association, but we are thrilled
18 to see that you suffered the rigors successfully of the
19 Senate confirmation process, and we are thrilled to be able
20 to work with you.
21 BOARD CHAIR MOULTON-PATTERSON: Thank you.
22 MR. MALAN: I would like to praise the speakers
23 and thanks to the advisors and the Board members and staff
24 for working on this. It is a critically important issue for
25 the LEAs.

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1 And we did send a letter to you on June 12th. I
2 won't repeat those issues, but just to strengthen our
3 concern over a proposal earlier about having the executive
4 director of this group actually approve a stipulated notice
5 and order where a notice and order was issued by LEAs. That
6 caused some heartburn for us. We feel it was going in the
7 wrong direction. So we are very happy with the direction
8 that this is going.
9 We are very supportive of getting this policy
10 established in regulation. It is a very important policy
11 for everyone concerned, and we believe that the regulations
12 will bring the clarity and the definition that's required.
13 I would like to thank you all, and I reserve some
14 time to comment on any specific recommendations that you
15 have with your motion. Thank you.
16 BOARD CHAIR MOULTON-PATTERSON: Thank you.
17 Chuck White.
18 MR. WHITE: Thank you. Madam Chair, members of
19 the Board, Chuck White with Waste Management.
20 Like the others, I have been really impressed with
21 the ongoing discussion of all the parties on trying to reach
22 common ground. Even though we may have seemed we all
23 started from different viewpoints, it seems like there has
24 been an effort on everybody's part to understand all the
25 positions and come up with a workable position that would

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1 provide some reasonable flexibility and at the same time
2 provide some increased accountability that perhaps has been
3 missing in the past.
4 The members of the solid waste industry have a
5 letter dated June 12th. I won't really go over the details
6 of that, but I would like to reinforce that we believe that
7 one of the options that really needs to be made available to
8 the LEAs when there is an inconsistency with permit
9 conditions does come up with a stipulated type of
10 agreement.
11 I want to distinguish that from enforcement
12 actions, which the LEAs always have access to and can use to
13 return a facility to compliance. But as permits have gotten
14 more complex and more and more terms and conditions,
15 frequently just to do routine maintenance operations, as
16 Ms. Delmatier has pointed out, you need to deviate from
17 strict compliance with the terms and conditions of your
18 permit for a period of time.
19 And rather than be forced to be subject to an
20 enforcement action, we would like to be able to be subject
21 to an enforceable action in the form of a stipulated
22 agreement that would be ironclad, that would guarantee a
23 return to compliance in a specified time frame. Not that
24 that would be used in all circumstances. There may be
25 circumstances that warrant a notice and order or a cease and

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1 desist order if someone is grossly in violation.
2 But we believe that some of the quiver of arrows
3 that you provide the LEAs to return a facility to
4 compliance, that at least one of those should be an
5 enforceable agreement through an enforceable stipulated
6 agreement.
7 With respect to the time frames, you know, I think
8 industry would be really happy to have it open-ended. We
9 probably realize that's not a likelihood. We urge the Board
10 to allow as much time as you can to return to compliance,
11 but it can always be foreshortened. But in any event, allow
12 for it to be renewed, if there is a cap, 180 days, 120 days,
13 90 days, that it is a renewable cap as long as the operator
14 is making progress in returning to compliance.
15 Probably the most important aspect of what the
16 Board needs to have is accountability. LEAs need to be
17 accountable for every situation in which there is a
18 deviation of permit conditions. Whether you use an
19 enforceable agreement or notice of order, those all should
20 be reported to the Board.
21 The Board should be responsible for tracking
22 those. And if there's a problem or concern in the manner in
23 which the LEA has exercised their discretion in using any
24 one of these mechanisms, the Board ought to be able to step
25 in and take corrective action.

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1 Finally, we encourage the Board to move as rapidly
2 to put these into emergency regulation if you deem
3 appropriate. We simply ask that we be provided as a
4 stakeholder to review and comment on those emergency
5 regulations before they can become adopted. Thank you very
6 much.
7 BOARD CHAIR MOULTON-PATTERSON: Mark Aprea. And
8 while Mark is coming up, I do want to thank our staff for
9 working very, very hard on this also. They have put a lot
10 of work into this, and I don't want that to be overlooked.
11 MR. APREA: Madam Chair, members of the Board, for
12 the record, Mark Aprea representing Republic Services.
13 Thank you for the opportunity to appear before you today,
14 and all the time that the Board members and the advisors
15 have taken on this issue, not only preceding this meeting,
16 but all the way going back to November.
17 I think it is important that we go back to
18 November and review what was the perceived problem that we
19 are trying to resolve. Since November we have determined
20 the number of the PEP items that have come before the Board
21 since the early '90s. We know the general nature in terms
22 of whether there were tonnage issues.
23 We are still not clear on whether these apply to
24 disposal facilities or MRFs or transfer stations, nor are we
25 exactly clear as to the nature of the problem, that is in

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1 terms of a -- going over on tonnage, whether it is ten tons
2 or 1,000 tons.
3 With that in mind, I want to make sure that we all
4 keep the perspective on the nature of the problem. It seems
5 to be universal acceptance of the fact that the former PEP
6 policy did not provide the specificity nor the overview by
7 the Board in terms of what was going on with this issue.
8 I think everyone agrees to that, but that
9 subsequent to the action that was taken in Glendale, we
10 have, in essence, removed the PEP policy without providing a
11 -- an alternative that is clearly understood in which case
12 the LEAs and operators of others know how to move forward.
13 So I would certainly request that this Board, as
14 you take action today, that you be very, very cognizant and
15 put yourself in the shoes of the LEA and make sure that they
16 understand clearly that which you are adopting here today,
17 and that they understand where you are going in terms of a
18 go-forward policy and where you are going in terms of
19 emergency regulations.
20 I think Ms. Delmatier accurately in our
21 conversations in the past weeks described some of the
22 unintended consequences of the action in Glendale, and of
23 some of the unintended consequences that we might not
24 foresee as we adopt the policy and that we maintain some
25 level of flexibility and some ability for the LEA and the

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1 operator to come forward while at the same time ensuring
2 that the Board understands on a realtime basis what's going
3 on and has an opportunity to review that.
4 So, again, I would recommend that you give clear
5 action -- clear direction to the LEAs as to what policy is
6 not -- what the policy is and how you intend to move forward
7 with emergency regulations.
8 Again, when there is something formal before the
9 Board, we would like to reserve the right to comment at that
10 time. Thank you.
11 BOARD CHAIR MOULTON-PATTERSON: That concludes our
12 speakers. Any Board comments?
13 BOARD MEMBER JONES: I, like the stakeholders,
14 have to congratulate all of the different proposals that
15 have been floating around for the last couple of weeks, but
16 it looks like a compromise may have actually been effected
17 here.
18 I do want to say a couple things for the record.
19 I think there are -- Mary, 16 or 14?
20 MS. MADISON-JOHNSON: Currently 11.
21 BOARD MEMBER JONES: And we got rid of two today?
22 MS. MADISON-JOHNSON: Actually, those two that you
23 acted on, Imperial, they were not PEP policy, but ERS was
24 one, and that's still on there.
25 BOARD MEMBER JONES: We have 11 facilities that we

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1 probably need to look at, some of them I know are for
2 closure/post-closure funding. They are local jurisdictions
3 that may not have the money. Is that pretty accurate? So I
4 think we need a listing of those, and we have got to be able
5 to determine how to help bring those people in to
6 compliance.
7 Clearly they have opted not to fund in some
8 cases. Maybe they just didn't have the money, whatever, and
9 use this policy to continue to exist, and then one other
10 thing, I don't think PEP policy should ever be used to gain
11 a competitive advantage, and I don't think it does, but
12 that's important. This is a policy that helps bridge a
13 gap.
14 I think that we heard today's Western Regional had
15 to spend ten months to do a two-and-a-half-hour -- or change
16 of two and a half hours in operating. It clearly takes time
17 to get revisions through. And when you are bumping up
18 against tonnages or you're bumping up against car counts,
19 there are some real issues that don't disappear overnight.
20 It is proposed that we are going to give you a
21 version here. I want to make a motion of what we need to do
22 here. The recommendation is that we direct staff to draft
23 emergency regulations to come back to the Board for
24 consideration in August to take -- that takes the same
25 process used for declared emergencies in LEA advisory No. 41

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1 and applies them to non-declared emergencies.
2 Non-declared emergencies can be determined by the
3 LEA, but the process as outlined in advisory 41 will be
4 followed whereby the LEA may use a stipulated agreement, a
5 stipulated notice and order or a notice and order based on
6 the existence of an unforeseeable circumstance as determined
7 by the LEA.
8 This direction should be the basis for the draft
9 emergency regs that staff prepare as well as to the LEAs for
10 the interim period until the emergency regs are in effect.
11 The initial orders may not exceed 90 days, but they may be
12 extended. And in discussions, they should -- they need to
13 be extended. So that is my motion.
14 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina?
15 BOARD MEMBER MEDINA: I had a friendly amendment
16 to Mr. Jones' motion.
17 BOARD MEMBER JONES: I know what it is. Go
18 ahead. I'm sorry.
19 BOARD MEMBER MEDINA: And that's specifically for
20 the purpose of policy labor disputes do not constitute
21 temporary emergencies.
22 BOARD MEMBER JONES: I'll accept that. That was
23 in my original. It wasn't in this. Which at the end of
24 that, that labor disputes do not include those unforeseeable
25 emergencies.

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1 BOARD CHAIR MOULTON-PATTERSON: You second that?
2 BOARD MEMBER MEDINA: Yes.
3 BOARD CHAIR MOULTON-PATTERSON: We have a motion.
4 BOARD MEMBER EATON: I know we are going to do
5 emergency regs, but what happens -- what do we tell the LEA
6 just for clarifications in the interim? That was one of the
7 things that everyone was trying to find out.
8 BOARD MEMBER JONES: This policy with these
9 recommendations to be used in the interim from today through
10 the approval of the regs.
11 BOARD CHAIR MOULTON-PATTERSON: Did you want to
12 speak, Mr. Paparian?
13 BOARD MEMBER PAPARIAN: Yes. In terms of
14 development of these regulations?
15 BOARD MEMBER JONES: Can I answer that for you,
16 Mr. Paparian?
17 BOARD MEMBER PAPARIAN: Please.
18 BOARD MEMBER JONES: I also want to direct staff
19 as part of this motion to work with the Board offices of the
20 Chairman Linda Moulton-Patterson, Board Member Paparian,
21 Board Member Jones as well as in consultation with the EAC
22 and the CCDH policy commitment in development of the
23 emergency regulations as well as hold discussions and
24 provide recommendations as to how to deal with the existing,
25 says 14, anywhere between 14 and 11 facilities operating

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1 currently under the PEP. I apologize. I had it.
2 BOARD CHAIR MOULTON-PATTERSON: One of our longer
3 motions. Okay. Thank you.
4 MS. TOBIAS: Who did you designate to work on
5 that?
6 BOARD MEMBER JONES: Staff, Chairman Linda
7 Moulton-Patterson, Board Member Paparian, Board Member
8 Jones, CCDH and EAC.
9 MS. TOBIAS: Would you mind adding that those will
10 be noticed meetings?
11 BOARD MEMBER JONES: Sure, they'll be noticed.
12 BOARD MEMBER PAPARIAN: I am fine with the
13 motion. I want to just bring up a couple of the issues that
14 I am concerned about that I will bring up in the regulation
15 process.
16 One is we heard this morning an application that
17 included notice and orders that were issued again and again
18 and again and again. And one of the things I want to be
19 sure of is that we have some criteria so that we don't have
20 renewing for every notice and orders in the future.
21 Another question that I had -- my understanding is
22 the notice and orders come to the Board. I would like to be
23 sure that we get -- the Board offices get notified of these
24 notice and orders when they come in and then when they are
25 completed and finalized when they are no longer in effect.

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1 MR. DeBIE: Staff typically get draft rules and
2 orders submitted by the LEAs for review and comment, and
3 then the LEA considers our comments and then issues the
4 final order. So are you looking to see the draft order or
5 the final order?
6 BOARD MEMBER PAPARIAN: Draft.
7 BOARD MEMBER EATON: Why only a draft?
8 BOARD MEMBER PAPARIAN: And final, why not.
9 BOARD MEMBER EATON: I am just saying. The point
10 this morning was that they can ignore our comments, the
11 LEA. So if we comment that no more extensions of time up to
12 July 30th, they can disregard that. That's up to you. You
13 might as well not get the draft, disregard it. I am
14 interested in getting notice and orders as well. I haven't
15 seen any since I have been here. So I would be interested
16 in the final.
17 BOARD MEMBER PAPARIAN: I think both. What we
18 have been told is that there are not that many being issued,
19 right?
20 MR. DeBIE: That's a follow-up question. Are you
21 looking for just notice and orders relative to terms and
22 conditions of this facility permit, and that would allow
23 them to operate outside that or any notice and orders? For
24 example, a notice and order issued for a grading violation?
25 BOARD MEMBER PAPARIAN: No, what I am looking for

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is things that allow them to operate outside of the permit.

BOARD CHAIR MOULTON-PATTERSON: Okay. Is that it, Mr. Paparian?

BOARD MEMBER PAPARIAN: Yes, thank you.

BOARD CHAIR MOULTON-PATTERSON: We have a motion by Mr. Jones, seconded by Mr. Medina with quite a few changes that are read into the record.

Will you please call the roll. We have a resolution number on this?

BOARD MEMBER JONES: Of course we do.

BOARD CHAIR MOULTON-PATTERSON: 2001-141 with the changes.

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: Moulton-Patterson?

BOARD CHAIR MOULTON-PATTERSON: Aye.

Okay. No. 19.

MS. NAUMAN: Consideration of approval of facility compliance loans.

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1 Bridget Brown will make the presentation.
2 MS. BROWN: I am Bridget Brown with the Facility
3 Compliance Loan Program. At its December 12th, 2000, and
4 January 23rd, 2001, meetings, the Board approved funding for
5 seven facility compliance loan program loans. One of the
6 loans approved was for Glenn County in the amount of
7 $500,000.
8 Although Glenn County executed a loan agreement
9 with the Board, the County notified program staff on May
10 21st of this year of their decision not to pursue the loan
11 any further. This left a $500,000 amount available for
12 other loans.
13 Of the seven loans approved by the Board, two
14 applicants, Mono County and Si-Nor, Incorporated, received
15 less than the amount of funds that they requested. Mono
16 County received $33,000 and Si-Nor, Incorporated, received
17 $353,400.73.
18 Staff recommends that the Board consider
19 additional funding for the Mono County and Si-Nor,
20 Incorporated, projects using the $500,000 that has become
21 available with the withdrawal of Glenn County from the
22 program.
23 We do have representatives from Mono County and
24 Si-Nor, Incorporated, here should you have any questions.
25 BOARD CHAIR MOULTON-PATTERSON: Thank you very

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much.

We have Evan Nikirk.

MR. NIKIRK: Thank you, Madam Chair and Board members. I just wanted to thank the Board for its consideration of the Bridgeport project on behalf of Mono County. And regardless of the outcome, I'd like to encourage the Board to pursue funding of civil programs in the future. Thank you.

BOARD CHAIR MOULTON-PATTERSON: Thank you for coming.

Silas Ugorji.

MR. UGORJI: Good afternoon, Madam Chair and Board members. My name is Silas Ugorji. I am president of Si-Nor, Inc. I have been here for selected Si-Nor in the last loan program, and I am here to support whatever decision the Board made. We have additional increase in our project, and we are requesting the Board to consider us for that. Thank you.

BOARD CHAIR MOULTON-PATTERSON: Okay. Thank you for being here.

Any comments, questions, Board members?

BOARD MEMBER JONES: Madam Chair, I think Mono County, last time when they received $33,000, was because of the fact that they were trying to be proactive and didn't have a whole list of violations.

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1 I think when we are looking at bringing facilities
2 in compliance effectively having a positive impact on the
3 environment, I would like to see the majority of this money
4 go to the County of Mono since Si-Nor has already received
5 353,000. I would like to see the 467,000 go to Mono County
6 and the remainder to Si-Nor.
7 BOARD CHAIR MOULTON-PATTERSON: Do you want to put
8 that in a motion, Mr. Jones? I don't see any other
9 comments.
10 BOARD MEMBER JONES: Madam Chair, I would like to,
11 I guess -- is it Resolution 2001-217. Just as it is, to
12 award Bridgeport Landfill $467,000 and amend Si-Nor's to the
13 remainder 33,000.
14 BOARD MEMBER MEDINA: Second.
15 BOARD CHAIR MOULTON-PATTERSON: We have a motion
16 by Mr. Jones, second by Mr. Medina to approve Resolution
17 2001-217.
18 Please call the roll.
19 SECRETARY VILLA: Eaton?
20 BOARD MEMBER EATON: Aye.
21 SECRETARY VILLA: Jones?
22 BOARD MEMBER JONES: Aye.
23 SECRETARY VILLA: Medina?
24 BOARD MEMBER MEDINA: Aye.
25 SECRETARY VILLA: Paparian?

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1 BOARD MEMBER PAPARIAN: Aye.
2 SECRETARY VILLA: Moulton-Patterson?
3 BOARD CHAIR MOULTON-PATTERSON: Aye.
4 Okay. Thank you very much. Special waste, item
5 20, was pulled off consent, and so we'll start with that.
6 Ms. Gildart, are you going to start it off?
7 MS. GILDART: Yes, I am. I will be presenting 20
8 and 21. And item 20 is consideration of approval of scope
9 of work for the contract to remediate the Westley Tire Fire
10 Site.
11 It will be presented by Albert Johnson, geologist
12 with the Waste Category Remediation Program.
13 MR. JOHNSON: Good afternoon, Madam Chair and
14 members. My name is Albert Johnson. I work in Special
15 Waste Division and the project manager for the Westley Tire
16 Fire Site.
17 Today I would like to present agenda item 20,
18 consideration of approval of the scope of work for the
19 contract to remediate the Westley Tire Fire Site. But
20 before we begin, I would like to make a correction to
21 Resolution 2001-166. In the last -- whereas the number $17
22 million is in the item, it should be $20 million. That's
23 the amount that is in the five-year plan.
24 The scope of work is written generally to allow
25 maximum flexibility in remediating the remainder of the

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1 site. It addresses items such as the development of an
2 abatement plan, removal of the remaining debris piles, site
3 grading, worker health and safety, confirmation of soil
4 sampling and other related items that may be required.
5 At this site the following tasks need to be
6 completed yet: Removal of debris piles two and seven and
7 the contaminated soil that underlie them. Removal of debris
8 piles one, four and six. Evaluation of groundwater
9 contaminations and evaluation of the extent of potential
10 threat of buried tires.
11 The contract will be for an amount of $10 million,
12 as allocated in the five-year plan. Our schedule for
13 approval of the contract is to get the scope of work
14 approved today at the Board meeting, that in July and August
15 issue the RFQ and select a contractor, in September return
16 to the Board to get the contractor approved.
17 Once the contractor's approved, we will begin work
18 immediately on the debris piles two and seven and the
19 underlying contaminated soil, because they pose the greatest
20 environmental threat, and then we will go about finishing up
21 the additional tasks that are required.
22 Work should continue through the summer of 2002.
23 Staff recommends approval of Resolution No. 2001-166. That
24 ends my presentation. I would be happy to answer any
25 questions.

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1 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton?
2 BOARD MEMBER EATON: Welcome back, Mr. Johnson,
3 from the land of the moon. I just have a couple of
4 questions there about the scope of work. What seems to be
5 troubling me about the scope of work are two things. I
6 don't generally have any problem.
7 First and foremost, we are asking for 10 million,
8 and we don't have yet a budget approved. So where is the
9 settlement money? Is that 10 million out of our fee or is
10 that 10 million going to be a combination of money so we can
11 stretch it plus the settlement money?
12 MS. GILDART: At this time the $10 million is what
13 was set aside and approved within the five-year plan.
14 BOARD MEMBER EATON: I know, but we don't have a
15 budget yet, so the question really is: Is the settlement
16 complete yet, Mr. Hildreth?
17 MR. HILDRETH: The settlement is not yet
18 complete. I don't want to publicly --
19 BOARD MEMBER EATON: I understand that. I am just
20 trying to get a sense of -- what I am trying to do is get
21 this funded. If you have settlement money coming before
22 budget money, then the $10 million should be part of the
23 funding mechanism that should come out of settlement money.
24 I don't want to see the settlement money go away. It has a
25 way of getting lost. I think that should be what needs to

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1 come as part of the 10 million.
2 Second and foremost, just under scope of work,
3 could you explain to me why you are going to repair or
4 replace any portion of the fire suppression system to ensure
5 it's functioning by the local fire department? My
6 understanding is we are closing down this site. Why are we
7 trying to get it functioning again?
8 MR. JOHNSON: We are not getting it functioning.
9 What happened with the work that we have completed to date,
10 as long as we are working out there, we have potential for
11 tires to burn. We need a functioning fire system. The pipe
12 has been broken a few times doing remediation work, so we
13 have repaired it.
14 BOARD MEMBER EATON: So why don't we just say that
15 in the scope of work. What I am worried about here is I am
16 approving an individual violator's piece of property,
17 Mr. Filbin, or one of the owners or a lessee, i.e., or
18 successor to one of the energy companies out there that
19 wants to do it, and we are going to spend Board money to put
20 a fire suppression system in for them.
21 I don't have a problem getting it repaired and
22 protecting our interests so the tires don't go up. That's
23 not what the scope of work says.
24 No. 3, that needs to be amended.
25 MR. JOHNSON: I agree. That would be a good

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1 amendment. It is just to keep the fire suppression.
2 BOARD MEMBER EATON: I don't want to improve
3 Filbin's property and put a whole expensive fire system in
4 there and then have the contractor say, "Well, you told us
5 in your scope of work that's what you wanted." I don't
6 think that's what you intended.
7 MR. JOHNSON: That's not our intent.
8 BOARD MEMBER EATON: Because it says for local
9 fire district. You should know, we had problems with that
10 local fire district.
11 MS. GILDART: If you could propose some language
12 along the lines for protection of CIWMB contractor during
13 the remediation project, words along those lines, would that
14 suit?
15 MS. TOBIAS: Or would you want to put something in
16 that says that it is temporary or that any costs would be
17 recovered?
18 BOARD MEMBER EATON: As necessary for the
19 protection of the Board's interests, something like that.
20 Just so we have it in the scope of work so we are not
21 building a whole new system out there. I think it would be
22 a waste of our money.
23 And the other thing is that the contractor isn't
24 allowed to subcontract out without approval of the Board.
25 MS. GILDART: That's often part of the actual

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1 agreement language as opposed to the scope of work.
2 BOARD MEMBER EATON: I want to make sure that he
3 or she or it, the entity, understands that the
4 subcontracting or any aspects of it needs to be brought back
5 to the Board.
6 I don't want them entering into subcontracts. You
7 understand what I am talking about in terms of budgetary
8 constraints, that I would like to be able to spend the money
9 as we have or will at some point, I think, perhaps maybe
10 have to represent to a court of law what we are going to do
11 with that money and that this would be an ideal situation
12 that then frees up, if we don't get our entirety in the
13 future, to at least have that money to be used at future
14 sites for cleanup.
15 And that also means our obligation in the
16 five-year plan to spend the minimum as required along with
17 the changes to the fire suppression system.
18 MS. GILDART: Do you have proposed language, then,
19 on the funding issue? I would want to make sure we don't
20 preclude our ability to use any of those settlement moneys
21 for some of the payments to other State agencies, if I
22 understand correctly. There's some --
23 BOARD MEMBER EATON: That's exactly my point. I
24 know you want to use that money to go pay someone else.
25 That money is going to go to clean up that site.

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1 MR. HILDRETH: Strictly documents.
2 BOARD MEMBER EATON: That's what the document
3 says. I am not interested. I am interested in this project
4 using that money to clean up this scope of work.
5 BOARD CHAIR MOULTON-PATTERSON: Okay. We do have
6 a speaker. Shall we go ahead or did you want to continue?
7 Okay. Mr. George Larson.
8 MR. LARSON: Thank you, Madam Chair, members. I
9 just have one suggested change to the scope of work, which I
10 think will result in efficiencies and money savings and
11 really is just a minor change that would include under
12 Section A of the scope of work to allow specifically for
13 on-site remediation, and there are some technologies that
14 are out there available today.
15 They are not emerging or R and D. They are
16 demonstrated technologies that can lessen the disposal cost,
17 particularly for the removal of hazardous and contaminated
18 soil. If you would consider, I think that would be for the
19 benefit of your expenditure of the moneys that you have, to
20 include on-site remediation in Section A. Thank you.
21 BOARD CHAIR MOULTON-PATTERSON: Thank you.
22 BOARD MEMBER JONES: Mr. Larson, in Section A you
23 want to add what?
24 MR. LARSON: In Section A specifically under
25 subsection 3, it says removal of debris piles resulting from

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1 fire, including partially burned tires and contaminated
2 soils, to include removal and/or on-site remediation which
3 will be specifically directed to the contaminated soils.
4 And in subsection 4 it says identification,
5 removal, recycling where possible and disposal of hazardous
6 waste. It would read disposal or on-site remediation of
7 hazardous waste encountered during the cleanup. It does not
8 mean that on-site remediation has to be utilized, but it
9 provides that additional option if it is more cost-effective
10 than removal.
11 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian?
12 BOARD MEMBER PAPARIAN: Thank you. Does staff
13 have the changes? You are comfortable with those changes
14 that have been discussed?
15 MS. GILDART: Yes.
16 BOARD MEMBER PAPARIAN: With those changes, I
17 would like to move Resolution 2001-166 with the changes just
18 discussed, including the change of the $17 million to $20
19 million within the resolution. At the bottom of the
20 resolution page staff pointed out where it says $17 million,
21 it should read $20 million.
22 BOARD CHAIR MOULTON-PATTERSON: Okay. Do we have
23 a second?
24 BOARD MEMBER EATON: It should probably be what is
25 approved by the Legislature.

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1 MS. GILDART: We were citing the action the Board
2 did take in March.
3 BOARD MEMBER EATON: Right, but don't forget the
4 way the legislation is written -- I know we are quibbling
5 over words, but we can appropriate and we can adopt $50
6 million. But if the Legislature says we are only going to
7 approve $20 million for your long-term remediation, it
8 doesn't matter what this resolution says. They control it.
9 Under the statute they have final authority to approve the
10 budget, and not the big budget, but the five-year budget.
11 BOARD MEMBER PAPARIAN: I understand what you are
12 saying, Mr. Eaton, and what the five-year plan does is
13 recommend. It doesn't budget.
14 MS. FISH: Members, we could remove that 17
15 million commitment. It doesn't need to be in the
16 resolution. The other thing we need to remember is that
17 this will have to come back to the Board again for the award
18 identifying the funding source. This is only the scope of
19 work.
20 So when that award comes back, we will know what
21 settlement moneys have been received and exactly the
22 appropriation authority that we have received in the budget
23 and can then manage the money accordingly based on your
24 direction.
25 MS. GILDART: If I can make one addition, the tire

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1 program does not go through the contract process. Some of
2 the Board's other contracts do. So we have been in the
3 habit in past actions of citing how the moneys were
4 allocated by the Board for this particular project in lieu
5 of that contract concept number and citation. We can remove
6 it as Karin pointed out. It has merely been our habit in
7 the past to identify previous Board action through this
8 mechanism.
9 BOARD CHAIR MOULTON-PATTERSON: So you want to
10 remove it?
11 BOARD MEMBER PAPARIAN: Let's just move it along
12 by removing that "whereas" clause, the rest of the
13 resolution as is, and I am moving Resolution 2001-166.
14 BOARD MEMBER MEDINA: Second.
15 BOARD MEMBER EATON: With the changes?
16 BOARD MEMBER PAPARIAN: With the changes.
17 BOARD CHAIR MOULTON-PATTERSON: We have a motion
18 by Mr. Paparian, second by Mr. Medina to approve Resolution
19 2001-166 with the changes noted on the record.
20 Call the roll.
21 SECRETARY VILLA: Eaton?
22 BOARD MEMBER EATON: Aye.
23 SECRETARY VILLA: Jones?
24 BOARD MEMBER JONES: Aye.
25 SECRETARY VILLA: Medina?

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1 BOARD MEMBER MEDINA: Aye.
2 SECRETARY VILLA: Paparian?
3 BOARD MEMBER PAPARIAN: Aye.
4 SECRETARY VILLA: Moulton-Patterson?
5 BOARD CHAIR MOULTON-PATTERSON: Aye.
6 Okay. 21.
7 MS. GILDART: Item 21, consideration of approval
8 of sites for remediation under the waste tire stabilization
9 and abatement program will be represented by Bob Fuji,
10 manager of the Waste Tire Remediation Program.
11 MR. FUJI: Good afternoon, Bob Fuji, Special Waste
12 Division. Agenda item 21 is consideration of approval of
13 sites for remediation under the waste tire stabilization and
14 abatement program.
15 The PRC Section 42826 authorizes the Board to
16 extend moneys from the California tire recycling management
17 fund to perform any cleanup of remedial work required to get
18 rid of substantial pollution, nuisance at waste tire sites
19 where responsible parties have failed to take appropriate
20 action as with the prior Board.
21 In agenda item 21 staff is presenting four illegal
22 waste tires. The first site is the South Nash Hill Waste
23 Tire Site located in San Bernardino County at Elmer Avenue.
24 It is estimated there are about 10,000 PTE stockpile on
25 private property and there are no perimeter fencing or

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1 source of water for fire suppression in the event a fire
2 would occur. The immediate area appears to be used by
3 squatters and off-road vehicles and the property owner is
4 deceased and the property is currently in foreclosure.
5 The second site is Atwater Iron and Metal Waste
6 Tire Site located in the industrial area in Merced County.
7 Originally there were 7200 piles there illegally stockpiled
8 there. And after an administrative order by this Board, the
9 property owner did remove the tires, and there are about
10 3,000 PTE remaining there.
11 The site is five acres and is visible from Highway
12 99. There is a perimeter fence, but there is no water to
13 provide fire suppression at the site, and the business is
14 currently operating.
15 The Hamner Waste Tire Site is site No. 3 located
16 in a remote and rural desert county in Pear Blossom. There
17 is PTE stockpiled in an L-shape configuration on this
18 property. There is no perimeter fencing on the site or,
19 again, any source of water for fire suppression. Property
20 owner is deceased and left the wife the sole property owner.
21 Site No. 4, the James Waste Tire Site located in a
22 remote and rural desert area in Los Angeles County, also
23 near Pear Blossom. We estimate there are about 7,000 PTE
24 stockpiled at the site in a fenced structure surrounding
25 about 15 to 20 tents, trailers and structures occupied by

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1 squatters on the property. The property owners are absent
2 and living in Oklahoma at this time.
3 Staff has invested in each of these four sites,
4 and we have determined that abatement is needed to protect
5 the public health and safety and the environment. These
6 waste tires pose a threat to nearby residences and
7 businesses due to the potential for tire fire and a
8 potential hazardous problems.
9 Staff is proposing to abate these using our
10 stabilization and abatement contractor. CEQA compliance
11 will be achieved by filing a notice of exemption utilizing
12 exemption after the Board takes action on this item.
13 Staff will consider cost recovery pursuant to
14 42827 on each of these sites and recommend adoption of
15 Resolution 2001-167 approving these four sites under the
16 stabilization. That concludes my presentation. Any
17 questions?
18 BOARD CHAIR MOULTON-PATTERSON: Thank you.
19 BOARD MEMBER MEDINA: Madam Chair, I would like to
20 move Resolution 2001-167, approval of four sites for funding
21 for remediation under the waste tire stabilization and
22 abatement programs specifically the South Nash Hill Waste
23 Tire Site, the Atwater Iron and Metal Waste Site, the Hamner
24 and the James Waste Tire Site.
25 BOARD MEMBER EATON: Second.

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1 BOARD CHAIR MOULTON-PATTERSON: We have a motion
2 by Mr. Medina, second by Eaton to approve 2001-167.
3 Call the roll.
4 SECRETARY VILLA: Eaton?
5 BOARD MEMBER EATON: Aye.
6 SECRETARY VILLA: Jones? Medina?
7 BOARD MEMBER MEDINA: Aye.
8 SECRETARY VILLA: Paparian?
9 BOARD MEMBER PAPARIAN: Aye.
10 SECRETARY VILLA: Moulton-Patterson?
11 BOARD CHAIR MOULTON-PATTERSON: Aye.
12 Okay. Moving on to item No. 24. Thank you.
13 BOARD MEMBER EATON: Okay. Ask legal counsel a
14 question just in regard to the last item. It says here that
15 we can convert into penalties awarded and lien against the
16 property. Do we have any cap on what we can recover?
17 For instance, if it costs us $50,000 to remediate,
18 do we have a cap that says we can only recover 20,000, so we
19 are always going to lose 30,000 no matter what remediation
20 might cost us? You know, in terms of what our authority to
21 get a penalty. For instance, like the other one was capped
22 at 15,000 a year, right? So no matter how many times you do
23 it, you can only recover 15. And if it cost us 80,000 to
24 remediate, we would never recover the other 60,000.
25 MS. TOBIAS: If I understand what you are saying,

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1 that's a difference between penalties and cost recovery. In
2 cost recovery, we can recover whatever we expended. You
3 can't go in and say we would like to recover 300,000 if we
4 spent 250, but we can recover our costs 100 percent. Okay.
5 BOARD CHAIR MOULTON-PATTERSON: Twenty-four.
6 MS. WILLD-WAGNER: Shirley Willd-Wagner, the other
7 half of the Special Waste Division. Item 24 is
8 consideration of approval of the California Conservation
9 Corps as the contractor for the used oil recycling education
10 and promotion contract.
11 This concept for this project was approved in
12 November by the Board at the amount of $400,000. This would
13 be the fourth interagency agreement that the Board has
14 entered into with the California Conservation Corps.
15 The focus of these interagency agreements are
16 twofold, primarily to provide outreach in the classroom
17 education throughout the state, and specifically in targeted
18 locations, and also to provide grant support and education
19 outreach and evaluation services for the used oil grant.
20 We recommend the adoption of Resolution 2001-211
21 to approve the California Conservation Corps as contractor
22 for the used oil recycling education and promotion
23 contract.
24 Staff member Dave Golden is here from the
25 California Conservation Corps if you have any questions or

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would like to hear from him.

BOARD CHAIR MOULTON-PATTERSON: Thank you. I am looking for a motion.

BOARD MEMBER MEDINA: Madam Chair, I would like to move Resolution 2001-211, approval of the California Conservation Corps as contractor for the used oil recycling education and promotion, contractor used oil program contract concept No. 0-1, contract No. C0073.

BOARD MEMBER PAPARIAN: Second.

BOARD CHAIR MOULTON-PATTERSON: Motion by Mr. Medina, seconded by Mr. Paparian to approve Resolution 2001-211.

Please call the roll.

SECRETARY VILLA: Eaton?

BOARD MEMBER EATON: Aye.

SECRETARY VILLA: Jones? Medina?

BOARD MEMBER MEDINA: Aye.

SECRETARY VILLA: Paparian?

BOARD MEMBER PAPARIAN: Aye.

SECRETARY VILLA: Moulton-Patterson?

BOARD CHAIR MOULTON-PATTERSON: Aye.

MS. WILLD-WAGNER: Item 25 is consideration of approval of the grant awards for the household hazardous waste grant program, fiscal year 2000/2001.

At the December 2000 meeting the Board approved

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1 the scoring criteria and evaluation process for these
2 grants. Staff has applied that criteria in scoring the 39
3 applications that were received for totaling over 6.5
4 million in requests.
5 There's $3 million available, therefore, there is
6 not enough funding to award all the passing applications.
7 And the process that the Board approved calls for if there
8 is insufficient funding, that the applications be awarded in
9 rank order, and the highest ranked proposals would have
10 funding priority.
11 Sixteen programs have precipitating applications,
12 have been recommended for planning at the $3 million level.
13 One project will only receive partial funding, to make the
14 line at $3 million. And staff recommends approval of
15 resolution No. 2001-170 to award the household hazardous
16 waste grant.
17 BOARD CHAIR MOULTON-PATTERSON: Thank you.
18 We do have a speaker, Mark Davis.
19 MR. DAVIS: Good evening. Lassen Regional Solid
20 Waste Management Authority. I represent the City of
21 Susanville and the County of Lassen. We are a relatively
22 small community. We have 35,000 in our population.
23 For a number of years we have been working with
24 the Environmental Services Joint Powers Authority, ESJPA.
25 They have been providing -- I guess the long and the short

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of it is they have been providing household hazardous waste events for our community.

In the last two years the JPA has formed up and started to run, and in the last six months we have decided it was time for us to try to get a larger grant so that we could further our solid waste activities. So with this episode, we decided to not apply with the JPA, the ESJPA, because they were receiving a significantly reduced amount because they have so many member counties, $300,000 divided by 12 counties or so is much less than -- much less than what our potential could be.

So we decided not to apply with them, and we decided to go with the grant for the full amount for our county ourselves being a joint powers authority.

We did that. Also, at the same time filled out the other grant for household hazardous waste facilities. Being in the situation that we were in, this caught us with both sides of a double-edged sword. We didn't make the grant because our first time for applying for a grant. We couldn't apply with an ESJPA because they would have potentially no money for us or earned money for us through the grant, and we could have potentially done the same with the grant moneys.

So we didn't apply with them. And then because of the timing of the permanent household hazardous waste

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1 facility grant money, we did not have time or staff to apply
2 for those. So we were -- at this time we have no ability to
3 have a household hazardous waste event up in that area, and
4 I would just like to express that that's a shock to our
5 local community. They are very dependent on our free
6 programs.
7 And I would like to offer to the Board any
8 information they may wish, but I would like to recommend
9 that they have a specific revision with this Board order to
10 allow Lassen Regional Solid Waste some money to at least
11 perpetuate our household hazardous waste mobile collection
12 event.
13 BOARD CHAIR MOULTON-PATTERSON: Thank you,
14 Mr. Davis. Any comments from staff?
15 MS. WILLD-WAGNER: Lassen did receive a passing
16 score, but there was not enough moneys to funds all the way
17 down to that application.
18 BOARD CHAIR MOULTON-PATTERSON: Thank you.
19 BOARD MEMBER EATON: How much were we short for
20 all the passings?
21 MS. WILLD-WAGNER: $941,000, certainly underscores
22 the strong need for this program. And staff will work with
23 any of the applicants, of course, who did not receive
24 funding this year to work on getting their application a
25 little bit stronger for next year.

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1 BOARD CHAIR MOULTON-PATTERSON: That is sad. I
2 wish we could do it for all of them.
3 BOARD MEMBER PAPARIAN: Quick question. $3
4 million, is that set in legislation, in the budget act?
5 Where does the $3 million get set?
6 MS. WILLD-WAGNER: The $3 million is statute. It
7 does state that up to $3 million in grant may be awarded by
8 the Board, and it is out of the Integrated Waste Management
9 Board account.
10 BOARD MEMBER PAPARIAN: So the cap is $3 million?
11 BOARD MEMBER EATON: Mr. Paparian, what you simply
12 have to do when you seek a legislative change is say up to 5
13 million, then we as a Board could determine discretionary
14 whether that was an area of priority, one year, two years,
15 three. Then we would be able to afford more than that.
16 Let's say that was a hot thing. Just because you
17 have that doesn't mean that you have to award up to 5
18 million except -- up to 3 million in this instance -- we are
19 always oversubscribed.
20 So raising the cap and seeking a legislative
21 lifting of the cap in getting us additional authority only
22 commits us that we would have the authority and the
23 discretion, not only that we are mandated to spend that
24 amount.
25 But if we had that we could, like, maybe include

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1 some of these, or staff would have greater flexibility in
2 determining further on down the road. That would be one
3 alternative of the program. They have had other programs
4 where they have had an interest such as this.
5 BOARD MEMBER PAPARIAN: I think that's something
6 we should ponder given the tremendous need for this type of
7 service out there.
8 MS. FISH: We did have budget act language last
9 year to go up to 6 million, and I believe we did 4.5 million
10 based on the cash that we had available in the reserves. So
11 we could seek to possibly get that similar language, maybe
12 not for this year, or this coming year, but for the
13 following one.
14 BOARD MEMBER EATON: All the members really love
15 the household hazardous waste because everyone has it in
16 their garage.
17 MS. FISH: Michael, could you help facilitate that
18 possibility?
19 MR. MILLER: Michael Miller with the Legislative
20 Affairs Office. We can develop that language, and I guess
21 suggest it to the office and see what we can do if the Board
22 so directs me.
23 BOARD CHAIR MOULTON-PATTERSON: Yeah, we'd like
24 that. Thank you.
25 MR. MILLER: Six million or five? You raised a

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1 couple of different numbers. What would you like it to be?
2 BOARD MEMBER EATON: Five.
3 BOARD CHAIR MOULTON-PATTERSON: Five.
4 MS. FISH: And it would be important to say it is
5 an up-to amount based on Board direction and the reserves in
6 the fund.
7 MR. MILLER: Okay. Up to 5 million.
8 BOARD MEMBER MEDINA: Madam Chair, yes, I would
9 also like to include the next time that the household
10 hazardous waste grant program comes before us to include
11 environmental justice considerations in establishing the
12 fundings criteria and also evaluating the Board grant
13 program.
14 BOARD CHAIR MOULTON-PATTERSON: Okay. Well, feels
15 like they turned back on the air. Thank you.
16 MS. TOBIAS: Can I just respond to that last
17 point. What did you ask, Mr. Medina?
18 BOARD MEMBER MEDINA: The next time this comes
19 before us.
20 MS. TOBIAS: Okay.
21 MS. WILLD-WAGNER: There will be another award.
22 The criteria and the application package has already been
23 received and distributed. It has been received for the next
24 fiscal year. Those awards will be coming to you in August,
25 and those were all after the direction as far as the

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environmental justice, but we are working with administration to put in environmental justice into the criteria. The next time we will actually come to the Board with a criteria and scoring process will be in December.

BOARD CHAIR MOULTON-PATTERSON: We need a motion.

BOARD MEMBER MEDINA: I would like to move Resolution 2001-170, approval of the grant awards for the household hazardous waste program for fiscal year 2001.

BOARD MEMBER PAPARIAN: Second.

BOARD CHAIR MOULTON-PATTERSON: Motion by Mr. Medina, seconded by Mr. Paparian to approve Resolution 2001-170.

Please call the roll.

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: Moulton-Patterson?

BOARD CHAIR MOULTON-PATTERSON: Aye.

This brings us to our last item of the night, No. 27.

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1 MS. WILLD-WAGNER: Item 27 is the consideration of
2 approval of a contractor for the 2001 used oil recycling
3 forum contract. This will be a contract recommending that
4 the California State University, Sacramento, conference
5 services be awarded the contract.
6 The concept was approved also in the November
7 item, used oil allocation fund. Contract concept for up to
8 $100,000 to coordinate the used oil recycling forum. This
9 forum brings together local governments and nonprofit
10 organizations, businesses and vendors involved with used oil
11 collection and recycling.
12 CSUS concept services has previously coordinated
13 meetings and conferences for other Board programs, and staff
14 feels their experience with State agency programs and their
15 ongoing relationship with the Board and Special Waste
16 Division will help bring efficiency to planning and
17 execution of the event, therefore, staff recommends approval
18 of Resolution 2001-172, for the approval of CSUS as the
19 contractor for the used oil recycling forum contract.
20 BOARD MEMBER MEDINA: I would like to move
21 Resolution 2001-172, approval of contractor for the 2001
22 used oil recycling forum contract fiscal year 2000/2001,
23 concept 0-5, contract No. C0078.
24 BOARD CHAIR MOULTON-PATTERSON: Thank you.
25 Mr. Eaton has a question.

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1 BOARD MEMBER EATON: Yeah, it really applies --
2 and I don't have any problem with the forum. This is about
3 the third or fourth forum we have seen to come forward.
4 Mr. Paparian, how much did it cost you for your conversion
5 technology, $60,000, wasn't it how much that was?
6 BOARD MEMBER PAPARIAN: That sounds about right.
7 BOARD MEMBER EATON: I mean, $100,000 for a used
8 oil forum is a lot of money. I am just wondering where we
9 use these forums. And we are using the same contractor and
10 we are tight on moneys in different budgets, 100,000 is a
11 lot of money to put on a two-day forum unless you are flying
12 the applicants up here or something.
13 And I would just recommend that maybe, you know,
14 we have to have some sort of uniformity of what these cost,
15 especially since it is going to be here in Sacramento,
16 somewhere northern. Why 100,000 is the question I have? I
17 don't have a problem putting it on. It is a lot of money
18 compared to some of the other things we have seen recently.
19 What's unique about this forum that costs us $50,000 more?
20 MS. WILLD-WAGNER: We are actually hoping to get
21 two forums out of this contract concept. It was originally
22 with the idea for two forums. We completely agree with
23 you. We did find that 100,000 will fully fund two full
24 forums based on the solicitations that we received from
25 various universities.

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1 So we are looking at hopefully getting one forum
2 completed at about probably the $60,000, and then having the
3 funds left over to go towards the next concept. This is a
4 two-year agreement, and we would hope to do an annual
5 conference also in 2002.
6 BOARD MEMBER EATON: That doesn't say that here in
7 the agenda item. If I read that, I would have known that.
8 That's my problem. I don't have telepathic abilities,
9 contrary to popular belief. I don't know you are trying to
10 save $40,000 for next year, and neither would the public
11 know that, and I think it is important that the public know
12 that.
13 MS. WILLD-WAGNER: This will be done on a --
14 BOARD MEMBER EATON: It says two-day forum. I am
15 voting because I think it says a two-day forum. I am not
16 voting because it cost 60 and you put 40 away for next
17 year.
18 MS. FISH: Would you prefer to modify this for 60
19 and have staff come back?
20 BOARD MEMBER EATON: Yeah, we have other things we
21 can use it for.
22 BOARD CHAIR MOULTON-PATTERSON: I certainly agree,
23 and I think Mr. Medina, who made the motion, is well-taken.
24 BOARD MEMBER MEDINA: I will modify my motion for
25 60,000.

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1 BOARD CHAIR MOULTON-PATTERSON: Did you want to
2 second that?
3 BOARD MEMBER EATON: Yes, I will second that.
4 BOARD MEMBER PAPARIAN: Actually, there's a more
5 general point, too. By my back-of-the-envelope
6 calculations, we are spending somewhere between half a
7 million and a million dollars a year on conferences and
8 forums and related types of activities.
9 At some point -- I am not asking staff to deal
10 with this immediately, but at some point I think we ought to
11 take a look at all these various forums and conferences and
12 so forth and see if there's opportunities for cost savings
13 by doubling up some of them or doing a larger contract at
14 one time for multiple ones, or perhaps even seeking more
15 cost recovery from some of the participants in cases where
16 the participants can afford it.
17 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
18 motion by Mr. Medina, seconded by Mr. Eaton to approve
19 Resolution 2001-172 with the change from 100,000 to 60,000.
20 Call the roll.
21 SECRETARY VILLA: Eaton?
22 BOARD MEMBER EATON: Aye.
23 SECRETARY VILLA: Jones?
24 BOARD MEMBER JONES: Aye.
25 SECRETARY VILLA: Medina?

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BOARD MEMBER MEDINA: Aye.

SECRETARY VILLA: Paparian?

BOARD MEMBER PAPARIAN: Aye.

SECRETARY VILLA: Moulton-Patterson?

BOARD CHAIR MOULTON-PATTERSON: Aye.

With that, we will adjourn today's meeting. Thank you very much.

(Whereupon the proceedings were concluded at 5:33 p.m.)

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1 REPORTER'S CERTIFICATE

2 ---o0o---

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6 I, BALINDA DUNLAP, certify that I was the official
7 court reporter and that I reported in shorthand writing the
8 foregoing proceedings; that I thereafter caused my shorthand
9 writing to be reduced to typewriting, and the pages
10 included, constitute a full, true, and correct record of
11 said proceedings:
12 IN WITNESS WHEREOF, I have subscribed this
13 certificate at Sacramento, California, on this 30th day of
14 June, 2001.
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19 BALINDA DUNLAP, CSR NO. 10710, RPR, CRR
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