Please note, these transcripts are not individually reviewed and approved for accuracy.

STATE OF CALIFORNIA

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

BOARD MEETING

JOE SERNA JR., CAL EPA BUILDING

CENTRAL VALLEY AUDITORIUM

1001 I STREET, SECOND FLOOR

SACRAMENTO, CALIFORNIA

TUESDAY, DECEMBER 10, 2002

9:36 A.M.

Doris M. Bailey, CSR, RPR, CRR
Certified Shorthand Reporter
License Number 8751

A P P E A R A N C E S

BOARD MEMBERS PRESENT:
LINDA MOULTON-PATTERSON, Chair
SAL CANNELLA
STEVEN R. JONES
JOSE MEDINA
MICHAEL PAPARIAN
CARL WASHINGTON

STAFF PRESENT:
MARK LEARY, Executive Director
KATHRYN TOBIAS, Chief Legal Counsel
JULIE NAUMAN, Acting Chief Deputy Director
ELLIOT BLOCK, Legal Counsel
DEBORAH MCKEE, Board Assistant
SHARON WADDELL, Board Secretary
EDNA WALZ, Office of Attorney General

--oOo--

# I N D E X


| PAGE | |
|---|---|
| Call to order | 1 |
| Opening Remarks | 1 |
| Introduction & Reception of Board Member Washington | 1 |
| Roll Call | 2 |
| Reports & Presentations | 5 |
| Consent Agenda | 22 |
| Motion | 26 |
| Committee Chair Report | 27 |
| Agenda Item 3 | 28 |
| Motion | 28 |
| Agenda Item 4 | 30 |
| Motion | 30 |
| Agenda Item 5 | 30 |
| Motion | 31 |
| Agenda Item 6 | 31 |
| Motion | 32 |
| Agenda Item 9 | 32 |
| Motion | 33 |
| Committee Chair Report | 34 |
| Agenda Item 27 | 36 |
| Afternoon Session | 86 |
| Agenda Item 27 (Cont.) | 86 |
| Direction from Board | 137 |
| Agenda Item 7 | 155 |
| Motion | 162 |
| Committee Chair Report | 163 |
| Agenda Item 10 | 164 |

1 Agenda Item 11 183
Motion 185
2
Agenda Item 12 186
3 Motion 186

4 Agenda Item 13 189
Motion 192
5
Agenda Item 14 193
6 Motion 193

7 Agenda Item 15 194
Motion 213
8
Agenda Item 17 215
9 Motion 216

10 Committee Chair Report 217

11 Agenda Item 25 217
Motions 220/221
12
Committee Chair Report 222
13
Agenda Item 30 224
14 Motion 225

15 Committee Chair Report 226

16 Closing Remarks 227

17 Certificate of Certified Shorthand Reporters 228


18 --oOo--

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 --oOo--

3 BOARD CHAIR MOULTON-PATTERSON: Good morning.
4 I'd like to welcome you all to the December meeting of
5 the California Integrated Waste Management Board.
6 This morning is a very special meeting for us.
7 Wear very honored to have had Assemblyman Washington
8 appointed to our Board, and we have the very, very
9 wonderful honor of having Speaker Wesson come over to
10 swear him in.
11 And we also have newly elected Assemblyman Leno
12 here from San Francisco, welcome.
13 And with no further ado, I will turn it over to
14 Speaker Wesson.
15 Welcome.
16 (Thereupon there were proceedings conducted
17 off the record.)
18 BOARD CHAIR MOULTON-PATTERSON: As I said, Wear
19 very, very fortunate to have Assemblyman Washington. We
20 were able to still afford a cake so we have cake out
21 there, and I'd like to ask everyone to join us and
22 informally greet Assemblyman Washington to our Board.
23 Thank you so much.
24 (Thereupon there was a brief recess.)
25 BOARD CHAIR MOULTON-PATTERSON: Good morning

1 again and welcome back, glad you could join us.

2 And again, we're very happy to have Assemblyman

3 Washington join our Board.

4 We will miss Mr. Eaton and all that he brought

5 to the Board. We will be having a resolution for Mr.

6 Eaton next month, and we, we're sorry we didn't get to

7 formally thank him before, but it all took place very

8 fast.

9 But as we all know, Mr. Eaton added a great

10 deal to this Board, and I especially think of him in the

11 area of green building and sustainability. So we will

12 be doing that in January.

13 Would the secretary please call the roll?

14 BOARD SECRETARY WADDELL: Cannella?

15 BOARD MEMBER CANNELLA: Here.

16 BOARD SECRETARY WADDELL: Jones?

17 BOARD MEMBER JONES: Here.

18 BOARD SECRETARY WADDELL: Medina?

19 BOARD MEMBER MEDINA: Here.

20 BOARD SECRETARY WADDELL: Paparian?

21 BOARD MEMBER PAPARIAN: Here.

22 BOARD SECRETARY WADDELL: Washington?

23 BOARD MEMBER WASHINGTON: Here.

24 BOARD SECRETARY WADDELL: Chair

25 Moulton-Patterson?

1 BOARD CHAIR MOULTON-PATTERSON: Here.
2 We do have a quorum.
3 And I'd like to ask everyone to please turn off
4 their cell phones and pagers to avoid disrupting the
5 meeting, I appreciate that again.
6 We do have agendas in the back room. There are
7 a small amount of agendas, small number of copies. Wear
8 still very much into conserving energy, and we would, if
9 you would like to speak on an item, please fill out an
10 agenda -- a speaker slip, and hand it to Ms. Waddell who
11 is right down here, and she will make sure that you get
12 to speak to the Board.
13 We'll start with ex-partes. I think, I believe
14 I'll start first this time because I have a number of
15 them that I believe they were directed to the Board, all
16 the Board members, so it will help you out if I go
17 first.
18 Tom -- regarding the tire product
19 commercialization grant, item fifteen, we had, I had a
20 correspondence from Tom Faust from Redwood Rubber.
21 I have a number of them to all the Board
22 members on C&D, regs and they've been sent down, but
23 some of them came in so late I don't even know if you've
24 had a chance to look at them yet.
25 Stephen Bantillo, Construction Demolition

1 Council; Mark Murray, Californians Against Waste; Gale
2 Townley; Mike Hammer, Looney Bins; Rick Sakuda, Sunrise
3 Consolidation; Neil Ison, Ison Law Offices; Larry Strain
4 of Siegal and Strain Architects; Curt Honodel, Suncrest
5 Homes; Mark Demaio, Alpine County Public Works; Lee
6 Terry; Shelly Reider, City of Millbrae; and I also said
7 hello to Kelly Astor, Judy Wear, and Sean Edgar.
8 And with that I will go to Mr. Cannella for
9 ex-partes.
10 BOARD MEMBER CANNELLA: I'm up to date, Madam
11 Chair.
12 BOARD CHAIR MOULTON-PATTERSON: Thank you.
13 Mr. Paparian?
14 BOARD MEMBER PAPARIAN: I just said hello this
15 morning to Chuck White and also to Tom Faust.
16 BOARD CHAIR MOULTON-PATTERSON: Thank you.
17 Mr. Medina?
18 BOARD MEMBER MEDINA: I'm up to date. I just
19 said hello to a number of persons during the reception.
20 BOARD CHAIR MOULTON-PATTERSON: Great.
21 Mr. Jones?
22 BOARD MEMBER JONES: Basically up to date until
23 that reception. Mark Murray, Denise Delmatier, and Curt
24 Fujii on the C&D. And I think that was it.
25 BOARD CHAIR MOULTON-PATTERSON: Okay. And Mr.

1 Washington?

2 BOARD MEMBER WASHINGTON: Thank you, Madam

3 Chair.

4 I said hello to a number of individuals at the

5 reception likewise, Judy Wear, Tom Faust, Mark Aprea,

6 George Larson, Denise Delmatier, and Charles White are

7 all individuals I said hello to.

8 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank

9 you.

10 Reports from Board members. Mr. Cannella?

11 BOARD MEMBER CANNELLA: The only report I have,

12 Madam Chair, is to welcome the new Board member Mr.

13 Washington. And also to inform everybody publicly that

14 I will not return to the Waste Board after the first of

15 the year, we will have a new Board member.

16 I feel like we're on the back end of a Beatles'

17 song, you say hello, I say goodbye. But I've enjoyed my

18 short term here on the Waste Board, it's been a real

19 learning experience. We have a terrific staff.

20 I would like to thank specifically my staff who

21 have brought me up to speed in a short period of time.

22 I'm certainly going to miss this Board. Before

23 I became a member I really had no idea of what you do

24 for the people of California. And in the short period

25 of time I've come to appreciate all the dedication of

1 Board members and the staff, the focus, the vision that
2 they have, and the hard work that they do to try to make
3 California the best place to live, to continue to make
4 it the best place to live.
5 One of the things that I would like to leave, I
6 haven't been here long enough to leave any words of
7 wisdom, but I would say that what I appreciate from this
8 Board is that we should be advocates for the environment
9 as opposed to just being bureaucrats, that we shouldn't
10 be just shuffling papers. And I've appreciated the fact
11 that all the Board members have that same concept of
12 what this Board is to be.
13 I will miss you. I appreciate what you do, and
14 you've changed really the way I live at home. All the
15 sudden I've got all these different containers for
16 different stuff to throw away.
17 So anyway, I appreciate the kindness that all
18 of you have showed, the willingness to share the
19 information and to help me make good decisions.
20 And with that I'd like to wish everybody happy
21 holidays.
22 BOARD CHAIR MOULTON-PATTERSON: Thank you. And
23 Sal, we are going to miss you tremendously, I am really
24 disappointed you're not going to be with us. I've
25 enjoyed your candor and sincerity and your new ideas and

1 how hard you've worked, and I really am sad to see you
2 go.
3 I hope you'll keep in touch with you all.
4 BOARD MEMBER CANNELLA: Thank you.
5 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mr.
6 Paparian.
7 BOARD MEMBER PAPARIAN: Thank you, Madam Chair.
8 I'm continuing to work on the E-waste issue and
9 was, I participated a few weeks ago with this National
10 Electronics Product Stewardship Initiative group, and
11 we're continuing to try to craft a national solution.
12 But even as that goes along, as you know the Governor in
13 his veto message of California legislation a few months
14 ago was very specific in wanting to pursue a California
15 solution. So I've been working with others in Cal EPA
16 as we pursue that California solution.
17 On November 25th we held a forum here at Cal
18 EPA, and it went very well. We had Senator Sher,
19 Secretary Winston Hickox of Cal EPA, Toxic Substances
20 Control Director Ed Lawry, and myself.
21 Then we had a number of panels, one
22 representing industry, one representing environmental
23 groups, one representing local government, and one
24 representing recyclers and the waste industry.
25 Many of you may have seen the follow-up article

1 that the San Jose Mercury News did. One of the things
2 that came out of that workshop was Hewlett Packard
3 announcing their decision to support a product
4 stewardship approach as part of the plan for dealing
5 with California's E-waste.
6 A whole lot of people worked to make that forum
7 a success including Peggy Harris and her staff over at
8 DTSC. But I'd also like to thank Shirley Willd-Wagner
9 for all of her great work, and Matt McCarron of her
10 staff for his assistance with the logistics of the
11 forum, and all of the other staff who helped out on the
12 event.
13 It also wouldn't have been possible, wouldn't
14 have been as successful without someone who's often in
15 the background at these meetings, Bob Davila, and he was
16 providing the audio-visual support as well as Paige
17 Lettington. Thanks for their help as well as some of
18 the folks in the computer area.
19 We've got some good stuff up on our website, on
20 the Cal EPA website. But also we had more than 250
21 people log in and listen to the forum over the
22 Internet. I think this is something we'll probably see
23 some increasing use of in the coming years, and I know
24 that our Board meetings and committee meetings are also
25 broadcast on the Internet.

1 December 16th is the deadline for stakeholders
2 to get their comments in to Cal EPA regarding E-waste.
3 They can be sent to the E-waste mailbox at E-waste,
4 e-waste@calepa.ca.gov. Jeff Hunts and Terri Cronin are
5 working with Caroll Mortensen and her team to make sure
6 that the Cal EPA and Waste Board websites are updated
7 with the latest news on E-waste, including the
8 PowerPoint presentations from the forum, and links to
9 information on Senator Sher's new E-waste bill, SB 20.
10 And just one other little comment on that
11 E-waste mailbox we set up at Cal EPA. We set it up the
12 afternoon of the forum that we had on November 25th.
13 Within about four hours of it being set up, the very
14 first e-mail came in, and it was a request for our bank
15 account number from somebody in Nigeria, one of these
16 Nigerian scams. Somehow the spammers had found it more
17 quickly than our typical stakeholders did.
18 The EMS committee that I've been working with
19 is working very hard and has been ably assisted by Renee
20 Lawver and Keith Smith.
21 Now Keith Smith, as many of you may know, is
22 retiring. And I just wanted to thank him for all of his
23 hard work in getting the EMS project up and running, and
24 helping to get the word out to other states about our
25 project.

1 Finally, we've had some staffing changes in my
2 office, and I'm very pleased to announce that as of
3 December 1st Peggy Farrell is our new committee analyst.
4 She is, I think, back here -- she is back here. And
5 many of you know Peggy as our executive assistant.
6 She's worked ably in that role for two years, and Kit
7 and I are looking forward to working with her in her new
8 role in the committee analyst position as she tackles
9 her new responsibilities and challenges.
10 I guess finally I just want to add my words,
11 we're going to miss you, Mr. Cannella. You've served
12 with diligence, with commitment, and with integrity in a
13 very short period of time. I've been very impressed
14 with how quickly you've dived into the issues and
15 developed an expertise and provided really invaluable
16 help in the committees that I've served on and on the
17 Board. I'll miss you, as I'm sure everybody else on the
18 Board is going to miss you.
19 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
20 Paparian.
21 Mr. Medina.
22 BOARD MEMBER MEDINA: Thank you, Madam Chair.
23 I also want to welcome new Board member
24 Washington. And I want to say that, to Mr. Cannella,
25 I've enjoyed serving on this Board with you. I've

1 appreciated your insights and the energy and dedication
2 that you have brought during the two months that you
3 were here. And if we had such a thing we would be able
4 to present you with a certificate as a C&D expert for
5 all of the testimony that you sat through.
6 So again, thank you for your hard work and
7 dedication.
8 BOARD CHAIR MOULTON-PATTERSON: Thank you.
9 BOARD MEMBER MEDINA: And just to clarify my
10 ex-partes, I talked to Chuck White briefly around C&D
11 regs, and just said hello to George Larson and Mr. Mike
12 Mohajer.
13 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
14 Medina.
15 Mr. Jones.
16 BOARD MEMBER JONES: Thank you, Madam Chair.
17 I too want to welcome Mr. Washington, I think
18 it will be a nice addition.
19 Mr. Eaton and I always got along pretty well
20 but we, you know, we had our moments when we would
21 disagree, but we always got a lot of work done, and I'm
22 going to miss Mr. Eaton. But I think that it's going to
23 be a nice, a nice change for this Board.
24 You're actually my twenty-first Board member
25 that I've served with. That's kind of scary considering

1 the staff out here has probably served with about forty
2 of us.
3 So if you're twenty-one, Mr. Cannella is number
4 twenty. And I, while I welcome you, I'm sad that Mr.
5 Cannella is leaving. I think the common sense and the
6 ability to work through the issues was a true asset to
7 this Board. And in spite of all that I think that you
8 did a, you contributed. You've contributed at local
9 government and state government, and then on this Board,
10 and that's quite a legacy to be able to walk out of here
11 with.
12 Just quickly, I ended up just doing a couple of
13 events. Presented a WRAP award in Sebastopol to Whole
14 Foods Market. WRAP awards, when we look at the 6,500
15 that were submitted or that were accepted, this
16 organization takes it very seriously. They've got 19
17 markets.
18 One of the real benefits about going to one of
19 these things is the week before I was in Chico doing
20 some work for our public information folks on wax logs,
21 which is wax cardboard that is collected, brought in
22 from the fields, brought to this facility in Chico, and
23 they come out with a log that actually burns cleaner
24 than the Presto log and other products, all a hundred
25 percent recycled content. And that was an impressive

1 day.

2 Well, while we're walking around Whole Foods,

3 and they source separate all of their materials, and one

4 of the materials that they source separate is the wax

5 cardboard. The organic wax cardboard goes to the

6 organic farmers. The other material they have to find a

7 market for.

8 We suggested that they ought to be talking to

9 the folks in Chico. They're looking at 19 stores that

10 they end up delivering material to and could very easily

11 pick that up. And the nice part about that linkage is

12 this Chico operation, this wax logs, their biggest

13 client is a chain of about forty stores that delivers

14 all their wax cardboard to 'em and then turns around

15 with a full truck of new product to bring back into

16 their stores to sell as fire logs.

17 So if that linkage works, that's what WRAP

18 awards should be about is connecting the dots and

19 finding opportunities.

20 And then I was able to be the, I followed Madam

21 Chair and Mr. Medina, I guess, who have done it the

22 years prior, but I was the opening speaker at our used

23 oil forum in Pasadena. And it was a well attended

24 event, and I appreciated it.

25 And Shirley, your staff did a great job. Frank

1 was nervous trying to figure out where I was, I was
2 nervous trying to figure out since I had two different
3 addresses where I was.
4 But I appreciate the event.
5 And again, welcome, Mr. Washington.
6 And Sal, we'll miss you.
7 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
8 Jones.
9 Mr. Washington, did you wish to report on
10 anything?
11 BOARD CHAIR MOULTON-PATTERSON: Yes, Madam
12 Chair.
13 Just very briefly I want to again say to all of
14 the staff how grateful I've been as a new member. And I
15 tell you that sounds good, but with Sal leaving I guess
16 I only hold the title for a month or so, and I envy some
17 of the guys who had a month or a year and a half, like
18 Mr. Paparian who was a new Board member for about a year
19 I think he told me and enjoyed that title. I only get
20 it for about two or three weeks and then I'm history,
21 and it seems like that's the going thing around here.
22 I remember when I was elected to the Assembly
23 in '96 I was the youngest member, and about a year later
24 here come Tony Strickland who was about ten years
25 younger than I was. I took him on in a basketball game.

1 You should know he's about seven four, eight -- seven
2 four, and I mean I just kept hitting him at the bottom
3 of his knees trying to break him down. I was kind of
4 frustrated that I didn't get to share the title very
5 long.
6 But I am, I tell you I'm very excited about
7 being here.
8 And Sal, let me give you another perspective.
9 As a member of the legislature when I was elected I had
10 the opportunity to talk to Sal, and Sal gave me some of
11 the greatest information that I could ever receive as a
12 new member coming in. And I can imagine what it's like
13 for him leaving this Board with his expertise, and I'm
14 certainly going to miss him. He and I have already had
15 several conversations. And down in my community we call
16 it to be hip. He hipped me to some stuff around here,
17 and I'm very appreciative of that.
18 So thank you very much, Sal, for being a friend
19 that you've been to me as a member of the Assembly and
20 now as a member of this great Board.
21 I'd like to introduce my advisor who is, he
22 hasn't been officially appointed but he certainly will
23 be here and you guys will get to know him well, his name
24 is Bruce Roberson -- and Bruce, stand up and let them
25 see you. So Bruce, as you guys, I point him out so you

1 can get anything that needs to happen, you tell Bruce
2 and it's done.
3 And again, to all of you, I'm looking forward
4 to your expertise to learn as much as I possibly can.
5 And I certainly will lean, as I've been going on Madam
6 Chair, she has been so gracious, and I tell you she's a
7 wonderful chairperson, I'm looking forward to her
8 continuing leadership and making sure this agency moves
9 forward.
10 Thank you very much.
11 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
12 Washington.
13 I attended the Governor's Environmental Award
14 ceremony.
15 I've also had the honor of presenting two WRAP
16 awards, WRAP of the year awards, one to Dominican
17 Hospital on Friday in Santa Cruz, they've done a
18 terrific job, and they could be a real role model to
19 other hospitals, and they say they are sharing some of
20 their ideas.
21 And then yesterday I present the WRAP of the
22 Year award to the Portofino Hotel and Yacht Club in
23 Redondo Beach. And they have done a fabulous job,
24 especially with the boaters and that community, and they
25 also are a real role model to hotels, convention

1 centers, and so forth.

2 And I just want to say thank you to your staff

3 for the wonderful job they do on the WRAP of the Year

4 awards. Piper and Jeff accompanied me, and I really

5 appreciate all the work. You really do a great job

6 there.

7 I also, on a not-so-positive note, attended a

8 meeting at the Governor's office with finance director

9 Tim Gage discussing with the chairs and the directors

10 the grim situation of our budget. And it very, really

11 is grim and it will affect us. And this is going to be

12 hard times. And it's going to be painful and, you know,

13 I just really do appreciate our staff pulling together

14 during these times.

15 And I do formally want to wish everyone on our

16 staff happy holidays. I really hope you have a great

17 holiday season.

18 With that, there will be a closed session at

19 the close of today's Board meeting. We're not sure

20 exactly when that's going to be, so we'll just kind of

21 play it by ear.

22 And before I get into the actual order of the

23 agenda, I will call on Mark Leary, our Executive

24 Director, for his report.

25 EXECUTIVE DIRECTOR LEARY: Thank you, Madam

1 Chair. And good morning, members.

2 On behalf of the staff I'd like to say a few

3 words. Whenever a new Board member comes on, it causes

4 us to kind of reshape our thinking and review how we do

5 our business, and almost always that reshaping and

6 reviewing is for the better.

7 Sal certainly had that impression over the last

8 three months. Sal, as word spread throughout the

9 organization about the lack of your reappointment, to a

10 person as I have talked to people they have all

11 expressed their disappointment and were really excited

12 about you staying on and hoping you were staying on, and

13 when the bad news came through they were very

14 disappointed.

15 And Carl, we look forward to your new energy

16 and reshaping our perspective. I know in the two weeks

17 that you and I have interacted my head is already

18 spinning. So no, I'm kidding. I think that you're

19 going to fit in great here, and we're looking forward to

20 helping you in any way we can.

21 In the way of business, Madam Chair, you asked

22 me last month about bringing back to the Board a

23 discussion of our implementation of our strategic plan.

24 As kind of a heads up, we have been preparing an update

25 on the implementation. And the first one we'll be

1 bringing forward, of course, is next month at the
2 January Board meeting where we plan to cover goals one
3 and seven.
4 These goals cover resource conservation, waste
5 prevention, sustainability, and zero waste.
6 Goal two, which covers market development, and
7 then goal four which covers permitting and enforcement
8 will be presented in February.
9 And then the remaining three goals which cover
10 public education and outreach, internal efficiencies,
11 and environmental justice will be presented in March.
12 Through these presentations we hope not only to
13 provide an update and clear picture on what the current
14 activities implementing the strategic plan are, but also
15 to bring forward to the Board some new ideas where we
16 can enhance or refocus our efforts to more effectively
17 address the goals defined there in the plan.
18 After that we'll take some time to further
19 flesh out some proposals for new and enhanced
20 implementation activities as you've responded to us in
21 our general ideas, and bring those back to you at a
22 later date.
23 Preparation for the fourth annual recycled
24 product trade show is well underway in full gear. As
25 you know, the trade show is scheduled in April here in

1 Sacramento on the 10th and 11th. The exhibitor
2 prospectuses have been mailed, and copies have been
3 distributed to all Board offices, and are available also
4 at the back table.
5 Staff conducted a workshop on, for recycled
6 product suppliers on December 3rd to promote the sales
7 of the recycled content products in state agencies and
8 to recruit new exhibitors for the show.
9 Representatives of about 65 manufacturers and
10 vendors of recycled product attended this first time
11 event, and seven actually signed up to exhibit on the
12 spot that day. Feedback from the attendees was very
13 enthusiastic.
14 And then lastly, as Board Member Jones has
15 already mentioned, we held the used oil forum in
16 Pasadena last week, and it was a great success with over
17 150 attendees, mostly from local government, program
18 managers, and non-profit organizations involved in used
19 oil collection and recycling.
20 Board Member Jones actually provided the
21 opening remarks, stressing the evaluation of local
22 program efforts and closing the loop by promoting the
23 use of re-refined oil.
24 We also had the benefit of an all attendee
25 training on Thursday called, "Community Based Social

1 Marketing" by a Dr. Doug McKenzie-Moore, who traveled
2 here from New Brunswick, Canada to present this
3 workshop. And additional small group sessions on
4 Friday.
5 This interactive workshop presented research in
6 using social marketing techniques to effect positive
7 behavior change, especially in developing and evaluating
8 programs to collect and recycle used oil.
9 Feedback from this workshop was tremendous in
10 that they, the Board had really provided a tool that the
11 locals would be able to use.
12 Then Friday was a number of breakout sessions,
13 including the first of several of the Board-sponsored
14 workshops on grant writing, as the Board has directed us
15 to get the word out there to help our applicants write
16 better grants. We provided that at this forum, and it
17 was viewed very successfully.
18 And last, and certainly not least, just so you
19 know where the real credit belongs, I'd like to thank
20 Kristin Yee and Patti Bertram for their efforts on
21 behalf of the used oil forum, as well as all the special
22 waste staff who were involved in the technical sessions,
23 staffed the Board exhibit, and tirelessly networked with
24 our grantees.
25 Thank you very much.

1 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
2 Leary. And thank you for following up so rapidly on the
3 strategic plan. I really appreciate it, and I know my
4 colleagues do. We constantly have that in front of us
5 and know that we are keeping on target. So thank you.
6 With that we will now go over the agenda.
7 Items 16 and 23 have been pulled from the agenda and
8 will not be heard.
9 Items 21, 28, and 59 were heard at the
10 committee level only.
11 Items 1, 2, 8, 18, 19, 20, 22, 24, 26, 29, 31
12 through 43, 44 revised, 45 through 51, 52 revised, 53
13 through 58 have been proposed for consent agenda. And I
14 do have a speaker that I don't want to forget.
15 But would any Board member wish to pull any
16 items from the consent calendar?
17 (No response.)
18 BOARD CHAIR MOULTON-PATTERSON: Okay. Then
19 I'll go ahead, before I ask for a motion I will call on
20 our speaker, and it's Gerard Kadusck, I'm sorry if I'm
21 not pronouncing it right, from Ventura County
22 Environmental -- I'm having a hard time reading this,
23 I'm sorry, Gerard.
24 MR. KAPUSCK: That's okay, that's probably
25 because my penmanship was a subject in which I flunked.

1 Good morning, Madam Chair and members of the
2 Board. My name is Gerard Kapusck, and I'm the
3 Information and Technology Manager of the Ventura County
4 Environmental and Energy Resources Department.
5 I am here this morning to address the Board and
6 to urge your adoption of the biennial review findings
7 for the County of Ventura which is one of the consent
8 items. This was heard by the Diversion, Planning and
9 Local Assistance Committee.
10 And I want to thank Chairman Jones and the
11 committee members for your rigorous and fair evaluations
12 of our submittals.
13 I did want to address the entire Board from
14 this perspective. You may not hear this often from
15 local government, but we were very glad that we went
16 through the process of working with your staff
17 aggressively on site verification visits in terms of our
18 diversion claims. While that is not always a painless
19 process, it is an extraordinarily instructive and useful
20 process, both for our staff and your staff.
21 Because what it really amounts to beyond the
22 number crunching and the bean counting is a chance to
23 really connect and get a reality check with what kind of
24 diversion activities are going on in our communities,
25 how we can facilitate and improve those that are useful,

1 how we can identify new opportunities to improve it, and
2 embark on new initiatives. And so that was very, very
3 helpful.
4 I also want to tell the entire Board that from
5 Ventura County's perspective you have an excellent
6 staff, a very tough but very fair, and particularly the
7 staff that worked with us, Cara Morgan, Tara Gauthier
8 and Kaoru Cruz and Pat Schiavo. We learned a lot, we
9 exchanged a great deal, we arm wrestled. We had hoped
10 to be here a little earlier, but as I told your
11 committee, it took me about three months to recover from
12 the broken arm from the arm twisting from Cara Morgan in
13 getting our numbers down a little bit from what we had
14 originally submitted because she had done the due
15 diligence.
16 And I would tell you that this morning I'm a
17 little bit sensitive because I've lost the cap on one of
18 my teeth, and I was gonna also blame Cara for that, but
19 I thought a more effective way to explain that to you is
20 this is part of Ventura County's strategy of assisting
21 the state's bailout is we're mining the gold in our
22 teeth, anticipating reaching into our hands by the
23 state. So hopefully that won't happen.
24 But in any case, I wanted to make sure that
25 your entire Board knew that Ventura County was very

1 pleased with and very thankful for your working with us.
2 And I do want to say to Mr. Cannella, as a
3 Californian who has followed your history of public
4 service in the legislature and on this Board, I'm very
5 saddened that you will not continue. And as an Italian
6 I'm particularly saddened because I think state
7 government in general, and this Board's decisions has
8 benefitted by the wisdom and the history of both
9 Macchiavelli, da Vinci, and Michelangelo. So I'm sorry
10 this Board will not have that opportunity with your
11 continued service, and I wish you the best of luck, sir.
12 Thank you very much.
13 BOARD CHAIR MOULTON-PATTERSON: Thank you very
14 much.
15 And we also have a another request to speak to
16 the consent calendar on item 28, Mark Aprea.
17 MR. APREA: Madam Chair, since the matter is
18 not going to be taken up today I'll withdraw. That is
19 the ADC matter, you said that you pushed that over
20 because it was taken up in committee?
21 BOARD CHAIR MOULTON-PATTERSON: Oh, I'm sorry,
22 I thought you, I didn't even notice that. Okay. Yes.
23 MR. APREA: Thank you, Madam Chair.
24 BOARD MEMBER JONES: Madam Chair.
25 BOARD CHAIR MOULTON-PATTERSON: Or not pulled

1 but heard at the committee level.

2 Yes, Mr. Jones.

3 BOARD MEMBER JONES: I'll move adoption of the

4 consent calendar as you read it. Unless you want you

5 want me to reread it?

6 BOARD MEMBER MEDINA: Second.

7 BOARD CHAIR MOULTON-PATTERSON: Okay. We have

8 a motion by Mr. Jones, seconded by Mr. Medina.

9 Please call the roll on the consent calendar.

10 BOARD SECRETARY WADDELL: Cannella?

11 BOARD MEMBER CANNELLA: Aye.

12 BOARD SECRETARY WADDELL: Jones?

13 BOARD MEMBER JONES: Aye.

14 BOARD SECRETARY WADDELL: Medina?

15 BOARD MEMBER MEDINA: Aye.

16 BOARD SECRETARY WADDELL: Paparian?

17 BOARD MEMBER PAPARIAN: Aye.

18 BOARD SECRETARY WADDELL: Moulton-Patterson?

19 BOARD CHAIR MOULTON-PATTERSON: Aye.

20 BOARD SECRETARY WADDELL: Washington?

21 BOARD CHAIR MOULTON-PATTERSON: The consent

22 calendar --

23 BOARD MEMBER WASHINGTON: Washington aye.

24 MS. MOULTON-PATTERSON: Oh, I'm sorry.

25 Okay. We have the consent calendar unanimously

1 approved.

2 And we'll move on to item three, but before we

3 take that up I'd like to call on the chair of the Waste

4 Prevention and Market Development Committee, Mr. Jones,

5 to report.

6 BOARD MEMBER JONES: Thank you, Madam Chair.

7 Waste prevention and, we heard, we heard eight

8 items. Two are on consent, the RPPC compliance and the

9 scope of work for California Heartland.

10 We moved three items, well actually we moved

11 the reallocation for the green building of, with

12 rubberized asphalt activities to the Admin Committee and

13 then to this Board, as well as three loan applications.

14 And then we have one item to the full Board for

15 the scope of work on the recycling market development

16 loan program and to recover and liquidate collateral.

17 But all of these fiscal consensus items went

18 forward with a four 0 vote or whatever.

19 Thanks.

20 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank

21 you.

22 I think we will, we're almost to 10:45 and I

23 neglected to mention at 10:45 we have a time certain for

24 item 27. But I think we do have time to have Ms. Wohl

25 introduce item three and do that one.

1 MS. WOHL: Sure. Patty Wohl, Waste Prevention
2 and Market Development Division.
3 Agenda item three is consideration of
4 reallocating $150,000 from the fiscal year 2002-2003
5 civil engineering uses to green building and rubberized
6 asphalt activities in the market development allocation
7 of the five year plan for the waste tire recycling
8 management program to supplement funding for the
9 proposed Lorin Griset High Performance Demonstration
10 School grant project; and consideration of a direct
11 grant award to Santa Ana Unified School District on
12 behalf of the Lorin Griset High Performance
13 Demonstration School.
14 This item received a consensus vote at both
15 committees, and staff requested that Board approve
16 option one and adopt resolution 2002-663.
17 BOARD CHAIR MOULTON-PATTERSON: Thank you.
18 And I would like to, if there aren't any
19 questions since this is in my area I would like to move
20 Resolution 2002-663.
21 I'm really happy to see this effort going into
22 the proposed Lorin Griset school. This is in a very low
23 income area and will be serving minority children, and I
24 really am happy to see this go forward.
25 Thank you.

1 BOARD MEMBER WASHINGTON: Second.
2 BOARD CHAIR MOULTON-PATTERSON: Thank you. We
3 have a motion by Moulton-Patterson, seconded by Mr.
4 Washington.
5 Please call the roll.
6 BOARD SECRETARY WADDELL: Cannella?
7 BOARD MEMBER CANNELLA: Aye.
8 BOARD SECRETARY WADDELL: Jones?
9 BOARD MEMBER JONES: Aye.
10 BOARD SECRETARY WADDELL: Medina?
11 BOARD MEMBER MEDINA: Aye.
12 BOARD SECRETARY WADDELL: Paparian?
13 BOARD MEMBER PAPARIAN: Aye.
14 BOARD SECRETARY WADDELL: Washington?
15 BOARD MEMBER WASHINGTON: Aye.
16 BOARD SECRETARY WADDELL: Moulton-Patterson?
17 BOARD CHAIR MOULTON-PATTERSON: Aye.
18 Okay. At this point we will --
19 MS. WOHL: I could probably get through the
20 next three pretty quickly if you want me to?
21 MS. MOULTON-PATTERSON: Okay. Let's go ahead
22 and then we'll finish your section.
23 MS. WOHL: The next three items are all loans
24 that received a consensus vote at both committees. The
25 loan committee approved all three loans at the December

1 5th meeting.

2 The first one is agenda item four which is

3 consideration of the recycling market development

4 revolving loan program application for Amigo

5 Environmental, Inc.

6 This is an RMDZ loan in the amount of $50,000

7 to Amigo Environmental, Inc. for the purchase of

8 machinery and equipment.

9 Staff recommends approval of option one and

10 request that the Board adopt Resolution 2002-764.

11 BOARD MEMBER JONES: Madam Chair.

12 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

13 BOARD MEMBER JONES: Madam Chair, I'll move

14 adoption of Resolution 2002-764, the consideration of a

15 loan to Amigo Environmental.

16 BOARD MEMBER MEDINA: Second.

17 BOARD CHAIR MOULTON-PATTERSON: I have a motion

18 by Mr. Jones, seconded by Mr. Medina to approve

19 Resolution 2002-764.

20 Substitute the -- without objection we'll

21 substitute the previous roll call.

22 MS. WOHL: Agenda item five is consideration of

23 the recycling market development revolving loan program

24 application for North SLO County Recycling, Inc.

25 This is an RMDZ loan in the amount of $750,000

1 to North SLO County Recycling, Inc. for the purchase of
2 equipment.
3 Staff recommends approval of option one, and
4 requests that the Board adopt Resolution 2002-765.
5 BOARD MEMBER JONES: Madam Chair.
6 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.
7 BOARD MEMBER JONES: I'll move adoption of
8 Resolution 2002-765, consideration of a RMDZ loan to
9 North SLO County Recycling, Inc.
10 BOARD MEMBER MEDINA: Second.
11 BOARD CHAIR MOULTON-PATTERSON: Okay. We have
12 a motion by Mr. Jones, seconded by Mr. Cannella.
13 Without objection, please substitute the
14 previous roll call.
15 Item number --
16 MS. WOHL: Six.
17 BOARD CHAIR MOULTON-PATTERSON: -- Six.
18 MS. WOHL: Agenda item six consideration of the
19 recycling market development revolving loan program
20 application for Van Duerr Industries, Inc.
21 This is an RMDZ loan in the amount of $370,000
22 to Van Duerr Industries, Inc. for the purchase of
23 equipment and working capital. This is a tire loan and
24 will be funded out of the $2 million tire fund
25 allocation.

1 Staff recommends approval of option one, and
2 requests that the Board adopt Resolution 2002-766.
3 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina.
4 BOARD MEMBER MEDINA: Madam Chair, I'd like to
5 move Resolution 2002-766, approval of the recycling
6 market development revolving loan program application
7 for Van Duerr Industries, Inc.
8 BOARD MEMBER WASHINGTON: Second.
9 BOARD CHAIR MOULTON-PATTERSON: We have a
10 motion by Mr. Medina, seconded by Mr. Washington to
11 approve Resolution 2002-766.
12 Without objection, please substitute the
13 previous roll call.
14 Number seven.
15 MS. WOHL: That one may take a few minutes as
16 we didn't hear that at committee. I could do agenda
17 item nine quickly.
18 BOARD CHAIR MOULTON-PATTERSON: Okay.
19 MS. WOHL: Agenda item nine is consideration of
20 award of contract to KVIE for California Heartland
21 Sponsorship.
22 This is a contract in the amount of $100,000
23 for which the Board approved funding in the October
24 Board meeting. This item also received a consensus vote
25 at both committees.

1 Staff recommends approval of the, of KVIE as
2 the contractor, and requests that the Board adopt
3 Resolution 2002-769.
4 BOARD MEMBER JONES: Madam Chair.
5 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.
6 BOARD MEMBER JONES: I'll move adoption of
7 Resolution 2002-769 revised, consideration of the award
8 of a contract to KVIE for the California Heartland
9 Sponsorship, contract concept number 36.
10 BOARD MEMBER MEDINA: Second.
11 BOARD CHAIR MOULTON-PATTERSON: Okay. Motion
12 by Mr. Jones, seconded by Mr. Medina to approve
13 Resolution 2002-769 revised.
14 Without objection, please substitute the
15 previous roll call.
16 MS. WOHL: So we have an option. Agenda item
17 seven might --
18 BOARD CHAIR MOULTON-PATTERSON: Will take a
19 while. I think we'll stick to our time certain and
20 we'll come back to you, Ms. Wohl.
21 MS. WOHL: Okay.
22 BOARD CHAIR MOULTON-PATTERSON: Thank you very
23 much.
24 Okay. At this time we're going to be going to
25 item 27. And I'm sure we'll have a number of speakers

1 on this.

2 Would you like to make your report, Mr.

3 Paparian, at this time?

4 BOARD MEMBER PAPARIAN: I think I'll just

5 report on this item and save the other items for when we

6 get to the rest of the agenda.

7 BOARD CHAIR MOULTON-PATTERSON: Okay.

8 BOARD MEMBER PAPARIAN: I think the staff is

9 prepared to provide a summary of where the regulations

10 are in response to the committee action.

11 The committee did hear this item. It's clear

12 to everybody in the room that there still remained some

13 controversy over it.

14 Where we're at right now is that the most

15 controversial aspect of it has to do with the phase-out

16 of a registration tier.

17 As the regulations are right now, at a hundred

18 tons per day the C&D facilities that are operational

19 right now could get a registration permit, but they will

20 have to convert that eventually to a full solid waste

21 permit. And I think Scott will go over the various

22 deadlines that we have in the proposal for that.

23 The biggest aspect of the controversy that's

24 out there right now is whether a registration permit

25 tier ought to be in place and remain in place at some

1 level, like 250, 300, 350.

2 There are some who very strongly argue that

3 there ought to be a continuing registration tier. There

4 are others that argue that it ought to just, the

5 facilities ought to eventually be brought into the fold

6 with a full solid waste permit.

7 There are some other issues that are important

8 to either individual facilities or small groups of

9 facilities.

10 We have one facility that's out there that has

11 not opened yet that may be caught up in the situation

12 where if the regulations go into effect before they open

13 they may not qualify for the registration permit, yet it

14 might take them quite a while to get their full permit.

15 There are some issues like that that I think

16 we'll get comments on during the comment period that

17 we'll probably need to address in some fashion to ensure

18 that we're not putting people out of business or

19 preventing them from opening a business that they were

20 really diligently trying to get out there and open.

21 So I think that that's as much as I want to say

22 at this point on the issue. As I said before, though,

23 it does remain quite controversial. I think we'll get

24 that from the speakers.

25 And I think, Scott, you probably got more of

1 the summary of things.

2 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.

3 Paparian.

4 I'll turn it over to Mr. Walker.

5 MR. WALKER: Thank you. Scott Walker,

6 Permitting and Enforcement Division.

7 Item 27 is discussion and request for

8 rulemaking direction on noticing revisions to the

9 proposed construction and demolition and inert debris

10 processing tiered regulations for an additional public

11 comment period.

12 The proposed regulations would establish

13 minimum standards and permitting requirements for

14 operations and facilities that handle construction and

15 demolition wastes and inert debris which is a major part

16 of our waste stream targeted for AB 939 diversion.

17 As Board Member Paparian kind of mentioned,

18 this item presents the consideration of an additional

19 formal comment period based on the Permitting and

20 Enforcement Committee's direction this month.

21 This package continues to engender intense

22 interest from stakeholders, and we anticipate some

23 extensive testimony at this meeting.

24 Staff continue to work hard to assist the Board

25 in resolution of this package. We will continue to do

1 so.

2 I'm going to hand off to Allison Spreadborough

3 and Mark de Bie for a little bit more background and

4 details and direction.

5 But basically on December 2nd the committee,

6 P&E Committee directed staff to proceed with the formal

7 comment period for changes, but with some additional

8 changes in the permit transition period requirements,

9 pass this onto the full Board for consideration.

10 I'd like to remind the Board that in order to

11 meet the Office of Administrative Law guidelines or

12 requirements, we will need to adopt this regulation

13 package in March. There's a one year requirement, and

14 that comes up in May. So we need to adopt it in March

15 based on our projection of workload. So we've got this

16 month, January, and February to resolve any changes and

17 to get the direction to go out for an, for comment

18 periods for those changes.

19 And in this reg package we had a precursor in

20 1999 where we were unsuccessful and we had to stop and

21 then start over again. So we really are still working

22 hard to try to resolve that so we can get a final reg

23 package adopted and move through.

24 So with that, I will hand off to Allison

25 Spreadborough and Mark de Bie. They will provide the

1 staff presentation and be able to answer questions.

2 MS. SPREADBOROUGH: Good morning, Madam Chair

3 and Board members. My name is Allison Spreadborough.

4 staff have responded to the direction received

5 from the committee in November by redrafting the

6 proposed regulations.

7 Staff also met with stakeholders in a work

8 group meeting to receive input prior to finalizing a

9 redraft of the regulations.

10 And staff have adjusted language following a

11 December committee meeting in a more recent version of

12 the regulations which is dated December 5th, 2002.

13 Copies have been provided to Board member

14 offices, and additional copies are in the back of the

15 room.

16 I would like to clear up a possible

17 misunderstanding from the past several committee

18 meetings. Committee members have been informed that

19 Board staff visited 19 C&D processing sites in October.

20 The misunderstanding is that staff found situations that

21 would support the need for a lower threshold of 500 tons

22 per day -- for a higher threshold of 500 tons per day

23 for a full permit.

24 Staff is still supportive of a higher -- a

25 lower threshold -- excuse me, a higher threshold than

1 one hundred tons per day.

2 Staff visited a wide variety of sites,

3 including some sites that primarily processed municipal

4 solid waste, along with some C&D debris. These sites

5 were permitted as transfer processing facilities.

6 Staff also visited one site that primarily took

7 in C&D materials, but exceeded the one percent

8 putrescibles limit. The putrescibles at this site

9 consisted of garden refuse.

10 This particular facility does not want to

11 change their incoming feedstock, and has informed Board

12 staff that they will be pursuing a solid waste transfer

13 processing permit.

14 I hope this clears things up.

15 BOARD CHAIR MOULTON-PATTERSON: Thank you.

16 MS. SPREADBOROUGH: In September the Board

17 directed staff to return to the Board in November with

18 revised regulations for consideration of an additional

19 comment period. The Board directed staff to include the

20 following:

21 500 tons per day threshold for full permit.

22 One definition that included the terms waste

23 and debris.

24 Not to include a residual limit.

25 And to allow C&D like materials to be handled

1 at CDI sites.

2 At the November and December P&E Committee

3 meetings staff was provided with additional direction.

4 Waste industry representatives continue to

5 request that the full permit tier threshold limit be

6 kept at or over one hundred tons per day, and to also

7 add a residual percentage requirement.

8 Representatives from the C&D debris industry,

9 Permitting and Enforcement Division staff, and staff of

10 the Board's Waste Prevention and Market Development

11 Division continue to recommend a registration tier

12 permitting volume CDI processing facilities, and

13 establishment of a full permit tier threshold higher

14 than one hundred tons per day.

15 Mark de Bie will now review the changes to the

16 regulations that have been made based on committee and

17 Board direction.

18 MR. DE BIE: Thank you, Allison. Mark de Bie

19 with Permitting and Inspection Branch. Good morning,

20 Madam Chair and Board members.

21 My job is to go through the latest changes that

22 have resulted from the P&E committee's direction. And

23 basically they're listed here.

24 Instead of having the one definition that

25 included the terms waste and debris, we were directed by

1 the committee to come up with two separate definitions,
2 one for waste and one for debris. We were directed to
3 do our best to ensure that those definitions would be
4 franchise neutral.
5 To put the threshold to move from a
6 registration permit to a full permit at one hundred tons
7 per day.
8 To come up with a way to phase from a
9 registration permit into a full permit based on
10 testimony of a phase-in period of between two and four
11 years.
12 And then most recently the committee directed
13 this month to also require time certain for the
14 application to be submitted for moving from a
15 registration permit to a full permit that would be one
16 year.
17 And so what staff has done in response to that
18 latest direction from the committee is that we have come
19 up with two separate definitions.
20 Basically what we've done is reverted back to
21 the existing definition of C&D waste that's in Article
22 IV. And it's in Section 17225.15 which on your handout
23 of the regs can be found on page one, lines twelve
24 through fourteen.
25 Again, this is the existing definition that's

1 been there for a number of years, and so the proposal
2 right now is to retain that and not to change that.
3 However, in the Article 5.9, which is the new
4 article that will deal entirely with C&D debris
5 processing sites, staff has retained the definition of
6 C&D debris.
7 Just to remind the Board that this definition
8 does indicate that C&D debris is different from C and D
9 waste, and that it's source separated for reuse. And
10 that it does clarify that C&D is a subset of solid
11 waste, actually a subset of C&D waste.
12 It is waste that only comes from construction
13 work, which is defined as to include demolition as well
14 as construction.
15 That it is limited to no more than one percent
16 putrescible. And we also indicate that the putrescible
17 amount cannot constitute a nuisance.
18 And that, in direction from the Board, we have
19 allowed some flexibility to allow C&D like materials to
20 come in, but we've limited that kind of material to be
21 material that is zero putrescible, no putrescible at
22 all, and can be fully recycled.
23 Relative to the committee's direction to come
24 up with these definitions that are franchise neutral,
25 again we are, we continue to look back to the

1 stakeholders to give us insights on whether we have
2 achieved this goal or not.
3 But in the section of 5.9 that talks about
4 authority and scope, we've added a clarification
5 statement about what the information in 5.9 should or
6 should not be used for. So you can find that on page
7 two of the regulations, lines 30 through 34.
8 Again, the committee directed staff to change
9 the threshold to change from a registration permit to a
10 full permit to a hundred. So for CDI sites, debris
11 sites, the level or the tier structure would be as
12 indicated on this slide.
13 From zero to one hundred tons per day a site
14 receiving CDI debris would be considered a small volume
15 CDI processing, actually operation not facility, and
16 would be in the notification tier.
17 Anything above a hundred receiving CDI debris
18 would be considered a large volume CDI processing
19 facility and would be required to eventually get a full
20 permit.
21 And you can see the chart on page ten indicates
22 most clearly how these fall.
23 Because the registration permit, the permanent
24 registration permit has been removed, any reference to
25 medium volume transfer station has been removed from the

1 regs. And I'll tell you more about how we're addressing
2 the phase-in using the registration permit in the next
3 slide.
4 Just so there's clarity, because we now have a
5 definition of C&D waste and C&D debris, the, a facility
6 handling C&D waste as defined in Article IV would be
7 considered a transfer processing facility. And if there
8 are, and would follow the same tier requirements as
9 those for a regular MSW transfer processing facility.
10 And those are listed out there. If they're receiving
11 less than fifteen tons per day they'd be notification
12 tier, fifteen to a hundred registration, and a hundred
13 and up would be full permit.
14 Relative to the phase-in, and I apologize for
15 the complexity of this slide but it is a bit complex, so
16 bear with staff on going through this.
17 This information is contained in Section 17385B
18 through D, and that's found on page 22 and 23 on the
19 lines indicated.
20 In effect, after the date that the regulations
21 come into effect, so they're approved by the Office of
22 Administrative Law, any existing sites will need to be
23 noticed by the LEA no sooner than thirty days and no
24 later than ninety days.
25 And the reason for that is we're giving the

1 LEAs an opportunity to find these sites, to identify
2 them, and then to get information from the operator so
3 they're able to determine the appropriate tier for them.
4 And that will take some time, so we're allowing the LEAs
5 thirty to ninety days to figure out what kind of permit
6 the facility is required, and to provide notice to the
7 operators on their determination.
8 After the operator receives notice from the
9 LEA, if it's determined that they are able to qualify
10 for a notification tier, they will need to receive or
11 complete the notification process within thirty days of
12 notice from the LEA.
13 For a registration permit they will need to
14 complete that process in sixty days.
15 And for a full permit, 180 days.
16 And those timeframes are based on the
17 regulatory timeframes for working through the permit
18 process.
19 If an operator is required to get a full permit
20 and they're an existing facility, they may initially
21 apply for something we're calling a temporary
22 registration permit. And this is a permit that's good
23 only for three years or, if extended, for additional
24 time.
25 They would need to work through the same permit

1 process to get a registration permit in order to get the
2 temporary registration permit, which means that once
3 noticed by the LEA, they would need to have their
4 temporary registration permit within sixty days.
5 And the permit will be good for three years
6 from the effective date of the regulations. And it may
7 be extended by the LEA, that's what we have in
8 regulations, or the proposed regulations now.
9 And staff was a bit confused on whether this
10 was an independent decision from the LEA or if the Board
11 needed to be involved at some level in approving
12 extensions.
13 There was some discussion about the mechanism
14 that would be used by LEAs. I think I offered the
15 possibility of looking at the enforcement procedure to
16 extend a temporary registration permit.
17 So staff needs to apologize if we misunderstood
18 the committee's direction, but what we've offered you in
19 the proposed regs is just that the LEA on their own
20 would be able to extend the three year period.
21 But we have included some criteria that they
22 need to look at, and that is that the reason they're
23 extending it is because there's reasons beyond the
24 control of the operator, and they need to be able to
25 indicate that the operator's made a good faith effort to

1 get the full permit.

2 The committee directed that they also wanted to

3 ensure that operators move forward towards getting their

4 full permit, and so they indicated a wish to include a

5 requirement that an application be submitted within one

6 year of, from -- and what staff has interpreted as one

7 year from when the LEA noticed them that they needed to

8 eventually have a full permit.

9 So that's that underlined section towards the

10 bottom is that after the LEA notices the operator that

11 indeed they'll need to eventually get a full permit,

12 that they'll need to apply for that permit within one

13 year of that notice.

14 Failure to obtain a full permit within the

15 timeframes outlined shall result in enforcement action.

16 We make an affirmative statement in the regs that it's

17 not an option for the LEA to choose or not to choose to

18 take enforcement action, they will need to take

19 enforcement action.

20 This phase-in requirement is the same that is

21 being applied to the C&D waste facilities and not just

22 C&D debris facilities.

23 Staff's rationale for that is that until these

24 regs are approved by the Board, the definitions of who

25 is in and who is not in, and who needs what kind of

1 permit won't be clarified, and so some sites that
2 perhaps today feel that they're a non-traditional
3 facility but will eventually be defined as C&D waste and
4 not debris are in the same boat as a site that's
5 currently accepting C&D debris. So they're being
6 subject to the same lack of clarity right now as other
7 sites, and so staff feels that they should be offered
8 the same opportunity to phase in to getting their full
9 permit just as C&D debris facilities are.
10 As indicated, I think by member Paparian about
11 existing sites and how we're looking at that, it's
12 staff's proposal that in the statement of reasons that
13 we clarify what we are intending to mean by existing
14 sites.
15 In consulting with legal, the ideas that we
16 have currently are that if an operator has obtained
17 local permits and has done some sort of initial site
18 improvements, they would have reached a threshold of
19 being able to determine that they're existing; which
20 might be a little bit lower than some people would
21 prefer in terms of, you know, actually up and running
22 and processing materials.
23 We're taking into account those that are
24 basically, you know, have gone through all of the local
25 requirements and have made some investments but have

1 perhaps not yet actually received waste material and
2 started processing it, and giving them some flexibility
3 too.
4 And I believe that's the complete summary of
5 what you have currently in the proposed regulations.
6 As Mr. Walker indicated and Mr. Paparian
7 indicated, staff is aware that not everyone is happy
8 with this version, and I'm certain that you'll hear
9 testimony today relative to those issues.
10 And staff's available to answer any questions.
11 If after the testimony the Board has any questions,
12 staff will be available to answer those. And we do
13 believe that the product in front of you is, warrants
14 additional comment period, and we would recommend that
15 the Board direct that it go out for a fifteen day
16 comment period.
17 Thank you.
18 BOARD CHAIR MOULTON-PATTERSON: Thank you. Any
19 questions or comments before we start with our
20 speakers?
21 Mr. Paparian.
22 BOARD MEMBER PAPARIAN: I just wanted to add,
23 maybe I should have said this at the beginning, that the
24 staff has done an outstanding job of trying to move
25 forward with the direction that they've been getting

1 from the committee, sometimes clear direction, sometimes
2 vague direction.
3 And, you know, I want to especially thank
4 Allison Spreadborough and Mark de Bie, and actually
5 Michael Bledsoe also from the legal office, they are,
6 they've all really done what the committee has been
7 asking of them. Even though at times I know that they
8 haven't quite agreed with some of the direction, I think
9 they may still be, as Allison mentioned, in a position
10 where they think a permanent registration tier might be
11 more appropriate, but they've been taken the committee
12 direction and putting out very solid work.
13 So I just wanted to thank all of them for doing
14 that.
15 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
16 you. Any others?
17 I'd just like to, I've been, as everyone else
18 on the Board, has been listening to everyone, especially
19 to our staff on this issue, and reading your letters.
20 My concern is, you know, I'll say it right from
21 the beginning, that if we stay at a hundred tons per day
22 that it will affect recycling. Health and safety is
23 very important to me as well as the other Board members,
24 I'm sure.
25 So as people come forward and testify, please

1 address the impact on public health and safety of one
2 hundred tons per day versus 350, say, tons per day.
3 And we have a lot of speakers, I would prefer
4 that you stay at three minutes. Please no more than
5 five minutes. And a little light will go off as a
6 warning to you when you're getting near five minutes.
7 With that, we'll start with Kelly Astor,
8 California Refuse Removal Council.
9 MR. ASTOR: Madam Chair and members, thank you
10 very much. I'd hoped to actually go a little later in
11 the process to respond to some other complaints, but I
12 understand you have to start somewhere.
13 I think also that staff is to be commended for
14 doing, I think, a pretty good job of trying to
15 coordinate and assemble all the comments that you've
16 received including the direction from the Board.
17 The CRRC is substantially supportive of the reg
18 package that is in front of you now.
19 I anticipate that you'll be receiving comment
20 from other witnesses about the idea that the threshold
21 is wrong.
22 Let me simply remind you that from industry's
23 point of view, at least that segment of industry
24 represented by the CRRC, we are very supportive of the
25 hundred ton per day threshold and would not want to see

1 any change in that.

2 Similarly, we're pleased with changes that

3 clarify the fact that there are not to be any franchise

4 implications one way or the other as a result of the

5 regulation packages before you.

6 With regard to the temporary tier itself I'll

7 offer a couple of comments.

8 First, any extensions we think ought to be

9 difficult to get. And staff has begun to lay out some

10 fairly general criteria on the fact that you have to

11 satisfy a good faith requirement, for example, to secure

12 an extension.

13 We'd like the opportunity and anticipate in

14 responding during the comment period, will offer some

15 assistance in further specifying some objective

16 criteria. Because our fear is that the same people that

17 have been dragging their heels and never intended to get

18 a permit in the first place, some of them may be intent

19 upon delaying that eventuality for as long as possible.

20 So from our point of view it would be important

21 that the regulations perhaps spell out in greater detail

22 exactly what it is that triggers the opportunity to

23 obtain an extension.

24 I also would offer that I think a two year

25 extension may be more than is necessary. We've

1 testified previously that a Waste Board permit process
2 is 180 days long, and the idea that someone needs two
3 years based on some circumstances that may be beyond
4 their control, they're already getting several years at
5 the outset to obtain one, and in our opinion should have
6 had one in the first place. So we'd like to see that
7 extension period shortened to perhaps a year.
8 Also, the extension determination I think we
9 would prefer be made at the Waste Board level. There
10 was discussion about that I think from Mr. Cannella and
11 others at the last P&E Committee hearing. And I
12 recognize that Mark and his staff have a difficult job
13 in trying to assemble all of the comments, but I heard
14 some members of the Board support that. And the CRRC
15 wishes to lend its voice to that effort to get the Waste
16 Board to make the determination.
17 With regard to existing sites, I'd prefer that
18 you limit it to those that are already operational, but
19 I understand the logic behind including groups that have
20 obtained local permits. I don't know if that's spelled
21 out sufficiently in the regs.
22 The last piece is this. We're talking about a
23 temporary registration that goes away at some point in
24 time. For that period of time that the permit and the
25 permit tier are in effect, I personally continue to

1 believe that some form of residual cap is warranted.
2 After all, the people that are seeking to come into the
3 permitting process this way label themselves recyclers,
4 and the idea that those same people are unwilling to
5 support some form of back end residual cap on the amount
6 of tonnage that doesn't get recycled doesn't make sense
7 to me.
8 A facility without a residual cap is still a
9 transfer station. And your own guidance document, going
10 back to number, or guidance document number twelve from
11 March 29th to '94 indicates that a transfer station is
12 not a non-traditional facility.
13 Thank you very much.
14 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
15 Astor.
16 Curt Fujii, Allied Waste.
17 MR. FUJII: Thank you.
18 I'd also like to state that we believe that
19 staff and the Board members have done a very, very good
20 job with the regulation package that is before you. It
21 represents, in our opinion, a very good compromise on a
22 very difficult and controversial issue.
23 I'd also like to state that we support good C&D
24 recyclers, we support good independent C&D recyclers.
25 However, our experience in this arena leads us to state

1 that we feel that additional regulation, as presented in
2 the package before you, is appropriate.
3 I don't want to take up too much time here
4 repeating things I said at the committee, I'll just say
5 that it's based mainly on two items.
6 One is the experience in cleaning up an illegal
7 dump that started its life off as an unpermitted
8 recycling facility.
9 The other is our experience as a solid waste
10 management company receiving materials from C&D
11 projects.
12 Based on that, to protect health and safety we
13 feel that the higher level of regulation presented in
14 the package before you is appropriate.
15 Specifically, we support the hundred ton per
16 day threshold. We would support a cap on residuals.
17 And we have some concerns, as Kelly expressed, about the
18 time that is permitted for a truly clean C&D recycling
19 operation.
20 However, as I stated at the start of things,
21 this is a compromise, I think it's a good compromise,
22 and I think that, I personally expect to have a few
23 things that do prompt some concern on a compromise on a
24 very personal issue.
25 Thank you.

1 BOARD CHAIR MOULTON-PATTERSON: Thank you.
2 Next we have Patrick Munoz from Rutan and
3 Tucker, who will be followed by Wendy Sommer, Alameda
4 County Waste Management Authority.
5 MR. MUNOZ: Good morning, and welcome Mr.
6 Washington.
7 As you look at these regulations I think it's
8 important that you focus on I think what the underlying
9 problem is that's being identified by folks like my
10 clients and the people who have been arguing to make the
11 regulations more, I'll call it user friendly.
12 Over the last number of years the C&D recycling
13 industry, as Mr. Astor noted, has really been
14 unregulated. That's not because we asked for it to be
15 unregulated or caused it to be unregulated, that's at
16 the direction of the Board and the Board staff.
17 When we went out and permitted our facility,
18 spent $5 million to have it built and to get into
19 operation, we would have been here and we would have
20 been getting whatever the appropriate permit was had
21 that been an option for us, but it wasn't.
22 So as you consider the regulations, whatever it
23 is that you ultimately decide, bear in mind what the
24 impact will be on the existing businesses. And that's
25 our fear, that's our concern that whatever it is you

1 decide to do should not be something that causes
2 businesses to be put out of business.
3 We understand that we're going to be regulated,
4 and we are not arguing that we should not be regulated.
5 And we have never taken that position. As early as I've
6 been addressing you I've commented that we understand
7 that's going to happen, and we understand it and we
8 accept that.
9 But one thing you should note on this question
10 of health and safety, which I applaud you for pointing
11 out as really the key issue, because that is your
12 regulatory authority is health and safety, is that in
13 all these years that this industry has been unregulated
14 there has not been a health and safety crisis. It has
15 not existed.
16 Now that's not to say that there are not bad
17 actors out there, and that regulations are needed to
18 ensure that those bad actors don't cause a health and
19 safety crisis, but there hasn't been one yet, and it's
20 because of the nature of the material we're dealing
21 with.
22 Generally speaking we are okay with the draft
23 of the regulations that you have before you now with all
24 the various issues that have been getting beat up over
25 the last few years, with the one exception of the key

1 issue that Mr. Paparian identified; the question of
2 whether there is going to be a permanent registration
3 tier or whether there will be a phase-out as is in the
4 current draft.
5 We've put a lot of thought into it. We
6 recognize it was offered as a compromise. The phase-out
7 was offered as a compromise. But we don't feel as
8 though we can support it.
9 We feel as though it is critical to have a
10 permanent registration tier.
11 With respect to health and safety and the
12 impacts on health and safety, and I know I've said this
13 before, I hope it's not becoming tiresome but, you know,
14 your staff is objective. I've got my position, CRRC has
15 their position, but your staff was willing to recommend
16 750 tons, and to say that there was not a health and
17 safety threat at a permanent registration tier at 750
18 tons.
19 They've ratcheted it back down to 500 tons
20 because of what I would submit are political
21 considerations as opposed to true health and safety
22 contributions. But to give the benefit of the doubt, if
23 it's 500 tons, 500 tons is something that we could
24 probably learn to live with.
25 One hundred tons is just too low. 350 tons is

1 a new number I've heard badgered around the last week or
2 so. Certainly it's better than a hundred tons, but
3 based on the nature of the operation that my client has,
4 we certainly would ask that it be 500 tons.
5 The process has become very political,
6 everybody knows that, everybody who's been involved
7 knows that. And it's obviously that a compromise of
8 some sort is needed, and we're prepared to try and
9 compromise. We've had a number of discussions in the
10 hallways suggesting that. Unfortunately, and this is as
11 much fault ours as kind of the other side of this issue,
12 we have not come to a compromise.
13 But I think that it's a mistake -- and this is,
14 and I say these next comments not for the sake of delay
15 for the sake of delay, but rather because I think it's
16 really and truly the right thing.
17 I think it's a mistake to try and go forward
18 this quickly with these regulations at this point in
19 time. I have stated consistently throughout this
20 process that I genuinely believe that phase one and
21 phase two should come together at the same time.
22 And the reason I believe that is because in
23 order to get a compromise, a true compromise, all the
24 issues need to be put on the table at the same time.
25 The same interests that are saying today make it as hard

1 as possible for the C&D operators to operate because
2 there's a health and safety threat that needs to be
3 addressed, are the same people when we come to phase two
4 on the disposal aspect of this will say well make it as
5 easy as possible to dispose of this same material
6 because they have landfills to dispose of it in, or
7 disposal facilities to dispose of it.
8 If all the issues have to be addressed at the
9 same time, people will take much more legitimate
10 positions on the overall issue, both phase one and phase
11 two. And I think that it's more realistic that a
12 compromise position can be reached.
13 To summarize again, we would encourage you to
14 consider 750 tons. Remember, your staff supported that
15 as not a threat to health and safety. We recognize
16 that's not realistic. That being the case, we would ask
17 you to more seriously consider 500 tons rather than 350,
18 if there is a movement afoot to consider that.
19 And when I say that I think that perhaps the
20 process should be slowed down, it's not for the sake of
21 delay for the sake of delay. Remember, these
22 regulations didn't look anything like this a year and a
23 half ago, which is to be expected; but they also didn't
24 look anything like this a month and a half ago, which is
25 not to be expected after we've gone through this level

1 of detail in a project for such a long period of time on
2 an issue where there is not a looming crisis, not yet.
3 Thank you.
4 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
5 Munoz.
6 BOARD MEMBER PAPARIAN: Madam Chair, could I
7 ask Mr. Munoz a question?
8 BOARD CHAIR MOULTON-PATTERSON: Certainly.
9 BOARD MEMBER PAPARIAN: I take it you're
10 familiar with the existing permitting requirements
11 absent these regulations?
12 MR. MUNOZ: Generally yes.
13 BOARD MEMBER PAPARIAN: Locally and what other
14 things you would have to get.
15 Is there something called an injury and illness
16 prevention program that Cal OSHA requires? You're not
17 sure about that?
18 MR. MUNOZ: I can tell you I'm not an expert on
19 what Cal OSHA requires, but whatever they require at a
20 facility like this, or any type of facility, is an
21 independent state requirement that everybody under
22 certain circumstances would have to comply with.
23 BOARD MEMBER PAPARIAN: What I'm getting at is
24 does, do you know if your client had to do that? Would
25 that change depending on the type of permit? Does your

1 client have such a program in place?

2 MR. MUNOZ: Candidly, I know that there are

3 safety, work safety programs that my client is involved

4 with and has had to get up to speed with that I've had

5 nothing to do with.

6 The Cal OSHA requirements would not impact our

7 decision one on way or the other in terms of permit

8 tiers. Those are independent issues that will exist

9 regardless of what permit tiers that you may all

10 create.

11 BOARD MEMBER PAPARIAN: Okay. Because I think

12 we may, we may, I'm, we have something that was handed

13 out to us by CRRC, I don't want to anticipate too much

14 what their testimony is, but I think they may be getting

15 to a point where they suggest that some of these things

16 would really kick in depending on the permit tier.

17 MR. MUNOZ: I don't believe that that's true.

18 BOARD MEMBER PAPARIAN: Okay. Mr. de Bie wants

19 to add something to that.

20 MR. DE BIE: I'm anxious to respond to that.

21 Allison handed me the state minimum standard that

22 references the illness injury prevention program. This

23 is something that's standard with existing MSW transfer

24 stations. Section 17408.7, personal health -- personnel

25 health and safety. "The injury illness prevention

1 program shall be available for review by local state
2 inspectors during normal business hours."
3 Nothing in the section is intended to make the
4 EA responsible for enforcing the IIPP. It's clearly
5 understood as of AB 1220 that Cal OSHA is responsible
6 for requiring that any facility within their
7 requirements have a IIPP. We are supporting that in our
8 state minimum standards by having a reference, but
9 that's as far as we go.
10 This requirement is for a registration or a
11 full, this is a state minimum standard. Staff's
12 understanding and expectation that no matter what tier,
13 even a notification, if Cal OSHA requires this they will
14 have it, that it's not dependent on what kind of permit
15 you have.
16 BOARD MEMBER PAPARIAN: Okay. Thank you.
17 BOARD MEMBER CANNELLA: Madam Chair, I have a
18 question.
19 BOARD CHAIR MOULTON-PATTERSON: Mr. Cannella.
20 BOARD MEMBER CANNELLA: Your client currently
21 does not have a full permit?
22 MR. MUNOZ: That's correct.
23 BOARD MEMBER CANNELLA: Operating a C&D
24 facility?
25 MR. MUNOZ: That's correct.

1 BOARD MEMBER CANNELLA: When they applied to
2 whatever regulatory body was to conduct that use,
3 whether it be the city or the county, was there not an
4 item before the local planning department to consider
5 the use of that application?
6 MR. MUNOZ: Oh, absolutely.
7 BOARD MEMBER CANNELLA: Were there not
8 conditions applied to the operation of that during that
9 local planning process?
10 MR. MUNOZ: I'm not sure if I followed your
11 question there. We received a CUP, so there are
12 conditions.
13 BOARD MEMBER CANNELLA: So whether you get a
14 full permit or whether you have a registration or you're
15 operating currently under the rules, each facility, its
16 use is at a public hearing, and conditions are applied
17 to that specific use, whether it's C&D, whether it's
18 automotive repair, whatever it is, there is a local land
19 use process that attaches specific conditions to the
20 property for the use that you're proposing, is that
21 correct?
22 MR. MUNOZ: In many cases that's correct.
23 Apparently it's not the case throughout the city.
24 BOARD MEMBER CANNELLA: Because the argument is
25 that unless you get a full permit you're not subject to

1 land use conditions or specific conditions for that
2 operation. And so what I'm trying to determine or to
3 get out is that all land uses, all land use issues go
4 before a local planning body, and that local planning
5 body will attach to that use conditions before you can
6 get a permit.
7 MR. MUNOZ: That's not necessarily true. It
8 was true in my client's case, but if a property is
9 expressly permitted under a zoning code?
10 BOARD MEMBER CANNELLA: That's correct, if it
11 meets general plan zoning and land use --
12 MR. MUNOZ: Then you would not have to.
13 BOARD MEMBER CANNELLA: And if you had a master
14 EIR done and it complies with all those, then you're
15 given a permit. But if not, then you have conditions
16 that are attached to that permit?
17 MR. MUNOZ: That's correct.
18 BOARD CHAIR MOULTON-PATTERSON: Thank you. And
19 Ms. Sommer, I'm sorry, but we're going to be, you'll be
20 first when we come back from the break.
21 We need to take a ten minute break for our
22 court reporter. Thank you. And it is my intention to
23 finish this item before we go to lunch. We've got a lot
24 to do before lunch.
25 (Thereupon there was a brief recess.)

1 BOARD CHAIR MOULTON-PATTERSON: Okay.
2 Ex-partes, Mr. Cannella?
3 BOARD MEMBER CANNELLA: None to report.
4 BOARD CHAIR MOULTON-PATTERSON: Thank you.
5 Mr. Paparian.
6 BOARD MEMBER PAPARIAN: Let's see. On this
7 last item, John Cupps, Mark Murray, Sean Edgar, Shane
8 Gusman, and Kelly Astor. Kelly who, by the way, I think
9 promised to go help the tree sitter in Santa Clarita in
10 his new environmental role.
11 BOARD CHAIR MOULTON-PATTERSON: You had a busy
12 recess.
13 Mr. Medina.
14 BOARD MEMBER MEDINA: None to report.
15 BOARD CHAIR MOULTON-PATTERSON: I have none to
16 report.
17 Mr. Jones.
18 BOARD MEMBER JONES: Mr. Cupps and Mr. Aprea.
19 BOARD CHAIR MOULTON-PATTERSON: Thank you.
20 Mr. Washington.
21 BOARD CHAIR MOULTON-PATTERSON: Yes, Madam
22 Chair. Mr. Aprea on item 27.
23 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
24 you.
25 Ms. Sommer, thank you for your patience, from

1 Alameda County Waste Management Authority. And she'll
2 be followed by Joan Edwards.
3 MS. SOMMER: Good morning, Madam Chair and
4 members of the Board. My name is Wendy Sommer, I'm with
5 the Alameda County Waste Management Authority.
6 We represent seventeen agencies including all
7 of the cities of Alameda County, the county itself, and
8 two sanitary districts.
9 Seven jurisdictions so far have adopted C&D
10 ordinances, three more in the next two months. Our goal
11 is to assist our member agencies to reduce the amount of
12 waste going into landfills. And franchise agreements
13 and ordinances are essential tools in achieving the 50
14 percent diversion goal that you have set, and the 75
15 percent goal that was, that is required by our local
16 Measure D.
17 We assist our cities with solid waste and
18 recycling RFB design, ordinance language, contract
19 provisions, and incentives. In doing so we encourage
20 the cities to allow haulers to compete for the right to
21 collect C&D materials.
22 For C&D recycling to be successful, open
23 competition and facility options are necessary to ensure
24 the highest diversion, the greatest efficiency, and the
25 lowest cost.

1 You and your staff may have to draw
2 distinctions between regulations for facilities and
3 collection and disposal services. But we believe that a
4 holistic approach is necessary.
5 More and more cities are expected to adopt C&D
6 ordinances as a way to meet AB 939 goals as reinforced
7 by the recently passed SB 1374.
8 More materials will be available creating more
9 demand for facilities. The regulations, as currently
10 written, will severely limit the availability of
11 processing options.
12 We hope you will continue to work with all
13 stakeholders. We are in support of the Independent
14 Recyclers Council's position, the National Construction
15 Materials Recycling Association, and the Construction
16 Demolition Council.
17 Expand the definition of recycling center
18 allowing commingled materials.
19 Keep a permanent registration tier.
20 Give us, give the cities the chance to be
21 successful in our recycling programs.
22 Give the contractors cost competitive options
23 for facilities that will still have to comply with local
24 regulations, as Mr. Cannella mentioned earlier.
25 With a permanent registration tier, in terms of

1 public health and safety, they have to go through the
2 zoning process. And the zoning exists because of health
3 and safety. In Alameda County all the projects has to
4 go through this.
5 Let us keep the registration tier, be it 300,
6 500 tons per day. They are helping all of us to reduce
7 the amount of materials going to landfills.
8 Your Board was created to assist us, to stem
9 the flow of recyclables to landfills. Please continue
10 to do this by finding a balance between protecting
11 public health and safety while avoiding bureaucratic
12 overregulation, and staying true to your waste reduction
13 mission.
14 Thank you.
15 BOARD CHAIR MOULTON-PATTERSON: Thank you.
16 Joan Edwards who will be followed by Denise
17 Delmatier.
18 MS. EDWARDS: Thank you.
19 In contrast to my previous testimony on this
20 issue, I am today primarily representing the
21 Construction and Demolition Technical Council of the
22 CRRA, although I will be adding some personal comments
23 at the end that relate specifically to the issue of
24 residual limits.
25 You have all received a letter from the CDC

1 that has made it clear that as an organization they
2 strongly maintain that a permanent registration tier is
3 essential to diverting C&D from landfills and maximizing
4 higher and better use. The group voted before the CAW
5 recommendation for a compromise, but I think the
6 statement speaks for itself.
7 In the event that the Board does decide to do
8 away with the permanent registration tier in your vote
9 today, there are five items that the CDC noted in their
10 letter to you that they believe are essential to
11 maintaining just a small bit of mitigation to the damage
12 that the elimination of a permanent registration tier
13 would do to higher and better use recycling and
14 diversion in general.
15 Of the five, the five actions include:
16 Expanding the definition of a recycling center
17 to allow additional commingled recyclables.
18 The second is a clarification of the definition
19 of existing facilities.
20 Third is to have the ongoing registration
21 phase -- to have the registration phase be ongoing
22 because we want to see new facilities come in, not just
23 the ones that have initiated their business plans and
24 actions to date.
25 The fourth is to have a wide variety of

1 database reporting and system evaluations by staff.
2 Now, I have spoken every year personally for
3 the last four years on this issue. I believe absolutely
4 that if you had in hand already a study that showed all
5 of the Board of Equalization data, not just the disposal
6 numbers, you would see the clear trend towards
7 increasing quantities of not just green materials, C&D
8 materials that are being used on site, avoiding the
9 Board of Equalization fee, getting diversion credit for
10 the lowest and least beneficial use.
11 I think that that is one example that the CDC
12 has cited as the kind of evaluation they would like to
13 see in the future.
14 And finally, they support the LEA extension and
15 approval mechanism.
16 I would add that the group in making these
17 recommendations is very aware that staff of the
18 Permitting and Enforcement Division, a group that,
19 though great people, are not known for being the
20 standard bearers for diversion, their job is
21 regulation. They are regulators tried and true, and
22 tend to take the most conservative viewpoint to protect
23 public health and safety. And that we were all startled
24 by the switch to an elimination of the permanent
25 registration tier in the face of staff's continued

1 determination that health and welfare is not jeopardized
2 by a permanent registration tier.
3 I'd like to just add, with the approval of
4 Stephen Bantillo who is not able to be here today, a
5 personal note about the issue of residual.
6 I believe there is a real misunderstanding
7 about what is a viable diversion rate, a possible
8 diversion rate for C&D debris, and what is the minimum
9 residual rate that should be allowed.
10 I was not able to come last time, I missed my
11 plane, but I listened to everything on the audio
12 broadcast which is a great tool.
13 And people kept, continued to say, despite my
14 testimony in the previous meeting, this is a hundred
15 percent recyclable material, ten percent residual limit,
16 we all do it, you can do it too. That is baloney, and
17 the facts do not support that.
18 If you have numbers, I recall that Kelly
19 Ingalls asked for this at the last meeting, we'd all
20 love to see it. Because I only know, as someone who
21 oversees C&D ordinances for four cities, I only know of
22 five ways to get over 70 percent diversion, I'd almost
23 say 60 percent, but perhaps that's going too far.
24 You have an enormous percentage of inerts
25 coming into your facility, screen it out, that's easy.

1 Or you have source separated inerts passing in
2 the door and counting towards the overall diversion
3 rate.
4 You have substantive mechanization, something
5 that's not going to happen in a facility that has only
6 125 tons per day, or at least that's not likely to
7 happen.
8 You have a highly selective in-the-door
9 criteria. That load is going to be too hard to recycle,
10 go to the transfer station. That load is pretty easy,
11 you can come in.
12 Other than this, the only other way other than
13 those four, the only other way you're going to get
14 really high rates is at a landfill where all you have to
15 do is grind it up, or screen it and use it for ADC,
16 intermediate cover, cover, erosion control, some
17 stability of a berm, on-site road construction, over and
18 above what you've been doing for years. This is not the
19 highest and best use, the real recycling that the Board
20 has indicated in recent years that they support.
21 Thank you very much.
22 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
23 Edwards.
24 BOARD MEMBER PAPARIAN: Madam Chair, can I ask
25 a question?

1 BOARD CHAIR MOULTON-PATTERSON: Yes, Mr.
2 Paparian.
3 BOARD MEMBER PAPARIAN: Yeah. In terms of a
4 registration permit versus a full permit, can you just
5 very briefly describe what you think it is that's
6 different about the two that will make it so much easier
7 to conduct C&D recycling activities?
8 MS. EDWARDS: Yes. First of all, I'm going to
9 start with perhaps what might seem the least substantive
10 to you, the perception.
11 Perception is everything in most of our lives.
12 And the perception of a full permit really impacts your
13 ability to start a facility in any locality. So the
14 perception of a full solid waste facility permit does
15 have an impact.
16 Secondly, with the registration tier you can go
17 only with your local requirements, land use
18 requirements, as Board member Cannella mentioned before.
19 And those requirements could be very stiff, they could
20 be fairly light, they could be even as of right, but
21 they are clear and defined, and it is a process that you
22 need to go through.
23 But it is not the kind of process you need to
24 go through in that same city if you want a full solid
25 waste facility permit. You have to get through the LEA.

1 You have to do full CEQA, not just a local land use
2 requirement, you have to do full CEQA, and it costs a
3 lot of money.
4 So again, a facility certainly that's at the
5 125 and 150 ton is going to have an enormous problem,
6 and you had testimony to that in that regard from the
7 gentleman from Looney Bins who told you about, you know,
8 their profit margin and what would have to go towards
9 amortizing the cost of a full facility permit in the
10 City of L.A.
11 And in fact, in the City of L.A., transfer
12 stations, while they do require a solid waste facility
13 permit, are as of right when they want to expand their
14 tonnage if they're in an M3 zone. So it's particularly
15 easy.
16 Thank you.
17 BOARD MEMBER PAPARIAN: Thank you.
18 BOARD MEMBER CANNELLA: Madam Chair, may I ask
19 a question?
20 BOARD CHAIR MOULTON-PATTERSON: Certainly, Mr.
21 Cannella.
22 BOARD MEMBER CANNELLA: You say you represent
23 four cities?
24 MS. EDWARDS: I work with -- and let me, I
25 don't think I said that but if I did I will restate it.

1 I manage --

2 BOARD MEMBER CANNELLA: Manage, okay.

3 MS. EDWARDS: Manage the construction and

4 demolition debris ordinance process for cities in San

5 Mateo particularly, and also I help in the city of Santa

6 Monica.

7 BOARD MEMBER CANNELLA: How many C&D facilities

8 are there in the areas that you manage?

9 MS. EDWARDS: Well, in the city of San Mateo,

10 if you count inert facilities and facilities that take

11 source separated materials, you probably have about

12 fifteen options.

13 BOARD MEMBER CANNELLA: Okay.

14 MS. EDWARDS: But mixed facilities that take

15 mixed C&D debris, the kind that we're talking about

16 here --

17 BOARD MEMBER CANNELLA: Uh-huh.

18 MS. EDWARDS: -- you have only five. And of

19 those five they're heavily impacted by landfills.

20 BOARD MEMBER CANNELLA: And the five that you

21 speak of, are they located in an industrial area? Where

22 are they located?

23 MS. EDWARDS: Let's see. The mixed facilities

24 are generally in M3, oh, an industrial landfill, in

25 industrial areas or are in an already, they were added

1 to an already permitted landfill or transfer station.
2 BOARD MEMBER CANNELLA: So the places where
3 they're located probably CEQA has already been done, and
4 they just need to be measured against the impact that
5 was identified in the original CEQA document, is that
6 correct? So they wouldn't necessarily have to go
7 through the CEQA documentation again, they would more
8 than likely get a negative declaration.
9 MS. EDWARDS: Ahh. Those five, that's true.
10 But the small ones would.
11 BOARD MEMBER CANNELLA: Why would they?
12 MS. EDWARDS: The smaller ones would have to
13 because they're over a hundred tons. Or if they're at
14 ninety now and want to go to a hundred and ten they'd
15 have to totally change their operation.
16 BOARD MEMBER CANNELLA: But the tonnage doesn't
17 require whether you do CEQA or not, it's the location
18 and whether it is in an industrial area and whether
19 there was one done already.
20 The use doesn't dictate whether there's a CEQA
21 document needed or not, it's the area where it's going.
22 MS. EDWARDS: If you're going by local land
23 use. But if you're getting through, if you're getting a
24 full solid waste facility permit you have additional
25 requirements, the process requires additional

1 requirements which requires additional money, which
2 shuts out the smallest --
3 BOARD MEMBER CANNELLA: But the local planning
4 department puts those conditions on it, then it's part
5 of the CEQA document, you don't have to go through it
6 again.
7 MS. EDWARDS: You have to go through it if you
8 want to expand.
9 BOARD MEMBER CANNELLA: Well, okay. Okay.
10 Thank you.
11 BOARD MEMBER JONES: Madam Chair.
12 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.
13 BOARD MEMBER JONES: For Ms. Edwards, I'm not
14 going to let you leave that early.
15 MS. EDWARDS: I was hoping.
16 BOARD MEMBER JONES: Well, just a couple of
17 things.
18 MS. EDWARDS: Yes.
19 BOARD MEMBER JONES: These regulations have
20 nothing to do with recycling, right?
21 MS. EDWARDS: I did not believe that's true. I
22 did say that to you last item.
23 BOARD MEMBER JONES: There's no requirement.
24 MS. EDWARDS: You said that to me once before
25 and I made a statement. The ISOR clearly says that

1 recycling is one of the goals, and that in creating the
2 tiered permitting regulations in '96 we were all told
3 that one of the primary purposes was to encourage
4 recycling.
5 We all believed in that ourselves, those of us
6 who were interested in C&D recycling when we came here.
7 That discussion was really -- even though technically
8 you don't have to do any recycling under these
9 regulations, we believed that that was the intent, and
10 we got that belief both from the Board and staff as well
11 as from our own interests.
12 BOARD MEMBER JONES: Right. When we were in
13 San Francisco and I suggested a tier that would have a
14 residual amount that would encourage recycling, you said
15 it would never work.
16 MS. EDWARDS: No. I --
17 BOARD MEMBER JONES: Yes.
18 MS. EDWARDS: No. I believe that residual tier
19 -- that residuals can work. What I disagree with is the
20 constant harping on ten percent.
21 And as I said, if you want to go over seventy,
22 you have to fit one of those five criteria that I said,
23 I believe.
24 But I'm not saying that you couldn't have some
25 residual and, in fact, I think that the Californians

1 Against Waste proposal for a registration tier with a 33
2 percent residual is a workable one. At worst case
3 scenario, in my view all a facility would have to do is
4 to be a little more selective in who they let in the
5 door.
6 BOARD MEMBER JONES: Or yeah, exactly, quit
7 taking garbage.
8 MS. EDWARDS: No, more selective by not taking
9 garbage.
10 BOARD MEMBER JONES: Well that's what I'm
11 saying.
12 MS. EDWARDS: Yes.
13 BOARD MEMBER JONES: They'd have to change
14 their practices.
15 MS. EDWARDS: They'd have to change --
16 BOARD MEMBER JONES: From taking garbage to be
17 more select than not taking garbage.
18 MS. EDWARDS: I do not, no, I do not believe
19 that's true. I believe that's a misstatement. A
20 facility might not recycling inerts because they don't
21 have a screening system, but inerts are recyclable.
22 They might not recycle carpeting because
23 they're not close enough to Newby Island or the facility
24 down in L.A.
25 They might not recycle all the metal because

1 they don't have magnetic separation and can't get the
2 small pieces.
3 So there's lots of recyclables that facilities
4 don't recycle because they don't have the equipment or
5 the manpower or even the money to hire the extra
6 sorters.
7 So I'm saying that even in the worst case
8 you're a small guy, you only have a couple of sorters,
9 you're doing it off the ground, you only have a 50
10 percent diversion rate, you tell 'em they have to get to
11 67 percent, well he might be able to do it by being more
12 selective and taking loads that have higher percentages
13 of recyclables to begin with.
14 BOARD MEMBER JONES: I would agree.
15 MS. EDWARDS: Okay.
16 BOARD MEMBER JONES: These regulations come
17 after a ten year impasse. And it's, you know, ten years
18 of no regulation.
19 MS. EDWARDS: I agree. We need --
20 BOARD MEMBER JONES: And it's ten years of
21 everything in the world coming into a door, because it
22 wasn't regulated and LEAs weren't shutting 'em down.
23 And you have to start somewhere.
24 MS. EDWARDS: We do have to start somewhere,
25 and I do understand and appreciate and agree with the

1 frustration of the Board that this has dbeen going on
2 for so long. We do need regulations that clarify what
3 the rules are.
4 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
5 you, Ms. Edwards.
6 I am going to take Denise Delmatier and Shane
7 Gusman, and then I'm going to go back on my word because
8 I don't want a mutiny here, and we will take a lunch
9 break.
10 So Denise and then Shane Gusman.
11 MS. DELMATIER: Good afternoon, Madam Chair,
12 members of the Board. Denise Delmatier with NorCal
13 Waste Systems.
14 Like the others in the solid waste industry, we
15 supported one hundred tons per day at the San Francisco
16 Board hearing. We've supported a hundred tons per day
17 ever since that Board hearing a year ago. And we are
18 actually quite surprised to see the numbers moving
19 dramatically up throughout the year when we thought we
20 had consensus and agreement in that San Francisco Board
21 hearing on the hundred tons per day.
22 We also support a residual cap. We would like
23 to see the same residual cap two part test that we found
24 for the transfer processing regs, and that includes a
25 ten percent residual cap, one percent putrescible.

1 One concern we have with the regs as currently
2 drafted, and I don't think it's the intent of staff to
3 encourage this kind of activity, but we don't have any
4 strong clarification that would disallow a potential
5 operator who's currently operating at, for example, a
6 hundred tons per day but then sees a window of
7 opportunity during this three year phase-in and decides
8 to then immediately jump up to a thousand tons per day
9 because you don't have to get a full solid waste
10 facility permit for three years.
11 I don't think that's the intent of staff, but
12 some clarifying language I think would be helpful, that
13 if you're going to use this three year phase-in, you get
14 to come in at the level of operation that you're
15 currently at, and you don't get to come in and all of
16 the sudden triple, quadruple the size of your operation
17 through this minimal registration tier during the three
18 year phase-in. So we would request some clarification
19 there.
20 Thank you.
21 BOARD CHAIR MOULTON-PATTERSON: Thank you.
22 Shane Gusman from the Teamsters.
23 MR. GUSMAN: Madam Chair, members of the Board,
24 Shane Gusman with the California Teamsters Public
25 Affairs Council.

1 Our folks are generally supportive of the
2 package that you have before you. As I've stated
3 before, their primary concern has been the health and
4 safety of their members.
5 And I know that it's been said that this
6 package doesn't affect health and safety, that whether
7 it's a hundred tons or five hundred tons or a thousand
8 tons, it doesn't affect what happens at the facility,
9 but that's just simply not true.
10 There are mitigation requirements, mitigation
11 conditions placed on the facility when they have to get
12 a full solid waste permit, and that's what we support.
13 Because those conditions, like building a shower on your
14 facility so that the workers don't take home the
15 hazardous materials to their families, are important to
16 us. Having respirators which are mitigation measures
17 that are required are important to us.
18 And to consider ceding the authority to look at
19 the, or to have CEQA requirement and concurrence at the
20 Board level, I think that's just, you know, it's frankly
21 outrageous.
22 I think we have a fair compromise before you,
23 and I urge you to adopt it.
24 Thank you.
25 BOARD CHAIR MOULTON-PATTERSON: Thank you.

1 Any questions or comments of the Board before
2 we take our lunch break? Can we be back at 1:15?
3 1:30?
4 Okay, we'll go to 1:30.
5 (Thereupon the luncheon recess was taken.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 AFTERNOON SESSION

2 --oOo--

3 BOARD MEMBER WASHINGTON: I'll start at this

4 end this time.

5 Mr. Washington, do you have any ex-partes?

6 BOARD MEMBER WASHINGTON: Yes, Madam Chair.

7 Shane Gusman, California Teamsters Public

8 Affairs Council.

9 Mark Aprea regarding 27.

10 Catherine Bransenberg from the Flanagan law

11 firm on item 27.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you.

13 Mr. Jones.

14 BOARD MEMBER JONES: Actually just kind of said

15 hi to Mark Aprea, Kelly Astor. But we can't not talk

16 about C&D regs whenever we say hi. And I think that was

17 it. I think that was it.

18 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank

19 you.

20 I said hello to Mark Murray and that was about

21 it.

22 Jose -- I mean Mr. Medina.

23 BOARD MEMBER MEDINA: Just a discussion with

24 Mark White regarding the Tijuana landfill.

25 BOARD CHAIR MOULTON-PATTERSON: Okay.

1 Mr. Paparian.

2 BOARD MEMBER PAPARIAN: Yeah, I spoke with Mark

3 Murray about the C&D regs.

4 BOARD CHAIR MOULTON-PATTERSON: Okay.

5 Mr. Cannella.

6 BOARD MEMBER CANNELLA: I'm sorry to say no, I

7 don't have any to report.

8 BOARD CHAIR MOULTON-PATTERSON: Okay. Then we,

9 as you know, we were on item 27 and we broke midway

10 through the public comments.

11 The next one is Mark Aprea followed by Rick

12 Lymp.

13 MR. APREA: Madam Chair, Mark Aprea, Aprea and

14 Company representing Republic Services.

15 I'd like to just for a moment sort of put this

16 whole issue in perspective. We've all been dealing with

17 this, and I'd like to commend staff and the Permitting

18 and Enforcement Committee for all their efforts on this

19 issue.

20 But to go back about eights years to the 1994

21 Northridge earthquake. You'll recall that the Santa

22 Monica freeway collapsed, generating an awful lot in the

23 way of C&D waste which ended up in East Los Angeles in a

24 pile called La Montana.

25 Assemblywoman and now Senator Escutia attempted

1 to address the issue legislatively, and this issue I
2 suspect will be repeated time and time again. Not
3 because we've had an earthquake, but because we are, in
4 essence, going to generate a significant amount of C&D
5 waste as a result of the local school bonds that have
6 been adopted around the state the last two years, and
7 the major school bond that was adopted earlier this
8 year. We're going to see a considerable amount of C&D
9 waste, and it's important that whee get this right.
10 A year ago we met in San Francisco, and the
11 Board then agreed that one hundred tons per day was the
12 limit. And from there on we went, we've gone back and
13 forth, and we've seen this issue, these proposed regs be
14 modified substantially going back and forth, and we're
15 back again at a hundred tons per day.
16 A week ago the Permitting and Enforcement
17 Committee had a hearing that lasted in excess of three
18 hours, and the package that you have before you is the
19 product of that and many hearings before it.
20 While I want to commend staff on the work that
21 they've done, I'd like to ask a couple of questions that
22 may be addressed at some point during the hearing. And
23 that is that my recollection is that we did not really
24 look at this being a phase-in period of two to four
25 years, but rather that there was going to be a permit

1 process whereby folks would have one year in which to
2 apply for a permit, and six months to obtain that
3 permit.
4 And that then the Board, not the LEA, would be
5 in a position of authority to determine whether an
6 extension on that eighteen months would be granted.
7 And that that would be then conditioned or
8 denied, and that the Board would then determine the
9 period of time for the extension.
10 Staff mentioned that the registration permit
11 would be good for three years. Again my recollection is
12 somewhat different in that in that it may be extended by
13 the Board but that it would not have to be done so
14 mandatorily.
15 Madam Chair, to address your question in
16 particular, and I know the question of some of the
17 members of the Board as to what are the health and
18 safety issues between a hundred tons per day versus 350
19 tons per day or some other amount?
20 I think Mr. Edgar at the P&E Committee through
21 his PowerPoint presentation indicated that it was -- was
22 it ten tons per truck approximately?
23 MR. EDGAR: (Witness nodded head.)
24 MR. GUSMAN: So we're looking at the difference
25 in terms of traffic alone of ten trucks per day versus

1 35 trucks per day.

2 Madam Chair and members, Mr. Cannella indicated

3 that as a condition of his vote the last time around

4 that the Board would commit to providing permit

5 assistance to those folks who were coming into the

6 system for the first time or those people who were

7 having difficulty.

8 The assumption is also made that in most cases

9 there would not be a full-blown EIR but a negative

10 declaration.

11 And that the Board where there were

12 circumstances outside the applicant's control, whether

13 it was because of problems complying with CEQA or other

14 issues, that the Board would retain the authority to

15 extend that registration permit for a period of time to

16 be determined by the Board, and to determine what the

17 conditions are. That authority was what the, the P&E

18 Committee looked at back just a week ago.

19 The other issue that we, I think need to

20 address in looking at this issue is that we're not

21 dealing with all the good operators that are out there,

22 whether those who are currently permitted or those who

23 are operated.

24 Regulation packages are always developed to

25 make sure that the problems that existed in the past

1 don't repeat themselves over and over and over again.
2 I would submit to you that one of the issues
3 that you ought to take a look at is, when developing
4 this reg package, is to make sure that that La Montana
5 is not duplicated time and time again.
6 And then finally an issue that has not really
7 been addressed, and that is the issue of enforcement.
8 No matter what reg package is ultimately adopted, I
9 think it's important that we address the issue of
10 ensuring that enforcement both at the LEA level as well
11 as by the Board is maintained.
12 It doesn't really matter what the, it will not
13 matter what the reg package says if it is not going to
14 be properly enforced. And we've seen that there are an
15 awful lot of folks out there who, either by ignorance or
16 intent, are not going to comply with the law.
17 And I think it's important that the Board, in
18 addition to providing, as Mr. Cannella offered, that
19 there be permit assistance, that there also be an
20 extraordinary effort made as it relates to the
21 enforcement of these regs as they go forward.
22 Thank you, Madam Chair and members of the
23 Board.
24 BOARD CHAIR MOULTON-PATTERSON: Thank you.
25 Rick -- any questions?

1 Rick Lymp followed by Gary Liss.

2 MR. LYMP: Madam Chairman, gentlemen, my name

3 is Rick Lymp, I'm with Right 2 Know. Good afternoon. I

4 have just a couple of short comments to make.

5 First, I'd like to say something about Dan

6 Eaton. Four years ago when I started on this project

7 that I'm working on I watched, you know, what was going

8 on throughout the state and, in particular, this Board.

9 While he was the chairman, he and the Board

10 made a significant change in how this agency interfaces

11 with special interest groups. I think that's a very

12 good thing.

13 I'm going to miss the dynamics between Dan

14 Eaton and Steve Jones over there, I think that was a

15 good thing also.

16 Now for my comments. On October 15th, 2002, I

17 spoke to this Board. I reminded you that earlier this

18 year I had informed you that by my filing a notice of

19 Resource Conservation Recovery Act violations and

20 intention to file citizen's suit February 28th, 2001,

21 you and all the other respondents have been denied

22 certain legal rights.

23 Under federal law you may not administratively

24 modify any impacted policies, programs, or regulations

25 until such time as the RCRA issue is addressed and my

1 NOI are settled.

2 Treated industrial wastes, type B inert, AKA

3 contaminated soil, contaminated sludge, are not inert.

4 The Resource Conservation Recovery Act issues

5 have not been resolved. Therefore, any administrative

6 modification of impacted policies, programs, or

7 regulations would be highly inappropriate. Any such

8 action would be a violation of federal law.

9 There are only two methods available to resolve

10 the issues in the RCRA NOI. The first is by entering

11 into facilitated alternate dispute resolution mediation.

12 The other is by my filing a complaint in

13 federal court.

14 In the former alternative the respondents are

15 given the opportunity of being a part of the solution to

16 the problems.

17 In the latter alternative the respondents are

18 faced with criminal prosecution, loss of right to

19 administer and enforce federal and environmental law in

20 California, potential shutdown of local enforcement

21 agencies, Superfund problems, and tremendous financial

22 liabilities.

23 We have spent more than four years working on

24 this project. The factual and legal issues have not

25 changed. We have asked for your cooperation repeatedly.

1 At one point the agencies were about to sit
2 down and resolve the problems cooperatively. They
3 abruptly changed their minds for reasons that are still
4 unclear. I'm hopeful that decision reflects a desire to
5 postpone rather than to refuse to cooperate.
6 I hope to hear from each of the respondents at
7 their first opportunity regarding a cooperative
8 resolution.
9 Madam Chair, I brought some copies of this for
10 you and your Board members. May I give 'em to your
11 staff?
12 BOARD CHAIR MOULTON-PATTERSON: Yes, please.
13 Thank you.
14 MR. LYMP: Okay. Thank you.
15 BOARD MEMBER PAPARIAN: Madam Chair.
16 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.
17 BOARD MEMBER PAPARIAN: Just to our legal
18 counsel, without going into the substance of what was
19 just said, one of the assertions, as I understood it,
20 was that there's some legal basis for us not proceeding
21 on regulations like the one we have before us. So my
22 basic question is, in your view are we fine with
23 proceeding?
24 CHIEF LEGAL COUNSEL TOBIAS: I'd need to look
25 into it. I can't give you an answer at this time. I

1 might have an answer by the time that the Board meeting
2 is over today, but --
3 BOARD MEMBER PAPARIAN: Okay. So by the time
4 we're ready to actually vote on adoption you can let us
5 know if --
6 CHIEF LEGAL COUNSEL TOBIAS: By the adoption
7 certainly, since today is --
8 BOARD MEMBER PAPARIAN: If there's a problem
9 with us going ahead and adopting --
10 CHIEF LEGAL COUNSEL TOBIAS: I should have an
11 answer in a day or two, but I don't have an answer at
12 the moment.
13 BOARD MEMBER PAPARIAN: Okay. Good. Thank
14 you.
15 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mr.
16 Paparian and Ms. Tobias.
17 Gary Liss.
18 MR. LYMP: May I say one more thing to maybe
19 help facilitate here?
20 BOARD CHAIR MOULTON-PATTERSON: Quickly,
21 uh-huh.
22 MR. LYMP: If you look in the environmental
23 treatises for state and federal environmental law,
24 you'll probably find some pretty good beginning points.
25 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.

1 Lymp.

2 MR. LYMP: You bet.

3 BOARD CHAIR MOULTON-PATTERSON: Okay. We have

4 Gary Liss followed by Sean Edgar.

5 MR. LISS: Madam Chair, members of the Board,

6 thank you for the opportunity again to come before you.

7 I'd also like to welcome Mr. Washington. Glad

8 to see you have a nice easy issue to deal with on your

9 first day in your new position.

10 I'm here representing Industrial Carting, a

11 small C&D and independent recycler in Santa Rosa, Sonoma

12 County. And also for the Independent Recyclers Council,

13 the California Resource Recovery Association.

14 I'd like to first address Industrial Carting's

15 concerns. Because, as Mr. Paparian highlighted, I have

16 the dubious distinction of representing the facility

17 that would be most impacted of anyone in the state, from

18 what I can gather, by the regulation's direction that

19 came out of the Permit and Enforcement Committee last

20 week.

21 Last week they indicated that a facility needs

22 to be existing at the time of the effective date of the

23 regulations in order to go into this new phased-in

24 registration tier, or it would not be able to operate

25 until it got a solid waste facility permit.

1 It would put Industrial Carting out of business
2 for C&D recycling in one minute.
3 Industrial Carting has a facility that has a
4 conditional use permit with 52 conditions on it that
5 starts construction planned for the spring. And our
6 concern is that may not be operating by the effective
7 date of the regulations.
8 We ask that you include in your statement of
9 reasons and wherever else is appropriate a definition of
10 what you mean by existing if you adopt the regulations
11 suggested by the Permit and Enforcement Committee from
12 last week.
13 In land use law we understand there is a
14 precedent that if you have a land use permit and have
15 begun moving dirt, started construction, your vested
16 rights begin then.
17 We ask that a similar type of definition of
18 what existing means will be adopted by the Board in the
19 statement of reasons so that you don't close down a new
20 C&D recycler that's put two years of effort and has made
21 a major investment in C&D recycling for Sonoma County.
22 Other ways to address this would be to do an
23 ongoing temporary registration permit. Not have a once
24 in a lifetime opportunity of getting into this phase-in
25 from the old system to the new system, but allow the

1 registration permit to be a temporary permit, to deal
2 with this situation when new investment is desired in
3 the future.
4 Allow an ongoing investment by independent
5 recyclers. If you don't do it, if you do it as a one
6 time deal, what you're doing is you're consolidating the
7 industry and making only a few people in the state able
8 to invest in these facilities, and that will have the
9 effect that is contrary to the stated goal coming out
10 from the Board meeting last time which was that your
11 policy be franchise neutral.
12 Your definitions now we believe are franchise
13 neutral, but your policy by the rest of the regulations
14 is not. It is not franchise neutral, you need to direct
15 staff to make the whole regulations franchise neutral.
16 Another alternative would be what we prefer
17 which is the permanent registration tier as staff had
18 recommended. The hundred to five hundred tons per day
19 be a registration tier.
20 Please let Industrial Carting start operations
21 in Sonoma County.
22 For the Independent Recyclers Council we sent
23 in our suggestions over the last several weeks. I
24 passed out our comments again today.
25 Again, we support the staff recommendation of

1 the hundred to five hundred ton per day registration
2 tier on a permanent basis. They have looked at the
3 health and safety issues, they don't exist for that
4 hundred to five hundred ton per day. And staff was
5 convinced that that was a reasonable level of activity
6 to be regulated by a registration tier on a permanent
7 basis.
8 If you don't have a permanent registration
9 tier, mitigation is needed. We've suggested a number of
10 ways to address that, a number of people have commented
11 about those ideas earlier today, and I won't duplicate
12 those comments.
13 I would like to suggest that personally I've
14 just seen the CAW propose compromise for something on
15 the order of three hundred to four hundred ton per day
16 permanent registration tier, and something that is less
17 than five hundred tons per day on an average basis.
18 As long as the peak remains at five hundred
19 tons per day I think would be a reasonable compromise,
20 particularly with the residue tests that they're
21 proposing of thirty to forty percent residue tests. I
22 would suggest that the forty percent might be a test
23 that's done initially, and thirty percent be ratcheted
24 down that kicks in in five years so that you encourage
25 people to invest in equipment that will enable them to

1 get more residue over time, which should be one of the
2 dual goals of these regulations.
3 The final comments I have are about the general
4 stepping back and looking at the big picture. And the
5 question is, what is the problem here? Are there sham
6 recyclers? I've heard reference to La Montana. My
7 understanding is there are no rules, so how can people
8 say people are operating illegally?
9 BOARD CHAIR MOULTON-PATTERSON: Mr. Liss, I'm
10 very sorry, but I've tried to keep everyone to five
11 minutes, so if you'd conclude, I'd appreciate it because
12 you've gone over.
13 MR. LISS: Okay. I suggest that you invest in
14 recycler, not more permits. A one-time only deadline
15 locks out future investments.
16 And the definitions being franchise neutral was
17 an accomplishment, but the rest of the recommendations
18 are not.
19 We need to encourage investment by independent
20 recyclers.
21 This is a complicated issue, take the time to
22 do it right.
23 Thank you.
24 BOARD CHAIR MOULTON-PATTERSON: Thank you.
25 Sean -- oh, any questions?

1 BOARD MEMBER EATON: I have a question, Madam
2 Chair.
3 BOARD CHAIR MOULTON-PATTERSON: I'm sorry, Mr.
4 Jones.
5 BOARD MEMBER JONES: Thanks, Madam Chair.
6 Mr. Liss, Charlie Hardin, where does he do his,
7 you say he's a recycler?
8 MR. LISS: Correct, in Santa Rosa?
9 BOARD MEMBER JONES: Right.
10 MR. LISS: Industrial Carting?
11 BOARD MEMBER JONES: Right. Where does he
12 process the material that he's recycling?
13 MR. LISS: Currently he has a metals and paper
14 and bottles and cans recycling center in Santa Rosa.
15 They're adding C&D recycling is what they're working
16 on. They have two years of effort into this. The CUP
17 has been issued, they have done their environmental
18 review, and they're hoping to begin construction this
19 spring.
20 BOARD MEMBER JONES: So all the stuff they've
21 been doing has been source separating?
22 MR. LISS: They're also a debris box hauler,
23 and they haul debris boxes to the landfill, or if
24 they're source separated they're able to handle them as
25 source separated materials, they do that.

1 BOARD MEMBER JONES: Okay. Thanks.
2 BOARD MEMBER PAPARIAN: Madam Chair.
3 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.
4 BOARD MEMBER PAPARIAN: Yeah, and I think, and
5 I said this at the beginning too. I think that no
6 matter which way we go I don't think we want a facility
7 like the one he described to get caught in this limbo
8 land where they didn't have a permit to apply for up to
9 the point where these regulations go into effect. Then
10 if they go into effect and they haven't started
11 operation yet they can't apply for the permit, they
12 suddenly have to go for a full permit which might take
13 them a couple of years.
14 MR. LISS: Right.
15 BOARD MEMBER PAPARIAN: So I don't think it was
16 the intent of the P&E Committee to, you know, keep a
17 person like that who's really been diligently moving
18 towards opening up an operation from starting that
19 operation.
20 MR. LISS: Thank you.
21 BOARD MEMBER PAPARIAN: Thank you.
22 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
23 Paparian.
24 Sean Edgar followed by Chuck White.
25 MR. EDGAR: Good afternoon, Madam Chair and

1 committee members -- Board members. Sean Edgar on
2 behalf of the California Refuse Removal Council, more
3 than one hundred recycling operations throughout the
4 state.
5 I'd like to briefly address your question,
6 Madam Chair, on the difference between one hundred ton
7 and any greater number, and then offer you a few brief
8 comments.
9 First of all, the importance to public health
10 and safety from an environmental review is very obvious
11 with regard to the conditions that result from that
12 environmental review.
13 Our companies do not approach CEQA as a burden,
14 we approach it as an obligation. That obligation is to
15 identify the impacts and have mitigation measures that
16 are designed to control those impacts.
17 Specifically Board staff has indicated
18 repeatedly and to this Board that CEQA review may or may
19 not be taken up at the local level. There is no Waste
20 Board concurrence required for that registration tier
21 permit. Furthermore, the enforcement agency cannot put
22 any site specific conditions into that registration
23 permit, and those are the conditions that are
24 appropriate to the site that protect public health,
25 safety, and the environment.

1 The magic number of one hundred I think you
2 would look to your staff and the information that we
3 have of record going to the initial statement of reasons
4 for this regulatory package indicates that mixed C&D and
5 MSW facilities present an equivalent risk. Your staff's
6 word is "equivalent." It wasn't three times less, five
7 times less, twelve times more, it was equivalent.
8 And so our position is that if the existing
9 transfer processing regulatory requirements call for a
10 hundred tons for MSW transfer stations or processing
11 facilities, then that same equivalent limit should apply
12 to C&D handling operations.
13 So as a little bit of context, the staff has
14 indicated equivalency, and the registration tier does
15 not provide for any Board concurrence or in the issuance
16 of the permit, nor any site specific conditions.
17 Very briefly how that ties in with local
18 government is that across the street at the capitol, the
19 Senate Bill 1374 just instructed this Board to help
20 local government get to 50 to 75 percent recycling on
21 this waste stream.
22 Second of all, every jurisdiction that I'm
23 aware of that has come before this Board, and they plan
24 to get to 50 percent or to stay over 50 percent, is
25 relying upon expanded C&D programs to get there. So

1 we're looking at an expansion of C&D programs.

2 The permit requirement at a hundred tons that

3 puts this Board in the position of, A, protecting of the

4 public health and safety which, I believe, is a primary

5 obligation.

6 And B, getting to the meat of the AB 939

7 issue. We've heard a lot of talk about diversion

8 impact, what's the impact on diversion? At a hundred

9 tons per day it puts this Board in control of what

10 happens, and to ensure that the local land use process

11 was concurred in at the time that the facility permit

12 was issued.

13 So I wanted to briefly address those items.

14 And in answer to Mr. Paparian's question about

15 perception, Ms. Edwards had answered that there is a

16 perception or stigma attached to a solid waste facility

17 permit. However, we have seen and in our past testimony

18 we've indicated what the reality is.

19 The reality is there are problem facilities.

20 The reality is this Board is paying out hundreds of

21 thousands of dollars to clean up rogue C&D operations.

22 That's the reality.

23 The reality is that there are fires at these

24 facilities.

25 The reality is that in the initial statement of

1 reasons your staff has observed that these C&D debris
2 processing facilities process with dryer material with
3 an increased fire risk.
4 And if I could just very briefly, I understand
5 my time is running out, but I would like to address your
6 attention to the spreadsheet that I did hand out.
7 And just a brief example, this three page
8 spreadsheet entitled, "Mitigation Measures," and with
9 comments by CRRC on it. I point to where this is from
10 Blue Line Transfer station located in South San
11 Francisco. That facility is a fully permitted solid
12 waste facility, it also processes about 200 tons per day
13 of mixed C&D material.
14 This facility supports seventeen individual
15 ordinances in San Mateo County, so they're responsible
16 for seventeen ordinances on trying to maximize diversion
17 of this waste stream.
18 It's in an urban setting. This facility, if we
19 look through all the pages here and we've highlighted
20 some elements that, with regard to the worker safety,
21 hazardous waste load checking of which there's not a
22 requirement for this mixed C&D processors, there is for
23 a C&D mulch operation at the load check, but C&D
24 processors in this scenario in the current regs are not
25 required to load check. So we have load checking, we

1 have needle resistant gloves for site workers, we have
2 noise control measures, we have safety gear, we have a
3 whole variety of things.
4 BOARD CHAIR MOULTON-PATTERSON: Mr. Edgar,
5 please summarize, your time's up.
6 MR. EDGAR: Thank you, Madam Chair.
7 So in summary we would submit that it is the
8 site specific conditions that are protective of public
9 health and safety. We cannot rely, this Board cannot
10 assume that a CEQA review will be completed in a
11 registration permit, temporary or permanent or
12 otherwise.
13 I'd be happy to answer any questions you may
14 have.
15 BOARD CHAIR MOULTON-PATTERSON: Thank you. Any
16 questions?
17 Mr. Cannella.
18 BOARD MEMBER CANNELLA: Are you suggesting that
19 unless there is a CEQA process, that we cannot protect
20 the public health and safety because the local planning
21 departments and boards would not impose specific
22 conditions that regulate the use of that area to protect
23 the public's health and safety? You say they're not
24 permitted to do that?
25 MR. EDGAR: Mr. Cannella, through the chair I

1 would submit, as has been the testimony through the
2 Board, that that is not the case in all jurisdictions.
3 Alameda County spoke just earlier and indicated
4 yes, in Alameda County that's the circumstance.
5 However, it's apparent due to cleanup
6 operations in the city and county of San Francisco, that
7 wasn't the case with the mobile debris box.
8 In Tulare County that wasn't the case with
9 Cutter Industries in Visalia.
10 So I would submit that the testimony the Board
11 has received is that is not the universal case.
12 Industry is suggesting that that should be the universal
13 case.
14 BOARD MEMBER CANNELLA: So would you also agree
15 that if you were operating a hundred ton a day facility
16 that you may not be required to do the CEQA document or
17 EIR, and that if you were doing a hundred tons a day or
18 one ton a day that you would be required to do that
19 depending on where it is and the type of use that
20 surrounds the proposed C&D facility?
21 MR. EDGAR: I would suggest, Mr. Cannella, that
22 it is eminently important for this Board to have some
23 check that the local process was done, seeing this is a
24 very high profile and important waste stream not only
25 for health and safety but for achieving diversion, which

1 are the two goals of this package. And the best
2 mechanism we can think of for that to do, that CEQA
3 check to happen, is a concurrence function by this Board
4 that the local process was met, whatever that local
5 process may be.
6 BOARD MEMBER CANNELLA: But I was asking was a
7 question. It's possible to do a ton a day and be
8 required to do an environmental document as opposed to
9 doing a hundred tons and only get a negative dec?
10 MR. EDGAR: I suppose it's possible, yes, sir.
11 BOARD MEMBER CANNELLA: Right. Okay. So the
12 point I'm trying to make is I have a copy from the city
13 of Stockton that imposed 27 conditions of use for that
14 particular company. I would submit to you that the
15 majority of the folks through the planning departments,
16 because of public pressure, would certainly review that
17 use and impose whatever measures and whatever conditions
18 were necessary to protect the public health and safety.
19 And the argument about doing a CEQA document or
20 not really depends on where you are. The driving factor
21 is not whether you do 500 tons a day or you do a hundred
22 tons a day, it's where it was and what kind of
23 documentation was prepared to allow for that development
24 to occur.
25 Would you agree?

1 MR. EDGAR: I would agree, and I would agree
2 that it's important for this Board to have concurrence
3 to make sure that process got followed.
4 BOARD MEMBER CANNELLA: So if the, some city
5 concurs with a negative declaration under a full permit,
6 it would come up to the Board to review it, is that
7 correct? We'd have ninety days to read that document
8 and to either agree or disagree with its completeness?
9 MR. EDGAR: I depends on -- currently this
10 Board has authority under the solid waste facilities
11 permit, and the time is, I believe it's sixty days for a
12 full permit application once it's been deemed complete
13 and correct and sent from the LEA to the Board, I
14 believe the Board has sixty days to concur.
15 BOARD MEMBER CANNELLA: And then I'll ask Mark
16 de Bie then too if there's any questions to give us what
17 the Board's responsibility is then. Once we receive an
18 application that had a CEQA document attached to it with
19 the approval of the local governing Board, what action
20 would we have? What authority do we have to either
21 accept or reject or modify?
22 MR. DE BIE: Little or none relative to that.
23 What we do do relative to the CEQA document and the
24 permit is make sure that they're consistent, that
25 they're describing the same project, and that's pretty

1 much it.

2 But we don't, we're, we don't have an

3 opportunity to add conditions or to, you know, adjust

4 the permit at all.

5 BOARD MEMBER CANNELLA: So outside of the local

6 review and the local approval and the local conditions,

7 the Waste Board has very little action once a

8 environmental document has been certified at the local

9 level and submitted to the Waste Board for concurrence?

10 MR. DE BIE: That's the usual case certainly.

11 The LEA does have an opportunity with a full permit to

12 add any conditions they feel is necessary. It's been

13 our experience that site specific conditions are not

14 usually something that the LEA does include in their

15 full permits, especially for transfer stations. Once in

16 a while you'll see one or two, but usually it's all in

17 the land use approval.

18 BOARD MEMBER CANNELLA: Okay. So the point

19 we're trying to make is that the, whether you get a

20 registration or you get a full permit, the local

21 governing bodies are the ones that impose the

22 restrictions and the conditions of operation.

23 And whether you do a thousand tons a day or you

24 do five tons a day does not determine whether you're

25 going to have to do an environmental document or not.

1 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian
2 and then Mr. Jones.
3 BOARD MEMBER PAPARIAN: Yeah, thank you, Madam
4 Chair.
5 And this is a question I've brought up several
6 times in the P&E Committee that it just doesn't, it
7 seems to me that CEQA applies if there are environmental
8 impacts associated with a project. It's not, it's not
9 us determining some arbitrary registration or full
10 permit tier that makes CEQA apply.
11 To argue that it doesn't apply implies that --
12 well, to argue that local jurisdictions aren't following
13 CEQA unless we're requiring a full permit implies that
14 there are, there's rampant violation of CEQA around the
15 state, you know, that there are projects with
16 environmental impacts that the local governments are
17 letting through. That would be very troublesome if we
18 had evidence of that, but I certainly haven't seen that
19 kind of evidence.
20 MR. DE BIE: I think a typical scenario is one
21 that Member Cannella has pointed out that there's a
22 local land use review, and usually approval over these
23 kinds of operations that does, is usually discretionary
24 and does require some CEQA review.
25 There are occasions where no site specific CEQA

1 review is done, but usually there's some documentation
2 on zoning or general plan that is referred to or
3 utilized.
4 In rare instances there's no local approval and
5 the LEA is the first to have the discretionary approval,
6 and they would put a document together. But that's not
7 the usual case, but it does occur.
8 So we don't have any evidence of local, locals
9 avoiding CEQA when they're confronted with a
10 discretionary approval, they take the lead on that
11 issue.
12 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
13 de Bie.
14 Mr. Jones.
15 BOARD MEMBER JONES: I find that an interesting
16 comment because I think that this Board has taken the
17 lead, I know on more than, we voted on more than one
18 occasion to see if we thought CEQA was adequate, and
19 have actually done documents as the lead agency, when we
20 didn't think the documents were, that CEQA was adequate,
21 that was approved by a local governing body.
22 MR. DE BIE: And those are situations i which
23 we felt as staff that the project had changed to a level
24 where it was a different project.
25 Certainly if the project remains constant

1 through the, all the approval processes, then the
2 document done locally is usually, is the case that is
3 accepted.
4 But it's in those rare instances where a CUP
5 was granted, for example at a certain tonnage limit, and
6 then when it comes to the Board there's a different
7 tonnage limit. And so to be cautious we've advised the
8 Board to do additional CEQA.
9 BOARD MEMBER JONES: Right, and I just think
10 that's a fuller answer.
11 MR. DE BIE: Certainly it is.
12 BOARD MEMBER JONES: Thanks. There's just a
13 couple of things. If we look at our, at our permit
14 toolbox on our computer, one that we're guiding
15 operators, and it goes to the question that Mr. Cannella
16 brought up; one of the requirements under a full solid
17 waste facility permit is that we require evidence of
18 CEQA, whether it's a neg dec whether it's an exemption,
19 whatever, we require that that documentation be
20 presented as part of the package.
21 Under a registration permit there is no
22 requirement.
23 Now I'm not, that doesn't mean that a local
24 government isn't going to do what it should do. But if
25 a facility went into a previously zoned area that this

1 could have been an acceptable operation if it had lived
2 by certain terms and conditions, there would never be a,
3 you know, there would never be a CUP, there wouldn't be
4 anything.
5 So I think it's important we look at our own
6 documents. Because it's clear throughout those
7 documents that, you know, like a CUP is required,
8 evidence of a CUP is required in a full permit, it is
9 not required in a registration permit. An LEA issues a
10 registration permit, not this Board.
11 So clearly there are very different things, and
12 I think we're getting hung up on the idea that CEQA
13 somehow puts conditions on.
14 CEQA puts conditions, like Mr. Cannella said,
15 on the operation, the traffic that's coming in, the
16 hours of operation, the dust, the lights, the this, the
17 that.
18 A full solid waste facility permit puts on
19 specific terms and conditions germane to that
20 operation.
21 A registration permit does not. A registration
22 permit has a boilerplate set of requirements that become
23 the terms and conditions.
24 So that's the difference, and I think that it's
25 important that we look at our own documents to see that,

1 in fact, that's what we're telling the stakeholders out
2 there when they get ready to put a permit forward.
3 MR. DE BIE: If I may, just to clarify a fuller
4 answer.
5 In the registration process the application
6 that the operator fills out, which includes technical
7 documentation as part of that application, is, becomes
8 part of the registration permit by reference.
9 So if the operator describes tonnage limits,
10 vehicle numbers, those sorts of things, those become
11 limits in the registration permit. And if he went
12 beyond those things described in the application he
13 would have to get a new registration permit.
14 So yes, there are some set, not really
15 conditions but descriptions, and also one of those is
16 the application hereby referenced is part of the
17 permit. So there are limiting factors in a registration
18 that's not just wholesale whatever you want to do.
19 There's some limits.
20 BOARD MEMBER JONES: Is there requirements put
21 in the number of trucks?
22 MR. DE BIE: I'd have to look back on what
23 specifically is required to report in the technical
24 document in registration. But yes, I don't think
25 they're that specific, but there is specifics in terms

1 of describing their operation, capacities, waste stream,
2 those sorts of things, those are required.
3 BOARD MEMBER JONES: Right. Right. It's a
4 plan of operation.
5 MR. DE BIE: Just a point of operation, staff
6 has some experience as the Board with transfer station,
7 MSW transfer station permits.
8 And if you take a critical look at those MSW
9 transfer station permits, full permits, the majority of
10 the conditions in them included by LEAs are not site
11 specific conditions. They're reiterations of existing
12 requirements in regulation and statute. There are very
13 few, very rarely included site specific conditions in
14 those full permits. There are limits that are expressed
15 but not conditions.
16 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
17 de Bie.
18 We have Chuck White followed by Bernard
19 Meyerson.
20 MR. WHITE: Madam Chair, members of the Board,
21 Chuck White with Waste Management.
22 I want to welcome Mr. Washington and wish him
23 the best of luck as he deliberates on this and future
24 issues.
25 And Mr. Cannella, you're going to be sorely

1 missed, and I wish you the best in your future
2 endeavors.
3 With respect to the issue at hand, Waste
4 Management does support, with some possible modification
5 to the existing proposed regs that are before you today.
6 With respect to the tonnage limit, we believe a
7 hundred tons per day is the appropriate limit for the,
8 above which would require a full permit really for two
9 reasons.
10 For two reasons really. One, it's really
11 consistent with the transfer and processing
12 regulations. We've heard a lot of testimony that gee,
13 C&D waste looks a lot like normal solid waste. In fact,
14 C&D waste is normal solid waste if you look at the
15 definition in the Public Resources Code. And as long as
16 you keep a consistent tonnage you're going to likely not
17 have the problems of confusion in the future, future
18 regulation of these facilities.
19 With respect to the Chairwoman's concern about
20 health and safety. I did provide in the record a report
21 that was done by your sister agency, the Department of
22 Toxics, related to the presence of toxic materials and
23 hazardous waste in construction, at construction sites
24 that appeared in construction waste and it's discarded.
25 And the department's report basically said that

1 a lot of this is being mismanaged, particularly it's
2 being mismanaged by smaller operators.
3 And that's one of the reasons why we feel that
4 a consistent permit level for both small, except for the
5 very small, the very small and large operators are
6 appropriate, because the evidence on the record is that
7 the smaller operators may, in fact, be less diligent in
8 managing these toxic and hazardous wastes of which the
9 Department of Toxic reports there's over seventy
10 different types of hazardous materials typical to the
11 construction trades.
12 So bottom line, we believe that a hundred tons
13 per day is appropriate.
14 With respect to the residual issue, if you're
15 at a hundred tons per day we don't believe there's a
16 need to impose a percentage or limit on residuals going
17 for disposal.
18 However, if you go above a hundred tons per
19 day, we think a residual is.
20 And during the phase-in period you do have the
21 possibility of allowing much larger facilities to
22 operate under this registration tier. And I ask you to
23 consider whether it makes sense, which we think it does,
24 to impose a residual limit on, if you're operating
25 during this transition phase-in period.

1 If you're at a 500 or a thousand tons per day
2 you shouldn't be able to handle more than a hundred
3 tons of residual during this phase-in process if you're
4 eligible. Because if you're handling more than one
5 hundred tons per day you should be a transfer and
6 processing facilities as other types of facilities like
7 that are currently regulated.
8 With respect to the phase-in period, we believe
9 that Mr. Paparian's proposal for a phase-in period makes
10 a lot of sense. We think it should be kept as short as
11 reasonably possible but still provide people adequate
12 time apply.
13 In essence there's two groups that are
14 potentially subject to this phase-in period. One is the
15 C&D debris group, that's the group that has less than
16 one percent putrescible.
17 I don't have any problem for a little more
18 flexibility in phase-in for that group that is handling
19 basically relatively clean material.
20 What I'm concerned about is the same kind of
21 phase-in period for people that are not the C&D debris,
22 but are in the larger C&D waste category that are
23 handling material above more than one percent
24 putrescible.
25 I believe a much shorter phase-in, in fact

1 immediate compliance makes the most sense.

2 If they can comply with the one percent then

3 they ought to be either getting a transfer station

4 permit, or they ought to be proceeding to bring their

5 operations into compliance with these regulations.

6 With respect to the timing issues, my last

7 point, timing is of the essence. As a number of

8 speakers, and I think Mr. Jones referred to, this

9 process has been going on for a number of years, back

10 almost a decade, in large part seems to be attributed to

11 this non-traditional policy.

12 But if you go back and read that

13 non-traditional policy, it only pertains to inerts. It

14 doesn't mention C&D waste, and I'm unclear in my own

15 mind how we've gotten off to this unclear regulation of

16 C&D waste given that C&D waste is specifically mentioned

17 as a solid waste in the Public Resources Code.

18 That's not, that was there before AB 939, it's

19 been there for a decades, and why is this a,

20 non-traditional facilities that warrant non-regulation?

21 It's been going on for almost a decade with a complete

22 disparate view of how these facilities are regulated

23 from jurisdiction to jurisdiction, LEA to LEA.

24 The time is of the essence to bring this to a

25 close and get these facilities regulated consistent with

1 other types of solid waste facilities.

2 So we urge you, please, to move forward as

3 quickly and as diligently as possible to put closure in

4 this process and get forth with the proper regulation of

5 these C&D facilities which are solid waste.

6 Thank you.

7 BOARD CHAIR MOULTON-PATTERSON: Thank you.

8 BOARD MEMBER PAPARIAN: Madam Chair.

9 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

10 BOARD MEMBER PAPARIAN: Mr. White. You're not

11 the first one who's brought up the desire to have these

12 regulations consistent with the transfer and processing

13 facility regulations.

14 As I understand the transfer and processing

15 facility regulations, there is a permanent registration

16 tier in there.

17 MR. WHITE: That's right.

18 BOARD MEMBER PAPARIAN: And at --

19 MR. WHITE: Up to a hundred tons per day.

20 BOARD MEMBER PAPARIAN: Up to a hundred, I was

21 saying maybe it's between fifteen and a hundred. I

22 don't remember exactly.

23 MR. WHITE: I think it's between fifteen and a

24 hundred tons per day.

25 BOARD MEMBER PAPARIAN: Between fifteen and a

1 hundred you'd have to get a permanent registration.
2 Would you propose a permanent registration tier
3 for the C&D regs at such a level?
4 MR. WHITE: I'm not proposing at this point in
5 time. And I think it's appropriate above a hundred to
6 be full, how you divvy up the less than a hundred to
7 make it completely consistent with the transfer and
8 processing would be fine.
9 You've heard so much testimony about gee, this
10 stuff looks like solid waste, it doesn't look like solid
11 waste, it doesn't look like municipal waste, it looks
12 like C&D waste, there really isn't a clear break point.
13 The stuff gets dirtier and dirtier and dirtier, yet
14 cleaner and cleaner and cleaner, and you're going to
15 really confuse the issue to the extent you really have
16 disparate permit levels for material that looks and acts
17 and breathes exactly like the same kind of waste.
18 So I'm thinking it's going to be a lot easier
19 from an enforcement standpoint when you say if you've
20 got more than a hundred tons per day of C&D waste, C&D
21 debris, municipal solid waste coming through your
22 operation, you've got to get a full permit. You may
23 want to call it different things, but it's still clear
24 you're getting a full permit.
25 BOARD MEMBER PAPARIAN: Now what the staff has

1 argued, as I've understood it, is that a transfer and
2 processing facility typically gets much higher amounts
3 of putrescible waste than a C&D facility would get. And
4 that they do a conversion based on how much putrescible
5 is in there. I don't know, they can explain how they do
6 the conversion, but they somehow come up with an
7 equivalence above a hundred tons a day for a
8 registration tier.
9 That, their assertion, as I understand it, is
10 that it's apples and oranges to say a hundred tons a day
11 at a transfer station is like a hundred tons a day at a
12 C&D facility.
13 And they've argued that there should be a
14 higher registration tier at a C&D facility because it's
15 a different sort of waste stream.
16 Any response?
17 MR. WHITE: Well I think there's other kinds of
18 material of concern other than putrescible waste.
19 As I pointed out, I understand the Department
20 of Toxics did this study of C&D construction industry
21 some years ago, I haven't seen any report since then
22 that discounts that or says that there's been a
23 substantial improvement, but there's a tremendous amount
24 of toxic and hazardous materials that are used in the
25 construction industry and they're typically mismanaged,

1 they're mismanaged particularly by smaller operations.
2 And so I'm concerned that, you know, not only
3 possibly the putrescible issue, but more importantly
4 toxic and hazardous waste issues may be a concern.
5 BOARD MEMBER PAPARIAN: If we were to go to a
6 registration tier at a lower, at some level like the
7 transfer and processing, would you be comfortable with
8 some sort of conversion factor that led to a higher than
9 a hundred ton a day C&D facility?
10 MR. WHITE: We support the regulation package
11 that's before you, but if there is an alternative we'll
12 certainly be happy to work with you on that if that's
13 the wisdom of the Board.
14 BOARD MEMBER PAPARIAN: Okay. Thank you.
15 BOARD CHAIR MOULTON-PATTERSON: Thank you. We
16 have Bernard Meyerson representing EMS followed by the
17 last speaker, Mark Murray.
18 MR. MEYERSON: Yes, I'm speaking as a
19 businessman and I've been a consultant here for over
20 thirty years. I have some perspective here.
21 I really want to commend Member Cannella for
22 some of the points he's been trying to make.
23 I think in terms of the Board's needing to meet
24 its intent to get as much recovery out of C&D materials
25 as possible, that, one, that we have to be very careful

1 not to do, not to take actions that will very negatively
2 impact independent businesses.
3 I need to point out that the recycling
4 industry, as opposed to the solid waste industry, is
5 every bit as old as the solid waste industry, and as
6 long as there's been material used by humans there has
7 also been recycling as well as solid waste.
8 And no one questions the authority of the Board
9 to deal with solid waste. The issue is, when does it
10 become solid waste to be dealt with by the Board? And
11 that's where I want to draw the line.
12 I'm very supportive of the limitation of one
13 percent putrescibles. C&D material traditionally has
14 practically no putrescibles, and meeting the one percent
15 limitation I think is not a problem for businessmen in
16 the field.
17 I think the size of the operation is totally
18 irrelevant to the issues of concern to the Board. I
19 think the kind of problems you can have you can have at
20 twenty tons a day or you can have at a thousand tons a
21 day.
22 I think also the implication that somehow if
23 the Board is engaged in oversight it somehow is going to
24 mean a great improvement in health and safety over and
25 above the oversight that is conducted by local agencies,

1 even though the local agencies are right there on the
2 spot.
3 I operated a private facility and I had to
4 deal, and I had to answer to local authorities about
5 dust, about water, about drainage, about fire hazards,
6 and the Board and the Waste Board had nothing to do with
7 that. So the idea that unless the Board is somehow
8 involved none of these issues are going to be addressed
9 is I think erroneous.
10 I very much support the idea of a permanent
11 registration. I think that one should not underestimate
12 the negative impact of the term "solid waste facility"
13 for permitting purposes.
14 It will be devastating in terms of the NIMBY
15 phenomenon, especially siting any new facility anywhere
16 in an urban area that has, that people can say has to
17 get a solid waste facility permit in order to operate,
18 we'll almost have no chance at all of being approved.
19 And so by doing that you are effectively cutting off any
20 substantial growth.
21 I think also, I just have one additional
22 comment on the issue of residues. I think they're
23 totally irrelevant.
24 Businesses, especially independent businesses
25 will strive to recover as much of the material as

1 possible because what's left, which has to be disposed
2 of at landfills, is a direct cost item, it goes right to
3 the bottom line and affects their profitability.
4 So we have to look at what motivates operators
5 to recover as much as possible. And residues will vary
6 very much with markets over time. As other people have
7 pointed out, it depends on where you are whether you can
8 move carpeting, wood waste, have some markets and you
9 have to look for some other markets.
10 I think, for example, one of the proposed
11 regulations has to do with that a recycling center
12 cannot grind or chip wood. I don't think you should be
13 putting restrictions on how people need to process
14 material in order to be able to market it.
15 I think everything should be done to encourage
16 the maximum development of markets and processing. And
17 I think commingled facilities is the reality of C&D, C&D
18 material.
19 And now if somebody is doing, if you're
20 defining C&D waste as having nine or ten percent
21 putrescibles, then bless you, go ahead and regulate and
22 issue solid waste permits for all of that. There's no
23 excuse for having nine or ten percent putrescibles in,
24 you know, in regular C&D processing.
25 And just finally, I would like to say that it's

very important, it's very important that the Board not undertake to term every item of manufacturing as waste at any point in its life.

I mean you might get a nice table out at a landfill because somebody threw it away and then it's part of the waste stream, but that doesn't mean it's always been part of the waste stream.

And when a C&D recycler brings mixed C&D material to his facility and recovers as much of that as possible, and is within that one percent putrescible limitation, then that material is not solid waste until he takes that residue to a landfill, and it's the residue that then is subject to the solid waste control.

And there are enough regulations out there now governing hazardous and toxic materials. And the fact that some people may be working against regulations, that won't change if the Board has a whole permit process. The Board is not going to be able to be everywhere at the same time, and there's not going to be any greater guarantee of compliance under those circumstances.

Thank you.

BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr. Meyerson.

Mark Murray, Californians Against Waste.

1 MR. MURRAY: Madam Chair, members, Mark Murray
2 with Californians Against Waste.
3 Welcome Mr. Washington.
4 Mr. Cannella, after today I can say your
5 presence on this Board is going to be greatly missed,
6 and I think it may be time to renew discussions in the
7 legislature about a seventh member on the Board from, as
8 a former local government representative, possibly
9 modifying that to be from the Central Valley.
10 But you frankly have been on fire today, and
11 it's helped me to grasp some of these issues.
12 Mr. Medina was asking me some questions
13 yesterday in a meeting that I didn't have the answer to,
14 I should have sent him to you because you've got the
15 answers on that in terms of the abilities of local
16 agencies to apply conditions on facilities without
17 having to have a solid waste facility permit.
18 So Madam Chair, to get to your question that
19 you posed here, try and maybe assist if I might in
20 coming up with a solution here. You posed the question
21 about what is the environmental health and safety impact
22 here?
23 And I want to take a half a step back. Right
24 now in California we're generating, we're disposing of
25 more than four million tons of this C&D waste. And

1 that's twelve percent of the waste stream. That's more
2 than electronics waste, that's more than tires, that's
3 more than plastic containers. It's more than a lot of
4 other material that we spend a lot of energy at this
5 Board dealing with.
6 The goal here to me, the crisis that we're
7 facing is the need to divert more of that material. I
8 don't perceive that the crisis is dealing with the
9 environmental threat posed by this inert material.
10 Any of you that have looked out your windows to
11 the southwest catty-corner from this building have seen
12 several hundred tons of C&D material, some of it is
13 still standing as walls, it has piles of bricks and
14 rocks in the abandoned site that's been sitting there
15 for ten years, that site is an aesthetic problem, but
16 it's not posing an environmental health risk.
17 Now if I was to take a hundred ton or 99 tons
18 of material and, of mixed solid waste, putrescible solid
19 waste and dump it into that site, that would become an
20 environmental threat, a public health threat within a
21 matter of days.
22 We're talking about different waste streams
23 here. And this presents itself with, I think, an
24 opportunity to regulate this material in a way that
25 encourages businesses to set up new recycling

1 facilities.

2 And that's really what this regulation package

3 is the, really the reason we've been struggling with

4 this for so long is because we're trying to come up with

5 a balanced package that protects the environment, but

6 also encourages and protects these existing businesses,

7 and encourages them to expand, because there's a more of

8 this material that we need to manage.

9 Now, in trying to assist the Board in reaching

10 some kind of compromise, we've put forward and provided

11 with you a kind of a summary of a potential solution.

12 And it is a compromise. It brings to the table two

13 different elements that we've heard the various

14 stakeholders talk about.

15 One is the idea of increasing the threshold for

16 a permanent registration tier from one hundred tons per

17 day to 350 tons per day. And we didn't invent this

18 concept, we put this together in consultation with a

19 number of the other stakeholders here, particularly John

20 Cupps, and also benefitted a great deal from insight

21 from Chuck White, although he wasn't able to embrace the

22 proposal.

23 But one of the things that he put forward that

24 I think was very revealing and it was kind of brought

25 out again in the questions that Mr. Paparian was asking

1 a few minutes ago, is that if we had a facility that was
2 handling maybe 350 tons, but as long as we kept the
3 threshold of residual down below a hundred tons per day,
4 that that would be the equivalent of a transfer station
5 that was handling a hundred tons per day.
6 So the package that we've put together, ninety
7 percent of it, it suggests that ninety percent of what
8 you've got in this regulation is the way to go.
9 But it proposes basically a couple of changes.
10 Number one, increasing that threshold for permanent
11 registration of 350 tons.
12 And introducing a concept that up until last
13 Friday the waste haulers were talking about that I
14 supported was the idea of a residual test. It proposes
15 a residual test of thirty-three percent. Again, I think
16 that maybe that residual test can move around depending
17 on the size of the facility.
18 And I think maybe unofficially I've had that
19 dialogue with a number of the waste haulers. I really
20 think that there's an opportunity for a compromise there
21 if you marry the idea of increasing the threshold and
22 having some kind of residual threshold.
23 I'm not interested, frankly, in providing a
24 regulatory, a protection regulatory tier for facilities
25 that aren't out there recycling.

1 If they're C&D waste facilities and they're
2 collecting the C&D waste and taking the C&D waste to a
3 landfill, I'm not sure that I have anything to say to
4 those facilities.
5 But for those facilities that are hitting
6 diversion thresholds of 60, 70 percent, those are the
7 kind of facilities that we need more of. And
8 establishing a regulatory framework that provides
9 adequate protection, which I think would happen with the
10 registration tier, but one that encourages diversion
11 with a residual test in the thirty-three percent range,
12 to me that represents an opportunity for compromise.
13 Ultimately at the end of the day we do need to
14 have regulation in this area. The problem in terms of
15 the sham recyclers, the problem in terms of the
16 abandoned sites is that we've had an absence of
17 regulation.
18 I'm hoping that this Board can find that middle
19 ground, put together than compromise. I'm not
20 interested in any further delay on this issue, and I'm
21 hoping that something that kind of marries this idea of
22 true C&D recycling facilities at a reasonable threshold
23 can provide the answer.
24 Thank you very much.
25 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mr.

1 Medina has a comment.

2 BOARD MEMBER PAPARIAN: Thank you, Madam Chair.

3 I did want to correct one misimpression, and

4 that's that my question did not have to do with how

5 local government works, I come from local government, I

6 know how local government works.

7 My question frankly had to do with how the

8 Board happened to get into these multi-tier permits.

9 Because having served on the Board of Permit Appeals in

10 San Francisco, you either had a permit or you did not.

11 Frankly, from my experience on this Board is

12 that a municipal solid waste permit may be too broad,

13 that we need to look at specific permits.

14 If you're going to look at a composting

15 facility, we should have a permit specific for a

16 composting facility.

17 I think there's just too many issues that

18 result when you start looking at these different type of

19 layered permits.

20 Another experience coming from the Board of

21 Permit Appeals is that once an issue came out of

22 committee, no matter how complex or difficult, rarely

23 did we need more than an hour to discuss it and bring it

24 to a conclusion.

25 BOARD CHAIR MOULTON-PATTERSON: Thank you.

1 With that, we're going to take a five minute
2 break.
3 (Thereupon there was a brief recess.)
4 BOARD CHAIR MOULTON-PATTERSON: Mr. Washington,
5 any ex-partes?
6 BOARD MEMBER WASHINGTON: No, Madam Chair.
7 BOARD CHAIR MOULTON-PATTERSON: Thank you.
8 Mr. Jones.
9 BOARD MEMBER JONES: None.
10 BOARD CHAIR MOULTON-PATTERSON: I had none.
11 Mr. Medina.
12 BOARD MEMBER MEDINA: None to report.
13 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.
14 BOARD MEMBER PAPARIAN: None.
15 BOARD CHAIR MOULTON-PATTERSON: Mr. Cannella.
16 BOARD MEMBER CANNELLA: None to report.
17 BOARD CHAIR MOULTON-PATTERSON: Okay. We had
18 left off, Mr. Medina had finished.
19 Board members, I'm opening it up for questions,
20 comments from Board members.
21 (No response.)
22 BOARD CHAIR MOULTON-PATTERSON: I don't see
23 any. I think it's, you know, very important that we
24 give staff some direction today.
25 And I want to say that I think our staff has

1 done a fantastic job on this. I think they have been
2 unbiased, they have worked so hard, and I just want to
3 say that up front, I know everybody up here feels that.
4 You know, you've taken a lot of criticism on it, and I
5 think you really have done a great job.
6 Right now all facilities one hundred tons per
7 day and over are required to get a full solid waste
8 facility permit.
9 After hearing all the testimony, reading the
10 letters sent to me, and speaking with our staff, I'd
11 like to propose that we raise that from one hundred tons
12 per day to three hundred tons per day. In other words,
13 those facilities between fifty to three hundred tons per
14 day would be slotted into a permanent registration tier.
15 And those three hundred tons per day and over would get
16 a full solid waste facility permit.
17 I think it's important that we give staff some
18 direction today, and I'd like staff to draft language to
19 reflect this direction and send it out for a fifteen day
20 comment period before the holidays, and then bring it
21 back to, bring back this item to the January, 2003 P&E
22 Committee for further direction.
23 BOARD MEMBER JONES: Madam Chair.
24 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.
25 BOARD MEMBER JONES: If you were to do a three

1 hundred ton, and listening to all of the testimony,
2 there is a requirement that most of these people seem to
3 require that this material be recycled. There's nothing
4 in these regs that say that they have to recycle.
5 So if, if there was going to be three hundred
6 tons, then I think there needs to be a ten percent or a
7 twenty percent residual. If that's too low, then we can
8 change it.
9 But you can't allow these facilities who --
10 Gary Liss said it best. He criticized people for saying
11 that these people were operating illegally, he said,
12 "How can you say that? They haven't had any rules for
13 ten years. There are no rules to break."
14 Actually I think there were rules that were
15 broken, but I don't -- I think that to suggest three
16 hundred tons without a residual is, you know, I mean I
17 may be able to go there with you on the three hundred
18 tons, but there's got to be a residual of ten percent,
19 because that's the only way the material is going to get
20 recycled.
21 And I don't care what Joan Edwards says about
22 the poor guy that can't pick out metal. Right now that
23 box is being consolidated and taken to a landfill, or
24 it's being consolidated and taken to Peck Road or one of
25 these other facilities in L.A. and it's not going to

1 counted as anything. It's not going to be disposal or
2 diversion, it's non-existent.
3 So, you know, if you want to honor Mark Murray
4 and John Cupps and the rest of these folks, which I
5 don't have a problem with, Mark Murray and I get along
6 good, there needs to be a residual, and that residual
7 should be, I think, ten percent, but I'll be willing to
8 say twenty percent. Otherwise it's just getting around
9 the law.
10 BOARD CHAIR MOULTON-PATTERSON: Okay. I could
11 live with the 20 percent residual.
12 Mr. Paparian.
13 BOARD MEMBER PAPARIAN: Thank you, Madam Chair.
14 A couple, one interesting thing about what I
15 think I heard you say was that we would drop the lower
16 end to fifty tons per day which would, five zero, which
17 would, I mean it helps with one of my concerns as it is.
18 I want to make sure that if there's facilities
19 that potentially could cause problems, that we do have
20 LEA enforcement at those facilities.
21 And I think that I've heard enough to convince
22 me that even at, you know, even at fifty tons a day, and
23 it may even turn out to be lower at some point, even at
24 fifty tons a day you could have problems at facilities.
25 So having a registration tier at fifty tons a

1 day does assure that the LEA does get out there, does
2 look at these facilities, and does assure that they are
3 operating according to our state minimum standards. And
4 if there's any problems they'll catch it, they'll be
5 there every month taking a look at them.
6 On the residual amount, I'm sympathetic to the
7 residual amount. I don't want people to bring in under
8 the, under the guise of being a C&D facility really
9 being a transfer and processing facility or something
10 worse.
11 When I visited facilities, I remember visiting
12 the Looney Bins facility which does a 120, 130 tons per
13 day, somewhere in that range, and I talked to them about
14 their residuals. And what, and they've got a pretty
15 efficient operation.
16 And what they told me was that on the average
17 they recycle slightly over 70 percent of the material
18 that comes through the door. That for some of their
19 clients who want a higher recycling rate, they will
20 charge them in order to justify the economics, that they
21 could get it above 90 percent, and they have done this
22 for some clients, but that the markets aren't there on
23 the natural for those items between 70 and 90 percent,
24 that they need some subsidy in order to accomplish that
25 level of recycling.

1 Based on that, and I think we may need to hear
2 more during the comment period, I would suggest a 30
3 percent residual. And it puts me in an awkward position
4 of arguing for less recycling than Mr. Jones is arguing
5 for, but I'd suggest a 30 percent residual, 70 percent
6 recycling in order to continue under the registration
7 tier that the Chair has proposed.
8 BOARD CHAIR MOULTON-PATTERSON: Yes, Mr. Jones.
9 BOARD MEMBER JONES: You know, you make a
10 comment that this guy from Looney Bins says he has to
11 charge his customers. Do you think any of these guys do
12 this for free?
13 You know, part of the big issue here is a MRF
14 has an established rate to recycle the waste stream. So
15 you could get a, I'll look out in the audience and I'll
16 say you could get a John Cupps or Judy Wear or Gerard,
17 and they could bring a box to one of those facilities
18 and get 90 percent when they pay that gate fee.
19 So part of the biggest issue surrounding this
20 that nobody is talking about is the fact that there's a
21 rate that is charged when this stuff is brought to a
22 legitimate facility. It's the ones that, and that
23 becomes the going rate. And the way that you get market
24 share and you go in under the guise of a recycler, is
25 you offer that, to pick up that box for a lot less

1 money. And if they never went and recycled it and took
2 it directly to a landfill, it all becomes profit except
3 that little portion that becomes disposal.
4 The fact that they would have to spend some
5 money to recycle, that's the reality of what we do every
6 day. That's the reality of why there are those
7 stations. Why, you know, a MRF, a MRF has to pay its
8 employees, it has to pay for its equipment. I don't
9 know of anybody that doesn't charge.
10 So the fact that Looney Bins can get 90 percent
11 recovery by charging some of its customers a little more
12 money, it just means that that's really the benchmark
13 and shouldn't be our concern. I mean I can go at 20
14 percent because then I know there's a level. 30 percent
15 there's not a level of effort, there really isn't.
16 So I mean it's that critical to me.
17 BOARD MEMBER PAPARIAN: I mean I have to
18 disagree with you. I actually, the day I went to Looney
19 Bins, the day before I went to a transfer station and
20 looked at virtually identical material to what I looked
21 at Looney Bins and was told at the transfer station that
22 none of it was economically recyclable, virtually
23 identical material.
24 BOARD MEMBER JONES: But it was a transfer
25 station, it wasn't a processing facility, or was it?

1 BOARD MEMBER PAPARIAN: And the transfer
2 station actually occasionally does bring people in to do
3 some pulling out of material, and they said they cannot
4 make a go of recycling because it's just not economic,
5 they can't recycle any of it.
6 BOARD MEMBER JONES: For their rate, for the
7 rate that they charge.
8 What do they charge per ton for going into
9 transfer is going to be different than the rate that you
10 charge going into a MRF.
11 BOARD MEMBER PAPARIAN: But my point is we want
12 to encourage the material to be diverted to a recycling
13 facility.
14 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones. I
15 can support you in my direction on the 20 percent. And
16 I know Mr. Cannella wanted to speak, and then I would
17 agree with Mr. Medina that we need to wind this up.
18 BOARD MEMBER MEDINA: I want to speak too.
19 BOARD CHAIR MOULTON-PATTERSON: Well he wants
20 to speak too.
21 So Mr. Cannella and then Mr. Medina.
22 BOARD MEMBER CANNELLA: Thank you, Madam Chair.
23 And I realize that I won't be around for the
24 vote on this so you can take my comments for what
25 they're worth.

1 We've had a great hearing today. I think we've
2 been able to eliminate a lot of the myths that have been
3 associated with this issue of C&D about local control
4 versus CEQA and all the other stuff that we discussed
5 today, and I thought it was very healthy and I think it
6 enlightened a lot of.
7 I certainly don't oppose the proposed three
8 hundred, but I think that we've been on record at a
9 hundred tons, all the discussions have been at a hundred
10 tons, we advertised at a hundred tons. Again I won't be
11 here, but it was my preference that we follow along with
12 the hundred tons that were proposed.
13 I thought we had an in-depth discussion about
14 it, we provided for some clarity.
15 The 20 percent residual is certainly something
16 that I could support, but I would just like to go on
17 record as saying that I believed we had made, at the
18 committee, at least give the impression that we were
19 moving towards a hundred tons, and I want to publicly
20 state that I support the hundred tons.
21 But also I would like to say that the issues
22 certainly are a lot clearer now. We had a difficult
23 time getting to that and separating a lot of the
24 discussion.
25 But again, I won't be here to vote on that so

1 if it's going to be three hundred I certainly would
2 support that. But again I appreciate the dialogue, and
3 I certainly think we have provided for a lot of clarity
4 about this issue.
5 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
6 you, Mr. Cannella.
7 Mr. Medina.
8 BOARD MEMBER PAPARIAN: Thank you, Madam Chair.
9 I thought that Mr. Aprea pretty accurately
10 portrayed our discussion in San Francisco in the
11 development of this issue since last December.
12 And I also, like Mr. Cannella, was prepared to
13 move forward on the hundred tons per day as was
14 proposed, I thought it was a good compromise. We've had
15 extensive public testimony, we've had significant Board
16 deliberation.
17 I can see that, you know, this requires four
18 votes to pass this package, the four votes are not here,
19 and I'd have to agree with Board Member Jones in regard
20 to the residual, I think it's very important.
21 And I'm prepared to deal with this issue when
22 it comes back to us again next month.
23 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
24 Medina.
25 I feel, you know, this is not a vote, we're

1 going out for a fifteen days. You know, compromise
2 here. Our staff recommended 750, and I think 300 is a
3 good direction with the 20 percent, and I'd like to give
4 that direction.
5 And we'll see what, we'll have fifteen days for
6 comments, is that right?
7 CHIEF LEGAL COUNSEL TOBIAS: (Nodded head.)
8 BOARD MEMBER PAPARIAN: Madam Chair.
9 BOARD MEMBER JONES: Madam Chair.
10 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian
11 and then Mr. Jones.
12 BOARD MEMBER PAPARIAN: Thank you.
13 I think for the staff's sake they may need a
14 couple of clarifications here.
15 MR. WALKER: Thank you.
16 BOARD MEMBER PAPARIAN: One is, one obvious one
17 is if there's a facility out there right now over three
18 hundred tons that under the proposal coming into today
19 they would have had a few years in order to get, start
20 with the registration permit and convert it to a full
21 permit.
22 Presumably that stays in effect so that we're
23 not putting those people out of business.
24 BOARD CHAIR MOULTON-PATTERSON: That would be
25 my preference.

1 BOARD MEMBER PAPARIAN: And I'm sure the staff
2 may have some other, but that's the most obvious one I
3 can think of is what happens to that facility that's out
4 there over three hundred tons today.
5 BOARD CHAIR MOULTON-PATTERSON: Can you create
6 some language for that? Because it wouldn't be my
7 intent to put them out of business.
8 BOARD MEMBER PAPARIAN: Yeah, I think it would
9 be the existing language but with some different limit
10 on what, you know, what tonnage.
11 MR. DE BIE: Yeah, I think that would be easy
12 to accommodate if I'm understanding the intent of or the
13 direction is to allow a phase-in of a facility that is
14 over a hundred.
15 Right now we have a phase-in for facilities
16 over three hundred. Right now we have language that
17 allows a phase-in to a full for facilities at one
18 hundred, so we could easily shift that and just indicate
19 three hundred would be allowed the phase-in.
20 BOARD CHAIR MOULTON-PATTERSON: Okay.
21 MR. DE BIE: That's an easy fix. I did have a
22 question or two.
23 BOARD MEMBER PAPARIAN: Okay. Let me just add
24 one more that I was reminded of. And that is we may
25 need some clarity as to the fifteen day window on when

1 this can come back to us.

2 BOARD CHAIR MOULTON-PATTERSON: Okay. And I

3 would defer to Mr. Paparian as chair of the P&E

4 Committee. I was not privy to all the committee

5 discussions on the phase-in and so forth, so feel free,

6 Mr. Paparian, to jump in.

7 MR. WALKER: This is Scott Walker.

8 In terms of the fifteen day, what we'd be

9 prepared to do would be to come back to the full Board

10 for the conclusion of the fifteen day report back, and

11 then we, at the committee we'd give you an update. But

12 to prepare the fifteen day we won't have it concluded

13 and ready at the committee, but we would be at the full

14 Board we feel confident.

15 BOARD MEMBER PAPARIAN: So because of January

16 6th being the next committee meeting, that would likely

17 fall in the middle of the fifteen day comment period, so

18 rather than delay this to the February committee

19 meeting.

20 BOARD CHAIR MOULTON-PATTERSON: Come back to

21 the full Board.

22 BOARD MEMBER PAPARIAN: This could come back to

23 the full Board. It's a little bit unusual situation,

24 but it is an unusual situation.

25 MR. WALKER: Correct.

1 BOARD MEMBER JONES: Madam Chair.

2 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

3 BOARD MEMBER JONES: I have one other --

4 BOARD CHAIR MOULTON-PATTERSON: I'm sorry, Mr.

5 Cannella was next.

6 BOARD MEMBER JONES: Oh, go ahead. Go ahead.

7 BOARD MEMBER CANNELLA: I defer to the

8 experience.

9 BOARD CHAIR MOULTON-PATTERSON: Okay. Mr.

10 Jones and then Mr. Cannella.

11 BOARD MEMBER CANNELLA: Well at the committee

12 meeting we discussed providing local assistance and it

13 was more than just training.

14 I want to make sure that that's still a

15 commitment this Board is making that we'd provide people

16 out in the field to process the permits so that we don't

17 have any good luck, any bottlenecks.

18 And then again my concern is about a mandate to

19 local government, whether it's funded or it's not

20 funded. It's one more thing they have to do, and I

21 think we have a responsibility and obligation to provide

22 any assistance.

23 And it was a commitment that we, that we had in

24 the committee, and I would just like to say to the full

25 Board that that's a goal that we should strive to

1 achieve.

2 BOARD CHAIR MOULTON-PATTERSON: I'd certainly

3 agree with that.

4 Mr. Jones.

5 BOARD MEMBER JONES: Madam Chair, you know, I'm

6 encouraged that Mr. Cannella and Mr. Medina both thought

7 we should hold tight at the hundred, because I thought

8 we should hold tight at the hundred as well.

9 The only reason I was willing to look at

10 registration at 300 is if we had that 20 percent

11 residual.

12 But I think there's one other issue that we

13 need to add, and again it goes back to what Mr. Liss

14 said.

15 You know, that non-traditional was, as Mr.

16 White pointed out, was for inerts. So we've basically

17 let C&D off the hook for ten years.

18 We need to, I think the only way that I could

19 support three hundred tons besides the 20 percent

20 residual is if we had a rock solid enforcement.

21 Now we had enforcement at the hundred tons that

22 if they didn't get their permits, if they didn't do

23 these things they would be, you'd have to have a cease

24 and desist order. You know, you'd have to go through

25 the normal notice and orders to shut down operations

1 that are operating outside of the conditions.

2 I do think that it is critical. I mean I'm

3 arguing against myself. I believe in what Mark Murray

4 said. I would have preferred that we put this package

5 out with a hundred tons and then came back. He and I

6 had actually talked about that at one point, but it

7 didn't look like there were any votes for that.

8 Because we're going to rush into something. I

9 mean this thing, the argument of these folks is that

10 they've never been regulated, they don't want to be

11 regulated, and I think our staff has bought into it

12 pretty good.

13 I think that when our staff came back and said

14 it should be a hundred tons, it was because they saw

15 facilities that should be permitted as MSW facilities.

16 And if they can't be permitted as MSW facilities, they

17 should be shut down.

18 So my question is, are we prepared in this

19 package to put in language that shuts down these

20 facilities through the normal course of AB 59 cease and

21 desist when they don't live up to the terms and

22 conditions, if they're outside of these parameters? And

23 I really need to know that, because otherwise this thing

24 is, it's a joke.

25 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.

1 Jones.

2 BOARD MEMBER JONES: I think Mr. de Bie is

3 going to come up.

4 MR. DE BIE: Staff's understanding is if, the

5 way the regs are proposed, if a site qualifies for a

6 registration permit and fails to obtain that

7 registration permit according to the timeframes included

8 in the regs.

9 BOARD MEMBER JONES: What timeframe is that?

10 MR. DE BIE: As we described before, once the

11 regs are effective the LEA, between thirty and ninety

12 days, would need to identify the site and identify the

13 type of permit that was required, and notice the

14 operator of that.

15 From that date it would be sixty days to get a

16 registration permit which is the process.

17 BOARD MEMBER JONES: Okay. If they don't get

18 their permit in sixty days, what is the consequence?

19 MR. DE BIE: Staff would recommend to the LEA

20 that they issue a cease and desist order for that.

21 BOARD MEMBER JONES: Would it be in the regs

22 that it's automatic since there are no -- I mean this is

23 the reg package, you what I'm getting at, Madam Chair?

24 BOARD CHAIR MOULTON-PATTERSON: Yes.

25 BOARD MEMBER JONES: This is the reg package.

1 Under a registration tier, everything that you end up
2 putting into a registration permit has got to be in
3 these regs.
4 So is it going to say in these regs that there
5 will, that it is, that an LEA must do an AB 59 cease and
6 desist?
7 MR. DE BIE: Currently in the version of the
8 regs that we have proposed we do have language in there
9 that indicates that if they fail to get the full permit
10 in the phase-in approach, that the LEA shall issue an
11 appropriate enforcement or take appropriate enforcement
12 action.
13 I think we can utilize similar language to
14 indicate that if they failed to complete the
15 notification process as well as the registration process
16 that the same condition applies. So yes, we can include
17 that language.
18 BOARD MEMBER JONES: Okay. It's critical,
19 Madam Chair.
20 CHIEF LEGAL COUNSEL TOBIAS: Actually, Mr.
21 Jones, the statute actually covers that. We can
22 elaborate in the regs and make it clear, but the statute
23 already says that if there's a solid waste facility
24 operating without a permit that they shall be closed
25 down. So it's already, it's in the law.

1 BOARD MEMBER JONES: It's in the statute, but I
2 want to make sure that we're --
3 CHIEF LEGAL COUNSEL TOBIAS: Sure.
4 BOARD MEMBER JONES: -- that we're redundant
5 here, because I think that this is giving up an awful
6 lot.
7 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
8 you, Mr. Jones, I appreciate you pointing that out.
9 MR. DE BIE: I think I just have one question
10 for clarification.
11 In the application of the residual amount, I'm
12 understanding that the direction from the Board is 20
13 percent.
14 BOARD CHAIR MOULTON-PATTERSON: Correct.
15 MR. DE BIE: And the application would be such
16 that if a facility is between fifty and three hundred,
17 but fails to consistently achieve 20 percent, or it
18 would be 80 percent diversion or have 20 percent
19 residual, that they would then fail to qualify for a
20 registration and be required to get a full permit,
21 that's how it's being applied is to --
22 BOARD CHAIR MOULTON-PATTERSON: That's my
23 understanding.
24 MR. DE BIE: As a trigger to move them from one
25 tier to another.

1 BOARD CHAIR MOULTON-PATTERSON: Okay.
2 MR. DE BIE: Because in the past it's been
3 presented in various ways.
4 BOARD CHAIR MOULTON-PATTERSON: Murky.
5 MR. DE BIE: Well for different reasons.
6 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
7 you. That's my understanding.
8 MR. DE BIE: And the way that's applied, it's a
9 monthly average right now.
10 BOARD CHAIR MOULTON-PATTERSON: Okay.
11 MR. DE BIE: That's how it's used in all other
12 cases.
13 BOARD CHAIR MOULTON-PATTERSON: Okay. Okay.
14 Thank you very much, I think it's time to move on.
15 We're going back to number seven. Ms. Wohl.
16 MS. WOHL: Yes. Agenda item seven,
17 consideration of the scope of work for the recycling
18 market development revolving loan program to recover and
19 liquidate collateral.
20 And Jim La Tanner will present.
21 MR. LA TANNER: Good afternoon, Board members.
22 Jim La Tanner, supervisor for the Recycling Market
23 Development Revolving Loan Program.
24 Agenda item seven requests approval of several
25 scopes of work to allow the loan staff and Board to go

1 out and recover and liquidate collateral.

2 In the past this was accomplished through the

3 outside legal counsel, we are not longer able to have

4 that at this time, and we have one loan that we would

5 like to take some action on.

6 This would be using the invitation for bid

7 process, going out to bid. There's perhaps one or two

8 contractors that can perform most of the scopes of work,

9 however if they don't bid on it then that's why we broke

10 it up into multiple scopes.

11 It would be setting aside 200,000 for this

12 purpose on an as-needed type basis.

13 Staff recommend that the Board adopt Resolution

14 2002-767.

15 Are there any questions?

16 BOARD MEMBER CANNELLA: Yes.

17 BOARD CHAIR MOULTON-PATTERSON: Mr. Cannella.

18 BOARD MEMBER CANNELLA: Am I to understand this

19 that we are going to go out to an outside contractor to

20 look for the service?

21 MR. LA TANNER: Yes.

22 BOARD MEMBER CANNELLA: I thought DGS said that

23 we couldn't go out to anyplace else but that agency to

24 do this type of work?

25 MR. LA TANNER: Do you want to --

1 MS. WOHL: I think there's actually a section
2 code that requires us to go to DGS unless they sign off
3 saying that they can't really meet the services.
4 And although they've been doing it for us, it's
5 not really their, you know, they don't have the
6 experience to do a lot of this work.
7 So what we were hoping to do with this scope of
8 work once it's approved is to go to them and say we're
9 going to go outside, and get their approval to do that.
10 And we have every indication that they would allow us to
11 do that.
12 BOARD MEMBER CANNELLA: And what is our option
13 for other contracted service? Do we have to go to them
14 first and find out if they'll provide it, or can we, the
15 department go out and contract for services as they deem
16 necessary?
17 If we have to sell a house do we have to go
18 with the Department of DGS or can we go to a local real
19 estate agency to sell it?
20 MS. WOHL: Normally we would have to go through
21 DGS. But what this, what we're requesting through this
22 scope is to get their approval to look at other options
23 to have a contractor outside of them do this work,
24 possibly more experienced and maybe cheaper.
25 BOARD MEMBER CANNELLA: So by taking this

action we're just going to ask them if it's okay for us to go out, and then we gotta wait for them to decide whether it is or isn't?

MS. WOHL: You are approving the scope of work, and with that I'm going to talk to them and negotiate. And we have every indication that they're not really interested in taking this work on.

BOARD MEMBER CANNELLA: Okay.

BOARD CHAIR MOULTON-PATTERSON: Okay. Thank you. Any other questions?

But even though you have a lot of different scopes of work, we can do it with one resolution? We can move this with one resolution, is that correct?

MR. LA TANNER: I believe so, yes.

BOARD CHAIR MOULTON-PATTERSON: Is that right, Ms. Wohl?

MS. WOHL: (Nodded head.)

BOARD CHAIR MOULTON-PATTERSON: Okay.

BOARD MEMBER WASHINGTON: Madam Chair.

BOARD CHAIR MOULTON-PATTERSON: Mr. Washington.

BOARD MEMBER WASHINGTON: Just for clarification, am I reading this correct to where it says contract service expires June 30th and the Board is no longer able to contract because of the time it expired?

1 MS. WOHL: That's correct. We had some
2 external legal services that were helping us with some
3 of these processes, and that expired six months ago.
4 Now it's something that we don't need all the time, but
5 we do have a loan that we think is coming up that has
6 some problems and that we're going to need this service,
7 so we've been trying to work through the Attorney
8 General and get some permission also to hire external
9 legal counsel, and that avenue has been shut down.
10 BOARD MEMBER WASHINGTON: And how long will
11 this contract be for, six months, likewise?
12 MS. WOHL: No, I --
13 MR. LA TANNER: This will be for 36 months.
14 BOARD MEMBER WASHINGTON: 36 Months.
15 MR. LA TANNER: Right.
16 BOARD MEMBER CANNELLA: Madam Chair, I just
17 can't let it go.
18 BOARD CHAIR MOULTON-PATTERSON: Mr. Cannella.
19 BOARD MEMBER CANNELLA: You know, DGS is
20 responsible for liquidating real property on a defaulted
21 loan, is that correct, in the past?
22 MR. LA TANNER: We had one loan default in the
23 past. We contracted with the DGS real estate services
24 to recover and actually liquidate the collateral. This
25 is roughly three years later, they have performed a lot

1 of the work, essentially all the work to get us to this
2 point. We're still trying to liquidate some of the
3 collateral.
4 Their forte primarily is leasing state
5 properties, it's not foreclosing on commercial and
6 residential properties nor selling it.
7 And DGS is not interested, from the last
8 conversation, in taking on another one of our loans.
9 BOARD MEMBER CANNELLA: Madam Chair, let me
10 just say it. This piece of property that we're speaking
11 of was recovered by the agency on a defaulted loan, it
12 was valued at $160,000. Three years later DGS is
13 recommending that we sell the property at $140,000, and
14 we owe DGS $86,000 to this date to sell that piece of
15 property.
16 I'm just, it's a little concern that we have to
17 contract with another agency when we could have went to
18 a local real estate agent, given them six percent to
19 sell the property, and certainly would have liquidated
20 it a lot quicker than three years.
21 MR. LA TANNER: Correct. So on this next loan
22 that comes up we will got to DGS first, they would allow
23 us to go outside, and we can go out to bid and have the
24 contractors lined up to use.
25 BOARD MEMBER CANNELLA: Well I guess what I'm

1 trying to find out is why do we have to go to DGS first?
2 Why can't we just contract with a local agency to sell
3 it?
4 MS. JORDAN: If I may, Terry Jordan with the
5 administration division.
6 BOARD MEMBER CANNELLA: I can't see through my
7 broken nose. There you are.
8 MS. JORDAN: Sorry. There is a SAM section
9 that requires, state administrative section manual that
10 requires that we go through DGS. And that section is
11 1322.15. And it says that all state agencies are
12 required to go through general services for leasing of
13 property and property services. So, therefore, we were
14 required to do that.
15 They took this particular project on, and I'm
16 surprised they did because they really weren't qualified
17 to take it all on.
18 They had a lot of difficulty over the last
19 three years, and it's been difficult property to get rid
20 of anyway.
21 So, as Mr. La Tanner was saying, we don't think
22 that they're going to want to do this again because it's
23 taking a lot of their time and a lot of their initiative
24 to even try to figure out how to do this. And
25 unfortunately there's a lot of cost involved.

1 BOARD MEMBER CANNELLA: Well if I was making
2 $3,000 a month to sell a piece of property I don't think
3 I would be too anxious to dispose of it in a timely
4 basis. I mean it was just something that annoyed me,
5 and I thought the Board need to know that we had spent
6 $86,000 and the property still isn't liquidated yet
7 dealing with the DGS.
8 BOARD CHAIR MOULTON-PATTERSON: Thank you for
9 bringing that up, Mr. Cannella.
10 BOARD MEMBER JONES: Madam Chair.
11 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.
12 BOARD MEMBER JONES: I'm assuming that Mr.
13 Cannella wants to make the motion?
14 BOARD MEMBER CANNELLA: I want to know if I can
15 get the contract.
16 (LAUGHTER.)
17 BOARD CHAIR MOULTON-PATTERSON: Do we have a
18 motion?
19 BOARD MEMBER JONES: Madam Chair, I'll move
20 adoption of Resolution 2002-767 which I think covers all
21 of these scopes of work, correct? Okay.
22 BOARD MEMBER MEDINA: Second.
23 BOARD CHAIR MOULTON-PATTERSON: Okay. We have
24 a motion by Mr. Jones, seconded by Mr. Medina to approve
25 Resolution 2002-767.

1 Please call the roll.

2 BOARD SECRETARY WADDELL: Cannella?

3 BOARD MEMBER CANNELLA: Aye.

4 BOARD SECRETARY WADDELL: Jones?

5 BOARD MEMBER JONES: Aye.

6 BOARD SECRETARY WADDELL: Medina?

7 BOARD MEMBER MEDINA: Aye.

8 BOARD SECRETARY WADDELL: Paparian?

9 BOARD MEMBER PAPARIAN: Aye.

10 BOARD SECRETARY WADDELL: Washington?

11 BOARD MEMBER WASHINGTON: Aye.

12 BOARD SECRETARY WADDELL: Moulton-Patterson?

13 BOARD CHAIR MOULTON-PATTERSON: Aye. Okay.

14 Thank you very much.

15 This takes us to item number ten. And we'll

16 have a new set of faces up here.

17 MS. WILLD-WAGNER: Good afternoon, Madam Chair

18 and Board members, I'm Shirley Willd-Wagner with the

19 Special Waste Division.

20 Did Mr. Jones wish to give an update from the

21 committee?

22 BOARD CHAIR MOULTON-PATTERSON: I'm sorry, Mr.

23 Jones, I forgot about that.

24 BOARD MEMBER JONES: Actually Madam Chair, we

25 heard nine items, we pulled one, two were on consent,

1 scoring for oil research grant and for used oil block
2 grants. We're actually going to make the system easier
3 for local governments with our, with the item that we
4 approve today.
5 Four items on for fiscal consensus, one on
6 environmental justice, one on the product
7 commercialization grants, one on public education and
8 amnesty days, and one on environmental services contract
9 for the Tracy fire.
10 And then we did ask that staff come forward and
11 talk about the Westley tire fire site to the full Board
12 instead of just here.
13 And then we're going to look at a scope for
14 analysis of where we're going to go with our conversion
15 technologies, and what contract to analyze that, and
16 then some amendments to our facility permitting.
17 BOARD CHAIR MOULTON-PATTERSON: Thank you.
18 EXECUTIVE DIRECTOR LEARY: Madam Chair, if I
19 might --
20 BOARD CHAIR MOULTON-PATTERSON: Mr. Leary.
21 EXECUTIVE DIRECTOR LEARY: I'd like to take a
22 shot at introducing this item, I think this is a good
23 news kind of item.
24 BOARD CHAIR MOULTON-PATTERSON: We need that.
25 EXECUTIVE DIRECTOR LEARY: I think we do on

1 occasion. And one of Board member Eaton's legacy was
2 we'd come back and report on a regular basis on things
3 that are happening kind of behind the scenes, but it's
4 success nonetheless.
5 And like the C&D regs we've been working on the
6 Westley tire fire site for quite some time, but maybe a
7 little bit unlike the C&D regs we're here to tell you
8 that we're kind of at the end of the rope, we've
9 accomplished what we set out to accomplish by and large,
10 and maybe as a kind of a going away present to Mr.
11 Cannella, let him know that his neighborhood is a little
12 cleaner as a result of his efforts here at the Waste
13 Board, and as result of the efforts of Albert Johnson in
14 particular in getting the cleanup of the Westley tire
15 fire site nearly done.
16 So I'll turn it over to Albert now.
17 BOARD CHAIR MOULTON-PATTERSON: Before you turn
18 it over to Mr. Johnson. This would certainly seem to me
19 to be something that -- I don't know who does the
20 nominating for the governmental environmental awards,
21 but I think a superb job has been done and I think it,
22 you know, it needs to be recognized.
23 EXECUTIVE DIRECTOR LEARY: Madam Chair, that
24 was going to be a surprise.
25 BOARD CHAIR MOULTON-PATTERSON: Oh, okay.

1 EXECUTIVE DIRECTOR LEARY: We're still a year
2 away, but that is certainly my intent.
3 BOARD CHAIR MOULTON-PATTERSON: Okay. Great.
4 Thank you.
5 Mr. Johnson.
6 MR. JOHNSON: Thank you for the compliments,
7 Mark and Madam Chair. Albert Johnson, Special Waste
8 Division. I'm the contract manager and the project
9 manager for the Westley tire fire site.
10 Today I'm going to give you an update. We
11 pretty much have, all the field work is essentially
12 done.
13 With us today from Stanislaus County is Sonja
14 Harringfeld, she's the assistant director at
15 Environmental Health. She's here sitting right by
16 Martha.
17 And Russell Hildrith, he isn't here yet -- oh,
18 there he is, is also here from the Attorney General's
19 office.
20 Also Eric Walberg from DTSC and Kim Schwab from
21 the Regional Water Board couldn't make it here today,
22 but they also participated in the cleanup of this site.
23 (Thereupon a video presentation was shown.)
24 MR. JOHNSON: Here's a picture of the tire pile
25 before the fire to give you an idea of the number of

1 tires that were stored there.

2 On the hill we can see the power plant that

3 burned the tires.

4 On September 22nd, 1999, lightning struck the

5 pile and the pile ignited on fire. It burned for a

6 period of 34 days until the, it was extinguished by the

7 U.S. EPA.

8 During the fire the California Integrated Waste

9 Management Board was a division, was rather the liaison

10 between Cal EPA and the Federal EPA.

11 After the Feds pulled out we became the on

12 scene coordinating agency.

13 There's a picture of the fire on the first day

14 to give you an idea of the magnitude of the amount of

15 smoke that was produced.

16 On the second day oil started to flow from the

17 tires and the fire, and it pooled up on the other side

18 of this culvert as you can see in the foreground of this

19 picture.

20 These tires around this area were unburned.

21 And as the oil piled up it eventually ignited causing an

22 oil fire.

23 At this point the Feds called in Williams Fire

24 and Hazard Control from Texas. They extinguished the

25 oil fire, but the oil fire resulted in a grass fire

1 which burned all the way back to Highway 5 and to the
2 south to the offramp, maybe 3,000 acres or something
3 like that.
4 As the fire burned the Waste Board saw that
5 there was going to be some real problems during the
6 winter that was upcoming, and the rains from all the oil
7 and contaminated water and everything else that was
8 occurring at the site.
9 So we began the emergency winterization work
10 which was followed by the phase one remediation, and
11 eventually the phase two remediation to get where we are
12 today.
13 The winterization work consisted of the
14 construction of two check dams, two above ground
15 pipelines, regrading around the burn area to keep runoff
16 out of where the tires were burning, and/or the
17 contamination resulted in the removal of contaminated
18 water. We spent a total of about $850,000 on this.
19 Here's a picture of one of the check dams that
20 was put in in the main canyon. Behind this dam there's
21 about 750 acres of drainage basin that flows down to
22 this dam where the water is diverted into clean water,
23 would come from the upper basin diverted into this three
24 foot diameter pipe.
25 Here's a second dam behind this. There's about

1 150 acres of drainage that flows into this pipe. The
2 pipeline continues across the, or continued across the
3 job site in the contaminated area, discharged downstream
4 the clean water so it never became contaminated.
5 After the phase, after the winterization work
6 was done we began phase one. The first thing we wanted
7 to do was to remove the tires that did not burn so that
8 they couldn't catch on fire.
9 So we began removal of those tires. After we
10 processed those unburned tires and got rid of them, we
11 went onto work with the debris fires.
12 And as this was occurring, the Department of
13 Toxic Substance Control used their contractor to clean
14 out a couple of the ponds that contained contaminated
15 water and oil and that sort of thing. So that was
16 useful, it helped us out cause we couldn't do everything
17 at one time.
18 And as part of the phase one we also installed
19 four groundwater monitoring wells that was required by
20 the Regional Water Quality Control Board.
21 We spent a total of about 3.$8 on phase one.
22 Part of phase one was the unburned tires I mentioned.
23 Here they are. In the majority of this picture is
24 unburned tires, although a few debris piles are shown.
25 So here's what it looked like before we began,

1 or were just initially beginning the remediation of
2 those.
3 And what is what it looks like today. And I
4 mentioned the ponds. In the foreground the two ponds
5 with water in them are ponds three and four. They
6 resulted from the firefighting efforts at the site.
7 They had highly contaminated water and some pre-product
8 oil, a small amount on the surface.
9 The other ponds on the left are ponds two, and
10 in the background is pond one where all the oil that
11 flowed from the fire accumulated and was pumped off by
12 the Federal EPA and trucked off for disposal. I think
13 there's something like about 250,000 gallons of
14 pyrolitic oil that were pumped out of that pond.
15 So here's what that area looks like today. You
16 can see ponds three and four are completely clean. The
17 water that's in pond two there is clean water, that's
18 rain water from this year.
19 Then the last major task we had as phase one
20 for remediation was removal of debris pile three which
21 is in the center of the slide. This pile was about
22 26,000 tons, and we hauled it off. And this is what
23 that area looks like today.
24 Most of these pictures that I'm showing you,
25 the current pictures, those pictures were taken

1 yesterday, I ran down there and got those so we'd have
2 really current pictures, you can't get much more
3 current.
4 Then I mentioned the groundwater monitoring
5 wells we installed. There's a picture of the drillers
6 putting in one of the monitoring wells. We put in four
7 initially, and then eventually we put in a fifth well
8 that will act as a sentry well, and it exits the
9 drainage basin.
10 The Water Board felt this was an important area
11 to install a well to see if any contamination was
12 leaving the site. And to date there's been no
13 contamination leaving the site.
14 Then we went onto the phase two work. The
15 first phase in the winterization work was completed with
16 our contract with NorCal Engineering and Construction.
17 The phase two work we had hired Sukut
18 Construction Company to complete.
19 This consisted of the removal of the remaining
20 debris piles, and we removed a total of about 217,000
21 tons of waste as class two, and an additional 20,000
22 tons as Cal hazardous, and we continued to evaluate the
23 groundwater conditions, and we spent approximately $12
24 million.
25 Here's some of the operations. This is in the

burn area, one of the main burn areas. The tires here extended to a depth of 30 feet below the pipeline, as you see. And the excavator would load these offroad dump trucks. The dump trucks would create a stockpile where a second excavator would load the trucks for disposal. And then the trucks were weighed on the scale so they could check the weight, make sure they went the maximum weight that they could go without going overweight, and they were tarped and then they went off to the landfill.

Here's debris pile one that was done in phase two. This pile was created by the federal, like the other piles, created by the Federal EPA as they put the fire out.

Here's the before picture, and this is what the area looks like today.

This is pile four which is in the center. Around it are the unburned tires. This is pile four, pile four. Then we had debris piles two and seven. Seven is the foreground where the water is ponded, and two is in the background.

This is the main tire pile. The tires were the thickest here. Like I said, they extended about 30 feet below the pipe, and they were up to a height, you can see on the right hand corner of the slide there's a

1 roadway. The tires were stacked about fifty feet above
2 the height at the thickest point.
3 So we cleaned up this area also and this is
4 what it looks like today. We had excavated the bottom
5 of the drainage is about fifteen feet above the depth
6 that was excavated. We excavated down to the 30 feet
7 below the pipe, which isn't there anymore, and we filled
8 it back into about fifteen feet as we made the cut on
9 that big slope on the right-hand side.
10 Part of what we've done also is we've had a
11 couple of settlements or several settlements with the
12 Attorneys General's office that has helped us out.
13 From CMS we've recovered a total of five and a
14 half million dollars, a portion of which was work. From
15 MELP, we recovered $4.1 million, a portion of which was
16 work.
17 From TTR we got 50,000.
18 Oxford, 875,000.
19 For a total recovery on settlements of
20 10,525 -- $10,525,000.
21 To sum it up, approximately 292,000 tons of
22 tires and debris and contaminated soil have been removed
23 from the site at a cost in excess of $16 and a half
24 million.
25 To give you an idea of what 292 tons was, you

1 saw the trucks in one of those pictures, those big forty
2 foot bed trucks with the high sides. That's in excess
3 of 13,000 truckloads of material that were removed from
4 the site.
5 The work for phase two was expected to take
6 maybe two to three years. We were able to complete the
7 work in less than a year. In fact, we had about 90
8 percent of the material removed by the end of May or
9 so. So we came in within pretty much the expected
10 budget, and certainly well within the timelines that we
11 were looking at.
12 The remaining, we have a couple of reports to
13 complete for DTSC. One is the final remedial
14 investigation report, which is currently being worked
15 on, along with the remedial action plan.
16 We're going to do a risk assessment report,
17 which I understand they're just getting going on now.
18 And we're going to hold a final public meeting
19 as part of their process.
20 Additionally we are, we have agreed to continue
21 to monitor groundwater for a period of a few years,
22 we'll be doing that on a twice a year basis.
23 And we expect to have all the report writing
24 and the agency sign-offs by the end of the fiscal year.
25 That concludes my presentation. I'd be happy

1 to answer any questions.

2 BOARD CHAIR MOULTON-PATTERSON: Thank you very

3 much.

4 Mr. Cannella.

5 BOARD MEMBER CANNELLA: Before questions let me

6 just say what an outstanding job Mr. Johnson and his

7 crew did. I know there were many people involved. I

8 had an opportunity to tour it a little over a month

9 ago. I've dealt with that issue for twenty years as a

10 county supervisor, and it's just an outstanding effort

11 that was done out there, not only to clean it up

12 visually, but also to remove the contaminants.

13 Again, I can't tell you how pleased I am with

14 the result.

15 The question I have is, you've outlined a

16 number of agencies that contributed to the cleanup. But

17 missing from that list was the property owner.

18 Is it appropriate to ask how we're pursuing a

19 contribution from the property owner for the cost

20 incurred in putting out the fire and cleaning up the

21 site?

22 MR. JOHNSON: Yes. We still have a lawsuit

23 pending with the property owner and also the owner of

24 the Philbin Trust which is the adjacent property that

25 had tires on it that burned. And that's in litigation.

1 And we also have a $6 million lien on Ed
2 Philbin's property, and a $6 million lien on the trust
3 property.
4 We're working with the Attorney General's
5 office on those issues currently. We haven't received
6 any type of compensation from Mr. Philbin or the trust
7 property.
8 BOARD MEMBER CANNELLA: Okay.
9 BOARD MEMBER WASHINGTON: Madam Chair.
10 BOARD CHAIR MOULTON-PATTERSON: Mr. Washington.
11 BOARD MEMBER WASHINGTON: Yeah. It is amazing,
12 Sal, I was on the same wavelength you were saying, I
13 wrote down all those different agencies that he
14 mentioned.
15 An excellent job you guys have done with this.
16 And, you know, from the naked eye, and as a new member I
17 tell you, I was just sitting here talking to Mr. Jones
18 how I was in awe of how you guys were able to move.
19 And to hear that you've done it so fast around
20 this place since I been here the last -- I think that's
21 to be commended for.
22 The question I did have for you in certain
23 instances for my information, is the Westley site, was
24 that a site where it was illegal, those tires were
25 dumped there illegally? Or was that an actual site

1 where they were supposed to go?

2 MR. JOHNSON: Well I guess years back when the

3 tires first came in it was legal because the state

4 really didn't have any regulations over tire piles.

5 The regulatory history is very complicated.

6 And at one point the site had a permit and the permit

7 was taken away, and there's been all sorts of problems

8 over the years.

9 BOARD MEMBER WASHINGTON: Certainly didn't seem

10 like they stopped dumping.

11 BOARD MEMBER CANNELLA: Well it certainly does

12 have a checkered history, and if you've got three

13 minutes afterwards I can fill you in.

14 MR. JOHNSON: I've seen pictures where there's

15 twice as many tires just about as in that initial

16 picture I showed you.

17 BOARD MEMBER WASHINGTON: Excellent job.

18 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

19 BOARD MEMBER JONES: Thanks. And Mr.

20 Washington, I think it, I will take just a second and

21 say that at a time when they did have a permit they

22 didn't fulfill the conditions of the permit, so we did a

23 cease and desist order.

24 One of the other things that we did was because

25 the energy cliff was coming, where the subsidy to the

1 MELP facility to burn those tires was going to go
2 away --
3 BOARD MEMBER WASHINGTON: Whatever MELP means?
4 BOARD MEMBER JONES: -- Modesto Energy Limited
5 Partnership, and that's who owned the tire burning
6 facility. They used to burn six million tires a year.
7 And just prior to the deregulation of the
8 energy when those dollars were going to go away, I think
9 they were being subsidized like five or six cents a
10 kilowatt hour besides what they could sell it, and it
11 may have been different, it may have been ten cents for
12 all I can remember.
13 The Board took an action where we put our tire
14 dollars into cleaning up some of those tires that were
15 on site, and this was before the tire fire ever
16 happened. And we made sure we got money from Kirkland,
17 who was then the permittee, to burn in excess of four
18 million tires off of that pile at 16 cents a tire, which
19 was going to be cheaper than any other alternative.
20 So when the tire fire came, there were in
21 excess of about five million tires that weren't there
22 because of that action.
23 We're going to be looking at something similar
24 to that in, you know, we have tire problems all over the
25 state, so we've got to be looking at how we can

1 judiciously look at the impacts of health and safety as
2 well as other things to see where it's appropriate where
3 we may go out on a limb and spend some money to make
4 sure that we avoid a health risk where it deals with
5 tires as opposed to not.
6 But this was, this was an incredible effort.
7 Mr. Leary was in the tire branch then. I will tell you
8 that Mr. Eaton and I were in Patterson with Condit and
9 Cardoza and an awful lot of angry residents, and I don't
10 know if Mr. Cannella was there, but some of his former
11 colleagues sure were there, and we were, we --
12 BOARD MEMBER WASHINGTON: I certainly don't
13 believe you'll see Mr. Condit and Mr. Cardoza there
14 together now.
15 BOARD MEMBER JONES: No, no, we won't. But
16 that's what history is all about, just to kind of talk
17 about.
18 And we left that meeting, Mr. Leary was at that
19 meeting, Mr. Chandler and I, and we left that meeting
20 and ended up with a plan real quick.
21 But none of this could have been done without
22 all of the tire staff, the P&E staff, the legal staff.
23 And I don't know if Russell Hildrith left, because I
24 don't see him in the back of the room, he I think left.
25 Russell Hildrith sat down in a meeting with our

1 leadership and the Attorney General's office and said,
2 "We got one shot at this thing, if we're going to do it
3 right we got one shot to get the state's money back."
4 And Mr. Hildrith did his agency proud and did this place
5 proud.
6 So everybody, Albert, you did an incredible
7 job.
8 MR. JOHNSON: Thank you.
9 BOARD MEMBER WASHINGTON: Madam Chair, if I
10 could just very briefly add?
11 BOARD CHAIR MOULTON-PATTERSON: Certainly, Mr.
12 Washington.
13 BOARD MEMBER WASHINGTON: You know, that's the
14 thing that makes it very important. People wonder what
15 the California Integrated Waste Management Board does,
16 what do they really do? Those type of stories are the
17 stories that put a face on what this agency is all
18 about. Those are the type of things that I would go
19 back and tell constituency down in my district that I
20 have represented for six years in the legislature, now
21 as a representative of this Board, across the State of
22 California, those are the stories that I will like to
23 tell individuals, in churches and anyplace else.
24 Because people really don't know the significance of
25 what this agency is all about, and I think that's the

1 type of story that gets the message out in terms of what
2 happens.
3 Because you're absolutely correct, those tire
4 places are all over the place. They're in backyards,
5 they're in people homes, in their backyards stacking up,
6 and in alleys back of people homes. So you're exactly
7 right, I really do appreciate that as a new member of
8 this Board.
9 I won't be able to say that too much longer, so
10 I'm trying to get it in as many times as I can.
11 BOARD CHAIR MOULTON-PATTERSON: Use it as long
12 as you can.
13 Thank you, Mr. Paparian.
14 BOARD MEMBER PAPARIAN: Yeah, Mr. Simpson just
15 walked back in the room and I think that he knows, he
16 knows the value we place on getting our story told. You
17 know, good actions like this need to be rewarded, not
18 only by talk from up here, but by wide recognition of
19 the good work that folks like Albert are doing.
20 And you know, I just want to briefly add to
21 what's been said, you know, when you went down to that
22 site, when the staff went down to that site, when you in
23 particular went down to that site, you know, you could
24 have come up with a million reasons why you couldn't get
25 things done on time, and we would have believed you, you

1 know. There's a lot of obstacles that were out there to
2 preventing a good job from getting done.
3 But instead you went out there and you just
4 overcame every obstacle and did it quickly and did it
5 well. And I'd like to commend you for that.
6 MR. JOHNSON: I like to accomplish things. And
7 if there's an obstacle I just figure out how to get over
8 it and get the job done. I enjoy accomplishment. It's
9 really good to do something.
10 And I think the pictures do talk for themselves
11 to show you what's been done there.
12 BOARD CHAIR MOULTON-PATTERSON: And I'd just
13 like to add, thank you very, very much, it's a job very
14 well done.
15 And I certainly agree with member Jones about
16 Mr. Hildrith. He's done a fantastic job for us also,
17 and I'm sorry he left because I had planned to mention
18 that also. But you can pass that along to him, or I
19 imagine we might see him in closed session today.
20 But thank you all, and please pass our thanks
21 down to your whole team because it really is a job well
22 done, and I certainly hope we get some good publicity on
23 it.
24 Thank you.
25 MR. JOHNSON: Thank you.

1 BOARD CHAIR MOULTON-PATTERSON: Okay. Item
2 number 11.
3 MS. WILLD-WAGNER: Item number 11, thank you,
4 Madam Chair.
5 This is a scope of work that was presented to
6 the Special Waste Committee last week, and we've made
7 some changes on the scope in response to committee
8 interests.
9 Nate Gauff of our staff will present the item.
10 MR. GAUFF: Good afternoon, Madam Chair and
11 Board members. I'm Nate Gauff with the Special Waste
12 Division.
13 Item 11 is consideration of the scope of work
14 for the technology evaluation and economic analysis of
15 waste tire pyrolysis, gasification, and liquefaction
16 contract.
17 Basically this scope of work is for a report, a
18 study and a subsequent report to update some work that
19 was done in the past.
20 In 1995 the Board contracted with Cal Recovery
21 to also look at this subject area. And this report
22 would be an update of those technologies, and looking at
23 what's happened basically over the last seven years.
24 The Board in its five year plan did set aside
25 $200,000 for these types of activities.

1 At the committee meeting there was some
2 discussion and a seventh task was added to the scope of
3 work. And I'd like to read that into the record.
4 Task seven is, "The future PGL --" which stands
5 for pyrolysis, gasification, and liquefaction --
6 proposal evaluation." And what that task entails is
7 that,
8 "The Board will need to consider and
9 evaluate any new proposals made for PGL
10 technologies. The contractor will prepare
11 a brief guideline which identifies the main
12 elements that a PGL proposal should address,
13 the criteria that would be used to
14 adequately evaluate the economic and
15 technical viability of those proposals,
16 and the appropriate expertise to conduct
17 the evaluation."
18 And an additional minor change was that the
19 contract timeframe was adjusted to include that task, so
20 fifteen days was added for the contract timeframe.
21 Staff is recommending that the Board adopt
22 Resolution 2002-704.
23 Are there any questions?
24 BOARD CHAIR MOULTON-PATTERSON: Thank you.
25 Mr. Medina.

1 BOARD MEMBER PAPARIAN: Thank you, Madam Chair.
2 I'd like to move Resolution 2002-704 revised, approval
3 of the scope of work for the technology evaluation and
4 analysis of waste tire pyrolysis, gasification, and
5 liquefaction -- liquefaction contract tire recycling
6 management fund, fiscal year 2002-03, in the amount of
7 $200,000.
8 BOARD MEMBER JONES: Second.
9 BOARD CHAIR MOULTON-PATTERSON: Okay. We have
10 a motion by Mr. Medina, seconded by Mr. Jones to approve
11 Resolution 2002-704 revised.
12 Please call the roll.
13 BOARD SECRETARY WADDELL: Cannella?
14 BOARD MEMBER CANNELLA: Aye.
15 BOARD SECRETARY WADDELL: Jones?
16 BOARD MEMBER JONES: Aye.
17 BOARD SECRETARY WADDELL: Medina?
18 BOARD MEMBER MEDINA: Aye.
19 BOARD SECRETARY WADDELL: Paparian?
20 BOARD MEMBER PAPARIAN: Aye.
21 BOARD SECRETARY WADDELL: Washington?
22 BOARD MEMBER WASHINGTON: Aye.
23 BOARD SECRETARY WADDELL: Moulton-Patterson?
24 BOARD CHAIR MOULTON-PATTERSON: Aye. Item
25 number twelve.

1 MS. WILLD-WAGNER: Item number twelve is
2 consideration of contractor for the engineering and
3 environmental services contract for the Tracy tire fire
4 site. And this is being funded out of the tire
5 recycling management fund, fiscal year 2002-03 and
6 2003-04.
7 This item was heard by both the Special Waste
8 Committee and the Budget and Administration Committee
9 and received consensus from both committees.
10 The staff recommendation is that the Board
11 adopt Resolution number 2002-744 awarding the contract
12 to Levine Fricke. And I believe you've all received a
13 copy of that revised resolution actually listing Levine
14 Fricke as the contractor.
15 Piggybacking on success, Albert Johnson will be
16 the contract manager for this contract.
17 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
18 you.
19 Do we have a motion for this one?
20 BOARD MEMBER JONES: Madam Chair.
21 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.
22 BOARD MEMBER JONES: I'll move adoption of
23 Resolution 2002-744 revised, consideration of contractor
24 for the engineering and environmental services contract
25 for the Tracy fire, tire fire site to Levine Fricke for

one million dollars.

BOARD MEMBER MEDINA: Second.

BOARD CHAIR MOULTON-PATTERSON: Okay. We have a motion by Mr. Jones, seconded by Mr. Medina to approve Resolution 2002-744 revised, is that right? Did I read the right resolution number?

BOARD MEMBER JONES: Yes.

BOARD CHAIR MOULTON-PATTERSON: Please call the roll.

BOARD SECRETARY WADDELL: Cannella?

BOARD MEMBER CANNELLA: Aye.

BOARD SECRETARY WADDELL: Jones?

BOARD MEMBER JONES: Aye.

BOARD SECRETARY WADDELL: Medina?

BOARD MEMBER MEDINA: Aye.

BOARD SECRETARY WADDELL: Paparian?

BOARD MEMBER PAPARIAN: Aye.

BOARD SECRETARY WADDELL: Washington?

BOARD MEMBER WASHINGTON: Aye.

BOARD SECRETARY WADDELL: Moulton-Patterson?

BOARD CHAIR MOULTON-PATTERSON: Aye. Number thirteen.

BOARD MEMBER JONES: Madam Chair, can I ask a question, please, on this contract?

BOARD CHAIR MOULTON-PATTERSON: Sure.

1 BOARD MEMBER JONES: And I'm assuming that
2 Albert is going to manage this contract.
3 This is a site that told the world it was a
4 tire recycling site, similar to other things, and you
5 found all kinds of things like oil filters and oil
6 canisters and hazardous waste.
7 Is part of this contract going to be
8 categorizing that waste, when they're doing their soil
9 analysis and things? I mean we need to know, if nothing
10 else, at the end of this, what will probably be a twenty
11 or $30 million cleanup, we need to know what this guy
12 hid in these tires and why he fought so hard to keep us
13 off that property so that we can learn from those kinds
14 of tactics in the future.
15 MS. GILDART: Martha Gildart with the Special
16 Waste Division.
17 Yes, there are going to be a listing of the
18 materials found. I mean obviously in an environmental
19 services contract they're going to go out and take
20 samples and test where we point them. And if there are
21 things discovered under the ash and debris that is left
22 at the site, we'll definitely have an accounting of
23 that.
24 It's sort of how far the amount of money
25 allocated will go as to exactly how extensively that

1 network of test sites is.

2 BOARD MEMBER EATON: Okay. But I mean we had a

3 history of when this tire fire was burning of explosions

4 that were happening. Those explosions were coming from

5 hazardous waste, canisters probably of some form.

6 So we need to, we need to make sure that that

7 gets reported. And we need that I think as part of this

8 contract.

9 So I just throw it out there because this is

10 just another case of, you know --

11 MS. GILDART: One of the requirements under

12 the Department of Toxic Substances Control process is

13 also, you know, a safety plan for the individuals who

14 will be in the site working. So yes, that would fold

15 into that plan.

16 BOARD MEMBER JONES: That characterization?

17 MS. GILDART: Yeah.

18 BOARD MEMBER JONES: Okay, thanks.

19 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank

20 you.

21 MS. WILLD-WAGNER: Item thirteen is

22 consideration of adoption of proposed additions and

23 amendments to the existing waste tire facility

24 permitting and storing regulations.

25 These again had a couple of issues come up at

1 the committee meeting, and we're addressing some of
2 those questions now.
3 And Tom Micka will make that presentation.
4 MR. MICKA: Good afternoon, Madam Chair and
5 Board members.
6 At the December Special Waste, Market
7 Development and Committee meeting, committee members
8 recommended that this regulation package be forwarded to
9 the Board for adoption. However, two issues were raised
10 by committee members.
11 The first issue involved financial assurances.
12 Staff indicated that what the committee was asking for
13 could be accommodated in the existing proposed changes.
14 The second issue involved table five in the
15 proposed Article 3.5 of chapter six. This article is
16 entitled "Enforcement Criteria for Waste Tire
17 Facilities." And table five is entitled, "Additional
18 Penalties."
19 Based on the comments at the committee meeting,
20 staff is proposing a few minor changes to this article
21 as presented in the errata sheet handed out to the Board
22 members and on the back table.
23 At the committee's request, titles have now
24 been added to section numbers in table five. In
25 response to questions about the range in penalties in

1 table five, Public Resources Code Section 42852 has been
2 added, has been referenced at the top of page 16 and in
3 the reference citation at the end of this article.
4 PRC section 42852 establishes the criteria that
5 a hearing officer would use in determining the penalty
6 for an enforcement action.
7 The Board routinely uses administrative law
8 judges as hearing officers in waste tire enforcement
9 cases.
10 In addition to the aforementioned changes,
11 staff has added a footnote to tables one and three
12 stating that, "The total penalty amount shall not exceed
13 the maximum amount specified in Public Resources Code
14 Sections 18425 and 18435."
15 Staff believes that these proposed changes only
16 clarify the statutory requirements in Article 3.5, and
17 that these changes do not warrant an additional comment
18 period.
19 In addition, staff believes that this
20 regulation, regulatory package will not have a
21 significant effect on the environment, and that this
22 package qualifies for a categorical exemption which
23 includes actions by regulatory agencies for protection
24 of the environment.
25 At the Board's direction, staff will file a

1 notice of exemption with the Governor's Office of
2 Planning and Research.
3 Staff now request that the Board adopt
4 Resolution 2002-745 adopting the proposed changes to the
5 regulations, and making a finding that the proposed
6 changes qualify for categorical exemption under the
7 California Environmental Quality Act.
8 This concludes my presentation.
9 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
10 you.
11 BOARD MEMBER JONES: Madam Chair.
12 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.
13 BOARD MEMBER JONES: I'll move adoption of
14 Resolution 2002-745, consideration of adoption of
15 proposed additions and amendments to the existing waste
16 tire facility permitting and storage regulations.
17 BOARD MEMBER MEDINA: I'll second the
18 resolution. I did have a question in regard to the
19 fines.
20 Do the fines go to the Integrated Waste
21 Management, those fines, or what happens to the fines?
22 MR. MICKA: The fines go into the tire fund,
23 but then they, they're not accessible unless they're
24 reappropriated by the legislature.
25 BOARD MEMBER PAPARIAN: Okay. Thank you.

1 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
2 you. We have a motion and a second, motion by Mr.
3 Jones, seconded by Mr. Medina to approve Resolution
4 2002-745.
5 Without objection, please substitute the
6 previous roll call.
7 And that brings us to number fourteen.
8 MS. WILLD-WAGNER: Yes. Item fourteen is the
9 consideration of grant awards for the local government
10 waste tire public education and amnesty day program for
11 fiscal year 2002-03.
12 This was heard by both the Special Waste
13 Committee and Budget and Administration Committee,
14 enjoying fiscal consent by both committees.
15 Staff is recommending the award of 11 projects
16 for a total funding of $321,247.
17 Staff recommends the approval of Resolution
18 2002-703.
19 BOARD CHAIR MOULTON-PATTERSON: With unanimous
20 support from two committees, may I have a motion?
21 BOARD MEMBER JONES: Madam Chair, I'll move
22 adoption of the revised consideration of grant awards
23 for the local government waste tire public education and
24 amnesty day for fiscal year 2002-03.
25 BOARD MEMBER MEDINA: Second.

1 BOARD MEMBER JONES: Madam Chair, may I ask a
2 question?
3 BOARD CHAIR MOULTON-PATTERSON: Yes.
4 BOARD MEMBER JONES: I don't know if it was
5 this one, is, does this resolution also talk about those
6 passing scores that if the Board realizes --
7 MS. WILLD-WAGNER: No, that's the next one.
8 BOARD MEMBER JONES: Okay, just want to make
9 sure. Why couldn't we do it on this one?
10 MS. WILLD-WAGNER: We have funded all the
11 recommended projects.
12 BOARD MEMBER JONES: Okay.
13 MS. WILLD-WAGNER: We have funding available
14 for all projects received.
15 BOARD CHAIR MOULTON-PATTERSON: Okay. So we
16 have a motion, was that motion by you, Mr. Jones?
17 BOARD MEMBER JONES: Yes, ma'am.
18 BOARD CHAIR MOULTON-PATTERSON: Motion by Mr.
19 Jones, seconded by Mr. Medina to approve Resolution
20 2002-703.
21 Please substitute the previous roll call
22 without objection.
23 That brings us to item number fifteen, and we
24 do have a speaker.
25 MS. WILLD-WAGNER: Item fifteen is the second

1 grant award. This is for the tire product
2 commercialization and applied technologies grant program
3 for fiscal year 2002-3.
4 Staff received 26 qualified applications and
5 scored those 26, and are recommending for funding,
6 attachment one, eight projects in the amount of
7 $1,964,799. And that is adoption of Resolution
8 2002-702.
9 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
10 you. Any questions before our speaker?
11 Tom Faust, Redwood Rubber.
12 MR. FAUST: Good afternoon, Chairman Patterson.
13 Welcome to the Board, Carl Washington.
14 Sal Cannella, we're going to miss you.
15 Please excuse me if I have a hesitating speech,
16 my daughter had a science project, I was up until almost
17 2:00 o'clock in the morning on band saw.
18 So I'm really saddened to see these proposed
19 listed grants, and the reason I am is that at this time
20 of budget crisis every single dollar counts. Money has
21 to be spent wisely, especially so when 62 percent of all
22 existing tires in California are either burned or
23 buried.
24 Now the rules of this grant said for, "All
25 applicants proposing projects developing or producing

1 molded rubber products will be given preference."
2 The instructions then defined molded rubber
3 products as, "A crumb rubber derived product that is
4 using a mold and pressure or by extrusion."
5 And molded rubber products were to be granted
6 an automatic twenty points.
7 For the second consecutive year, unfortunately,
8 the grant scoring did not follow Public Resource Code
9 40051. On page three of your attachment here is, I list
10 40051.
11 And it says, "In implementing this division,
12 the Board and Agency shall --" it doesn't, it uses the
13 mandatory word "shall do both of the following:" And
14 that's, "Promote the following waste management in order
15 priority."
16 So in other words it sets a priority law, and
17 source reduction. Making crumb rubber is recycling and
18 composting. Source reduction is like, is the molded
19 rubber products. That's analogous to either make a new
20 tire or do sheet rubber like U.S. Rubber. But that's
21 source reduction.
22 And then maximize all of these, and
23 transformation or tire burning is the least desired
24 thing.
25 Unfortunately, the batting average here was

1 only 200. And there was only two grants that really,
2 that were granted that followed the rules, and those
3 were Rubbersidewalks and Van Duerr Industries.
4 And I certainly have no complaint, I welcome
5 those awards. All of the others do not follow the
6 rules.
7 And, for example, Total Tire Recycling is
8 proposing to use the proceeds to increase production of
9 tire derived fuel. The purpose of this grant was to
10 increase the manufacture of molded goods, not increase
11 tire burning. Burning tires causes an increase in
12 global warming.
13 No grants, according to the law, are to be
14 awarded under the tire burning category until all other
15 alternatives are exhausted. Under PRC 4051 there's a
16 priority of recycling, the priority law rule was not
17 followed.
18 And this flies against the face -- Governor
19 Davis, in July of, signed legislation mandating that
20 California has got to do away, has got to lower CO2
21 emissions.
22 You have Honda Motor on Friday of this week
23 introduced a car that had zero emissions, zero CO2
24 emissions. And here the Board, the staff, not the Board
25 but the staff is proposing a grant to increase CO2

1 emissions.

2 Okay. So the next paragraph I want to discuss

3 is there was four companies that were given crumb rubber

4 grants, and all of them are planning to use their grants

5 to increase the supply of crumb rubber.

6 If you add 'em all up, it's 52 to 55 million

7 pounds a year. Just a month ago BAS testified in this

8 room that they wanted a subsidy because they weren't

9 making any money.

10 So here you're planning on, the staff is

11 planning on increasing the supply of crumb rubber when

12 the existing market is oversaturated with supply. And

13 we all know that if supply exceeds demand, and there's

14 additional supply coming in from Canada, as a matter of

15 fact 60 percent of the crumb rubber that's used in

16 California comes from Canada.

17 I mean what that does, that puts the people out

18 of business. The people in Texas tried this. They

19 spent $80 million, and they have nothing to show for it

20 except a bunch of bankrupt companies.

21 California held its first environmental

22 recycling fair in Sacramento in the year 2000. After

23 consulting all of the crumb rubber product

24 manufacturers, I determined that 66 percent of them were

25 buying Canadian crumb rubber at around ten cents

1 a pound.

2 Why we would encourage more people to enter the

3 crumb rubber market is beside me. And especially so, on

4 Friday Governor Davis announced that he was going to be

5 cutting one billion dollars from Caltrans' road budget

6 for resurfacing highways, and the crumb rubber in

7 California goes directly into that, at least the vast

8 majority of it.

9 The next issue I'd like to take apart is the

10 grant application rules says that, "If two grants are

11 applied for at the same time, that both of them will be

12 disqualified." Lakin Tire West applied for two grants

13 for a total of a half million dollars.

14 The grading rule says quote, "Applicants

15 requesting more than $250,000, a maximum, will be

16 disqualified and will not be scored."

17 This is the first time this clause has appeared

18 on any grant. I've applied for multiple grants, I'm

19 very familiar with the change in the wording.

20 So you put this grant to discourage

21 gamesmanship in the grant project so people couldn't

22 apply for two, three, four grants. And here's a company

23 that does burning and burying for the majority of their

24 tires was given a grant.

25 And according to the rules set aside, set up by

1 the integrated Waste Board it says these, they will not
2 be scored.
3 The next argument is, this grant was written to
4 encourage the highest value reuse of rubber and the
5 grading rules were not followed. PUC 401 was not
6 followed.
7 BOARD CHAIR MOULTON-PATTERSON: Mr. Faust,
8 would you summarize, please?
9 MR. FAUST: Yes, I will. In conclusion, rather
10 than encouraging innovation to expand tire recycling,
11 these awards, all they do is maintain the status quo in
12 technology, and they enrich the largest stakeholders.
13 It is incumbent for this Board not to assign
14 any further grading to the staff as they have repeatedly
15 favored the largest stakeholders keeping the status quo.
16 I urge the Board to immediately cancel these
17 grant proceedings and re-notice and reschedule a second
18 offering which could commence in March, 2003.
19 Thank you. Is there any questions from any of
20 the Board members?
21 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
22 Faust.
23 Okay. Thank you. Any questions or a motion,
24 please?
25 Oh, on this item? Okay. If you could get your

1 speaker slips up at the beginning I'd appreciate it.
2 Thank you.
3 MR. SNYDER: I'm Rick Snyder, I'm president of
4 U.S. Rubber Recycling in Riverside.
5 I want to say good afternoon to the members of
6 the Board.
7 And to Carl Washington, welcome to the Board.
8 And to Sal, it's too bad you're leaving.
9 I think it's commendable that you guys worked
10 so hard today, especially in light of the fact that the
11 L.A. Times wants you all to work for free next year. So
12 that's very commendable.
13 I want to just real quickly make a few points
14 about the grant. I think that the grant is a great
15 opportunity for the stakeholders of the recycling effort
16 for tires in the State of California, but I believe that
17 it has some flaws. And amazingly, I kind of concur with
18 Mr. Faust on a couple of points.
19 There's a problem with the scoring. The
20 scoring is very subjective, it's arbitrary, and I think
21 anybody who went to business school 101 would realize
22 that you can't judge products of such importance from an
23 ivory tower.
24 To my knowledge there wasn't one phone call
25 made to an outside manufacturer, to any of the

1 references we gave, or to any of the stakeholders
2 regarding any of the people that came in.
3 We funded one company from out of the state
4 that doesn't have offices in the State of California.
5 We funded two companies that don't have
6 receptionists, nevertheless office staff.
7 And I think what it does is it exposes the
8 Board to a tremendous amount of ridicule and, you know,
9 you could be the next subject of a bashing in the Wall
10 Street Journal.
11 When I look at some of the recipients it's kind
12 of scary. I just said that. I mean you're giving money
13 to people that are very shaky.
14 Now, that could have been remedied, I'm not
15 saying I'm the smartest guy on earth or anybody else is
16 around here, but some of us are very knowledgeable in
17 the industry, and we would love to share the information
18 with you. We don't want to see anybody go down.
19 Now, in my mind I think the biggest fallacy of
20 the grant, like I mentioned before, was that they're
21 using this scoring system, arbitrarily judging these
22 applications without doing due diligence. This is like,
23 in college you get an F minus.
24 These grants are very important to us. For
25 U.S. Rubber it, we battled through a tremendous energy

1 crisis, and as the premiere rubber molder in the State
2 of California we look forward to these grants. We've
3 got major things happening with the retailers around the
4 nation, it's beyond my belief that staff couldn't fathom
5 this.
6 Now I think going forward, the program, like I
7 said before, has some flaws, and I think we need to sit
8 down, make a committee, bipartisan committee with people
9 from all around the state, and try to work on these
10 things.
11 I'm not going to do, I'm not going to try to
12 raise hell and have the damn thing canceled or anything
13 like that, it's water under the bridge to me, but it's
14 definitely flawed.
15 And if I have to come in here at the next Board
16 meeting and stick a $20 million purchase order up from
17 Wal-Mart and Sam's Club, then that's what I'll do.
18 But there's a lack of understanding on the
19 staff's part of the potential of recycled rubber
20 products. TDF is fine, rubberized asphalt is fine, but
21 there's a tremendous market for these recycled products.
22 The architectural level is going crazy. We
23 personally have an account started with Minards, which
24 is the number three home improvement chain, and I'm
25 going to be, ironically, I'm going to be down in

1 Bentonville, Arkansas next week at this time talking to
2 Sam's Club and Wal-Mart.
3 So there's a huge market out there. Whenever I
4 go to committees all I ever hear is staff doesn't think
5 there's a market. We need to put some of these dollars
6 into TDF, you know, for whatever the subjectiveness of
7 this scoring system has allowed all these outside uses
8 to come in that weren't in the description of the grant
9 application.
10 But be that as it may, we accept the decision
11 of the Board and staff, and we'll work harder next year
12 to try to get this thing straightened out.
13 Thank you.
14 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
15 Snyder.
16 BOARD MEMBER WASHINGTON: I have a question.
17 BOARD CHAIR MOULTON-PATTERSON: Mr. Washington.
18 BOARD MEMBER WASHINGTON: For the speaker you
19 said it was a company from out of state, which company
20 that is awarded is from out of state?
21 MR. SNYDER: I believe it's Green Man.
22 BOARD MEMBER WASHINGTON: Who?
23 MR. SNYDER: Green Man.
24 MS. WILLD-WAGNER: Green Man is on the second
25 list of projects that were receiving a passing score but

1 are not being recommended for funding.

2 These grants may come back in a reallocation

3 item in that they did receive a passing score at a later

4 time.

5 BOARD MEMBER WASHINGTON: Sir, you understand

6 that that one is not funded in this process?

7 MR. SNYDER: Oh, sure I do.

8 BOARD MEMBER WASHINGTON: Oh, okay.

9 MR. SNYDER: But if the funds become available

10 then they'll get funded.

11 BOARD MEMBER WASHINGTON: Okay.

12 MR. SNYDER: But it's, you know, they're from

13 outside the state, that's a fact.

14 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones, and

15 then Ms. Willd-Wagner wanted to respond.

16 BOARD MEMBER JONES: Yeah, but Rick, when we

17 were down in Van Nuys it was the guy from Green Man that

18 was sitting there with you.

19 MR. SNYDER: Yeah, it's formerly UTT which is

20 at the Azusa Landfill.

21 BOARD MEMBER JONES: Understood.

22 MR. SNYDER: And Green Man though is a big

23 corporation that's in Utah, I believe, and they're

24 putting an office in California.

25 BOARD MEMBER JONES: Right.

1 MR. SNYDER: Yeah.
2 BOARD MEMBER JONES: So that is a California, I
3 mean they're operating in Azusa, right?
4 MR. SNYDER: Right.
5 BOARD MEMBER JONES: And Azusa is still in
6 California?
7 MR. SNYDER: Yeah, but --
8 BOARD MEMBER JONES: Okay, I just wanted to
9 make sure. Now Rick, didn't you get a grant the last
10 time?
11 MR. SNYDER: Yes.
12 BOARD MEMBER JONES: Okay.
13 MR. SNYDER: I'm not --
14 BOARD MEMBER JONES: That's the grant that
15 Senator Roberti and I sat on the scoring group and
16 scored?
17 MR. SNYDER: Yes.
18 BOARD MEMBER JONES: And didn't do it
19 arbitrarily.
20 MR. SNYDER: Well -- okay.
21 BOARD MEMBER JONES: And then came back and
22 redid the scope of work and the scoring.
23 MR. SNYDER: I don't want to do a tit for tat,
24 but who finished number one this year, and who finished
25 near dead last year.

1 BOARD MEMBER JONES: But there was a reason why
2 he was last.
3 MR. SNYDER: Did he go to grant school?
4 BOARD MEMBER JONES: He did something right
5 because they, it was a specific reason why he didn't
6 score the last time that had been rectified this time
7 according to -- because I checked on that, Rick, because
8 it didn't pass me last time and so --
9 MS. GILDART: Actually it was his third time
10 applying so, you know, practice makes perfect.
11 BOARD CHAIR MOULTON-PATTERSON: Mr. Cannella.
12 BOARD MEMBER CANNELLA: You didn't get funded
13 this year. My concern, and it's something we mentioned
14 a the committee hearing, have you been notified
15 specifically as to reasons why you were not funded?
16 MR. SNYDER: No, I've got a right to request
17 that, how the application was scored, but I haven't done
18 that.
19 BOARD MEMBER CANNELLA: Well one of the things
20 we discussed, Madam Chair, in the committee was that in
21 this process it seems that it would be beneficial to not
22 only the applicants but also for the Waste Board to send
23 letters to those who are not granted the grant, to
24 delineate specifically why they didn't.
25 I believe it's important for us to educate

1 those who go through the process as to the reasons why
2 they were not, so that they could perhaps do a better
3 job the next time.
4 And the staff has indicated that is one of the
5 priorities the next go-round is that they will notify
6 the unsuccessful applicants as to the reasons why, so
7 that the next time they'd have a better understanding of
8 what was necessary to perhaps be successful.
9 BOARD CHAIR MOULTON-PATTERSON: I think that's
10 a good idea, and I certainly support it. Thank you.
11 Mr. Paparian wanted to speak next.
12 BOARD MEMBER PAPARIAN: Did the staff have
13 something they wanted to add before I --
14 MS. GILDART: Actually, yes. I actually had
15 some response to Mr. Cannella's comment.
16 One, we cannot release that information until
17 the Board has completed its deliberations and acted on
18 the award. At that time we do make the information
19 available.
20 I would caution against any kind of a blanket
21 policy for all grant programs. We have had, and some of
22 the Board members will remember, in the school
23 playground grant program that was funded through the
24 Department of Education bond, we had 200 applications
25 come in, and we could only fund something like fifty or

1 sixty of them, that would be 140 applications to write
2 up that level of detail.
3 What we generally do is let them know that they
4 can submit, you know, a records request, and we will
5 send them a copy of the cover sheet on their grant so
6 they see individual criteria and how they're scored.
7 It's a little difficult to write up
8 explanations for, you know, a huge number of grant
9 applicants.
10 CHIEF LEGAL COUNSEL TOBIAS: Well, and I'd like
11 to add as well, Madam Chair, that staff is happy to meet
12 with the applicants too. I.
13 Know that we have basically sat down with
14 people who have submitted for the first time and worked
15 through their applications, talking to them about, you
16 know, how the applications can be made better. So I do
17 think we have that side of it covered.
18 But sometimes, as Martha said, sometimes it
19 takes one or two or three tries to get through these,
20 especially if you've never written a grant before or if
21 you're not clear or if your project doesn't match what
22 the Board wants to do set out in the criteria.
23 BOARD CHAIR MOULTON-PATTERSON: Thank you.
24 Mr. Paparian and then Mr. Washington.
25 BOARD MEMBER PAPARIAN: Yeah, thank you, Madam

1 Chair.

2 I think the last time around I raised concerns

3 about these grants in this category, and I think I

4 probably forever annoyed the tire staff in terms of what

5 we put them through in putting the grants out again,

6 getting another set of applications, getting them

7 rescored and so forth. I'm still very comfortable we

8 did the right thing with those at that time.

9 I think that in reviewing the ones before us

10 today, I think the staff did a good job in scoring the

11 grants according to the criteria that we reviewed and

12 approved by this Board.

13 And I think, I do continue to have questions in

14 the tire area, whether we are putting our resources, as

15 Mr. Faust has suggested, whether we're putting our

16 resources, and as you have suggested too, whether we're

17 putting our resources in the right areas in our tire

18 program.

19 I continue to have those to concerns, I

20 continue to raise those concerns at the Special Waste

21 Committee and in the context of the five year plan.

22 But I think that in terms of what's before us

23 today, I think the staff did what we asked of them, and

24 they scored it in the way that, using the criteria that

25 we approved. And I think they did the right thing here.

I think that if we have continuing questions about the tire program, I'm certainly, you know, pushing an agenda for more recycling and source reduction of tires, and I think the context for debating that will be the upcoming five year plan meeting on January 30th.

BOARD CHAIR MOULTON-PATTERSON: Thank you.

Mr. Washington.

BOARD MEMBER WASHINGTON: And I appreciate that, Mr. Paparian.

And I guess my concern, I'll vote for this one, but I'm not so sure if I'll be supportive of any other grants whatsoever until I sit down with staff to understand the process of creating criteria. And I think that's where I need to understand where this gentleman is coming from in terms of the criteria and how you got to the point of awarding these grants.

So I will be supportive of this grant, but I would like to sit down with the staff and talk about how you get to the point of creating the criteria for the grants.

MS. WILLD-WAGNER: Absolutely.

BOARD CHAIR MOULTON-PATTERSON: Thank you.

Okay. Mr. Medina.

BOARD MEMBER PAPARIAN: I just wanted to say that both of the speakers made some excellent

1 suggestions in this. I think they made some very good
2 observations, and we'll certainly take those seriously
3 into consideration. We went down this road before where
4 we had a number of, a number of companies that were
5 recommended for funding, and the issue was raised about
6 molded rubber products.
7 MR. SNYDER: Yeah, I don't want to do that
8 again.
9 BOARD MEMBER PAPARIAN: We did not proceed in
10 making those grants and, in fact, took extra pains to go
11 through the reviewing process again. And actually came
12 very close to exposing ourselves legally. And so this
13 is an area that, you know, we will continue to look at
14 very carefully.
15 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
16 you, Mr. Snyder and Mr. Faust, we appreciate your
17 comments.
18 We're going, we're going to be taking a break
19 if you have a comment because our court reporter needs
20 ones. Is it very brief, Mr. Faust?
21 MR. FAUST: It's really brief.
22 BOARD CHAIR MOULTON-PATTERSON: Well, come to
23 the podium, please.
24 MR. FAUST: I'd like to address the issue of
25 providing feedback. Last year I was, I was given

1 feedback from, on the basis of the grant, and I was
2 utterly totally amazed at the total subjectivity and
3 really bad scoring and grading on the grant.
4 I was ashamed that, I was ashamed for myself
5 and for the Board that, that the subjectivity was so
6 high. It was bad scoring, that's all I wanted to say,
7 cause --
8 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
9 Faust.
10 MR. FAUST: And that's why it should go to the
11 University of California Davis, it should get out of the
12 politics of the staff here. You should move it to
13 another organization to have an independent unbiased
14 evaluation.
15 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
16 Faust.
17 BOARD MEMBER JONES: I'm going to make a
18 motion. I'm going to thank Mr. Faust for the critique
19 on my scoring.
20 MR. FAUST: You're welcome.
21 BOARD MEMBER JONES: Because he and I did talk.
22 I'll move Resolution 2002-702, consideration of
23 the grant awards for the tire product commercialization
24 and applied technology grant program for fiscal year
25 2002-2003 to fund those, however many it was.

1 And then if we have extra money, Madam Chair,
2 then this resolution includes the acceptance of those
3 people. And then it's our discretion as to whether or
4 not we will fund this group that have passed.
5 BOARD MEMBER PAPARIAN: Second.
6 BOARD CHAIR MOULTON-PATTERSON: We have a
7 motion by Mr. Jones, seconded by Mr. Medina to approve
8 Resolution 2002-702.
9 Without objection, we'll substitute the
10 previous roll call.
11 And at this time we'll take a much needed ten
12 minute break.
13 We have three items left.
14 (Thereupon there was a brief recess.)
15 BOARD MEMBER JONES: Any ex-partes, Mr.
16 Cannella?
17 BOARD MEMBER CANNELLA: None to report, Madam
18 Chair.
19 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.
20 BOARD MEMBER PAPARIAN: None.
21 BOARD CHAIR MOULTON-PATTERSON: Okay. Mr.
22 Medina.
23 BOARD MEMBER PAPARIAN: None to report.
24 BOARD CHAIR MOULTON-PATTERSON: I have none.
25 Mr. Washington.

1 BOARD MEMBER WASHINGTON: Yes, ma'am, I have
2 one.
3 BOARD CHAIR MOULTON-PATTERSON: Okay.
4 BOARD MEMBER WASHINGTON: Rick Snyder, U.S.
5 Rubber Company talking about setting up a meeting,
6 visiting his corporation.
7 BOARD CHAIR MOULTON-PATTERSON: Great. Thank
8 you.
9 Mr. Jones.
10 BOARD MEMBER JONES: None.
11 BOARD CHAIR MOULTON-PATTERSON: Okay. Mr.
12 Jones has none.
13 And that brings us to item 17.
14 MS. WILLD-WAGNER: Yes, item 17 is an award of
15 contract. This item was heard by both the Special Waste
16 Committee and the Budget and Administration Committee
17 and enjoys fiscal consent.
18 It's the consideration of California State
19 University at Sacramento as the contractor for
20 development of an environmental justice guidance
21 document for local governments. This will produce a
22 used oil guidance tool.
23 And the scope of work was approved by the Board
24 back in September.
25 Staff recommends adoption of Resolution number

1 2002-774 to award California State University Sacramento
2 as the contractor for this contract.
3 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
4 Medina.
5 BOARD MEMBER PAPARIAN: Madam Chair, I'd like
6 to move Resolution 2002-774, consideration of California
7 State University of Sacramento as contractor for
8 development of environmental justice guidance document
9 for local government for the used oil and household
10 hazardous waste collection programs, fiscal year
11 2002-2003, used oil program contract concept number 54.
12 BOARD MEMBER WASHINGTON: Second.
13 BOARD CHAIR MOULTON-PATTERSON: Okay. We have
14 a motion by Mr. Medina, seconded by Mr. Washington to
15 approve Resolution 2002-774.
16 Please call the roll.
17 BOARD SECRETARY WADDELL: Cannella?
18 BOARD MEMBER CANNELLA: Aye.
19 BOARD SECRETARY WADDELL: Jones?
20 BOARD MEMBER JONES: Aye.
21 BOARD SECRETARY WADDELL: Medina?
22 BOARD MEMBER MEDINA: Aye.
23 BOARD SECRETARY WADDELL: Paparian?
24 BOARD MEMBER PAPARIAN: Aye.
25 BOARD SECRETARY WADDELL: Washington?

1 BOARD MEMBER WASHINGTON: Aye.
2 BOARD SECRETARY WADDELL: Moulton-Patterson?
3 BOARD CHAIR MOULTON-PATTERSON: Aye. Okay.
4 That brings us to our P&E section of the agenda.
5 Mr. Paparian, do you have any further reports?
6 BOARD MEMBER PAPARIAN: Madam Chair, I'll just
7 keep it extremely brief.
8 I think with our action this morning we've
9 dealt with everything except one item on the P&E agenda.
10 And that one item did come out of the committee with a
11 four zero recommendation, but it is something that
12 requires a vote of the full Board. And I think staff
13 will describe that now.
14 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
15 you.
16 So item number 25, we do have one speaker slip
17 on it.
18 Mr. Walker.
19 MR. WALKER: Madam Chair, members of the Board,
20 Scott Walker from the enforcement division.
21 Item 25 is consideration of adoption of the
22 negative declaration, state clearinghouse number
23 2002112004 and proposed regulations for the waiver of
24 terms and conditions during temporary emergencies for
25 solid waste facility permits.

1 Again, this item was committee consent pending
2 completion of the California Environmental Quality Act
3 or CEQA comment period.
4 No comments were received during the CEQA
5 comment period.
6 Therefore, in conclusion, staff recommends
7 adoption of Resolution 2002-739 for the negative
8 declaration, and Resolution 2002-740 for the
9 regulations, for the proposed regulations for the
10 waiver of terms and conditions during temporary
11 emergencies.
12 Staff is available to answer questions.
13 BOARD CHAIR MOULTON-PATTERSON: Thank you. And
14 we have two speaker slips now.
15 First one, Curt Fujii representing Allied
16 Waste, followed by George Larson of Waste Management.
17 MR. FUJII: I'll try to run up and run back and
18 be very quick. Thank you very much. I just have one
19 very quick question.
20 I've expressed some concerns about the fact
21 that this, that a stipulated agreement is an action
22 taken under enforcement authority, and the impact that
23 might have on disclosures that companies like ours must
24 make to other states annually, or as part of an SOQ or
25 RFP process for a business opportunity.

1 If the statement of reasons or some similar
2 document could contain just one sentence to the effect
3 that a stipulated agreement is an action taken under
4 enforcement authority but is not the result of a
5 violation on the part of the operator, that would just
6 make our life a lot easier for those in our company who
7 have to handle such disclosures.
8 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
9 you.
10 And that could be done, couldn't it, Mr.
11 Walker?
12 MR. WALKER: Yes. Unless Mark has anything
13 further to add, that is okay.
14 I got a thumbs up on that one.
15 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
16 Walker.
17 Okay. Mr. Larson.
18 MR. LARSON: Madam Chair, members. George
19 Larson for Waste Management.
20 I had the same point so I won't restate it,
21 just that we would like to have that clarification that
22 these regulations provide for an enforceable action not
23 an enforcement action.
24 Also, the other item which we did not submit
25 written comments on, but Mr. White of Waste Management

1 did make oral comments regarding the inclusion of part
2 five as a reference to other sections of the regulations
3 and code that these cross-reference. I really feel that
4 it is a significant change to have included the
5 reference to the enforcement portion, and feel that it
6 would justify additional time to consider what the full
7 implications of that are.
8 Thank you.
9 BOARD CHAIR MOULTON-PATTERSON: Do you have any
10 comments? Okay. Thank you.
11 BOARD MEMBER JONES: Madam Chair.
12 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.
13 BOARD MEMBER JONES: The, was there going to
14 be, if there weren't any comments on Mr. Larson's thing
15 I'll make a motion.
16 None?
17 BOARD CHAIR MOULTON-PATTERSON: Yes, please do.
18 BOARD MEMBER JONES: Okay. And this will
19 include the language about it being an enforceable
20 agreement.
21 I'll move adoption of Resolution 2002-739,
22 consideration of adoption of the negative declaration,
23 clearinghouse number 2002112004, and proposed
24 regulations for the waiver of terms and conditions
25 during temporary emergencies.

1 BOARD MEMBER MEDINA: Second.

2 BOARD CHAIR MOULTON-PATTERSON: Okay. We have

3 a motion by Mr. Jones, seconded by Mr. Medina to approve

4 Resolution 2002-739.

5 Please call the roll.

6 BOARD SECRETARY WADDELL: Cannella?

7 BOARD MEMBER CANNELLA: Aye.

8 BOARD SECRETARY WADDELL: Jones?

9 BOARD MEMBER JONES: Aye.

10 BOARD SECRETARY WADDELL: Medina?

11 BOARD MEMBER MEDINA: Aye.

12 BOARD SECRETARY WADDELL: Paparian?

13 BOARD MEMBER PAPARIAN: Aye.

14 BOARD SECRETARY WADDELL: Washington?

15 BOARD MEMBER WASHINGTON: Aye.

16 BOARD SECRETARY WADDELL: Moulton-Patterson?

17 BOARD CHAIR MOULTON-PATTERSON: Aye.

18 BOARD MEMBER JONES: Madam Chair.

19 BOARD CHAIR MOULTON-PATTERSON: Yes, Mr. Jones.

20 BOARD MEMBER JONES: I'll move adoption of

21 Resolution 2002-740, adoption of the regulation for the

22 waiver of terms and conditions during the temporary

23 emergencies.

24 BOARD MEMBER PAPARIAN: Second.

25 BOARD CHAIR MOULTON-PATTERSON: Okay. Motion

1 by Mr. Jones, seconded by Mr. Medina.

2 Please substitute the previous roll call

3 without objection.

4 Okay. That brings us to item number 30,

5 Diversion, Planning, and Local Assistance.

6 Mr. Jones, did you want to make a report from

7 your committee?

8 BOARD MEMBER JONES: Madam Chair, just very

9 briefly. There was, we have one item to hear,

10 everything else was on consent.

11 But I do want the members to know that we

12 approved the city of Los Angeles' new base year. But,

13 more importantly, we had a, we had two items, the city

14 of Brea gave us a visual PowerPoint presentation where

15 they actually, as all the members of the P&E, the

16 planning know, they put out people looking at loads

17 coming off the freeway to the Brea Landfill that were

18 clearly not from the city of Brea but had been

19 identified as from the city of Brea, therefore driving

20 their disposal up and diversion down.

21 And yet there are other cities who would have

22 benefitted by that because their recycling number would

23 have gone up because of that waste. That was a very

24 poignant presentation.

25 The other issue I want to hit just real quick

1 is two issues. The city of Carson. We had approved
2 prior a base year. I think Madam Chair made it very
3 clear that we had a presentation, there's a lot of
4 issues in the city of Carson dealing with, there's a lot
5 of legal issues around solid waste and recycling. We
6 don't think we want to pile onto that.
7 But here's a city with no curbside recycling,
8 with no curbside green waste collection, and their
9 numbers show 72 percent diversion. It's pretty tough to
10 come up with that kind of a number for diversion when
11 you don't have any programs.
12 So we did say that maybe after they had cleaned
13 up some of their other problems we would go in and take
14 a look at those numbers and see if we can make something
15 a little more realistic out of fairness to all the other
16 cities in the State of California.
17 And then very quickly one other issue. The
18 city of Torrance came forward with a new, with a base
19 year that only gets them to 20 percent. In their audits
20 they did 441 business audits, one hundred -- 200, or 121
21 of 'em, I think, or 279 did not respond. And yet they
22 just dismissed them as not meaning anything. Those need
23 to be treated that they have no recycling programs.
24 If they're going to do extrapolation and
25 somebody refuses to talk about their recycling programs,

1 rather than just dismissing 'em as not part of the mix,
2 the mathematical mix, they've got to be looked at as a
3 hundred percent disposal.
4 The reason I bring that up is that the city of
5 Cupertino, which we did approve, went through the same
6 methodology, did some extrapolation, but everybody that
7 said, that refused to fill out a survey were treated as
8 a hundred percent disposal with no diversion programs.
9 So it can be done. But it's an issue that
10 needed to be brought up on this Board at this Board
11 meeting because that's a flaw in extrapolation, and
12 we've got to be cognizant of it as we go down the road.
13 And I thought it was important that we bring
14 those issues up.
15 And that's it, Madam Chair.
16 BOARD CHAIR MOULTON-PATTERSON: Thank you.
17 Okay.
18 With that, we'll go to item number 30.
19 MR. SCHIAVO: Okay. Pat Schiavo, Diversion,
20 Planning, and Local Assistance Division.
21 And item 30 is consideration of allocation from
22 the used oil recycling fund for fiscal year 2002-2003 to
23 supplement the school DEEL environmental ambassador
24 pilot grant awards, and consideration of grant awards
25 for the school DEEL environmental ambassador pilot

1 program grant.

2 And this item was unanimously approved by two

3 committees, the Administration Committee and the

4 Planning Committee.

5 And staff recommends adoption of Resolution

6 2002-770.

7 That concludes my presentation.

8 BOARD CHAIR MOULTON-PATTERSON: Thank you. I'd

9 like to move this resolution, 2002-770. As I said in

10 the committee, both committee meetings, I'm really glad

11 to see this moving along.

12 And thanks to you, Pat, and to you Trish, and

13 all your staff for all your hard work on this, it's

14 really exciting.

15 And I'd like to move it.

16 BOARD MEMBER WASHINGTON: Second.

17 BOARD CHAIR MOULTON-PATTERSON: And do we have

18 a second by Mr. Washington?

19 BOARD MEMBER WASHINGTON: Yes.

20 BOARD CHAIR MOULTON-PATTERSON: Please call the

21 roll.

22 BOARD SECRETARY WADDELL: Cannella?

23 BOARD MEMBER CANNELLA: Aye.

24 BOARD SECRETARY WADDELL: Jones?

25 BOARD MEMBER JONES: Aye.

1 BOARD SECRETARY WADDELL: Medina?
2 BOARD MEMBER MEDINA: Aye.
3 BOARD SECRETARY WADDELL: Paparian?
4 BOARD MEMBER PAPARIAN: Aye.
5 BOARD SECRETARY WADDELL: Washington?
6 BOARD MEMBER WASHINGTON: Aye.
7 BOARD SECRETARY WADDELL: Moulton-Patterson?
8 BOARD CHAIR MOULTON-PATTERSON: Aye. And Mr.
9 Medina has a report as chair of the budget and Admin
10 Committee.
11 BOARD MEMBER MEDINA: Thank you, Madam Chair.
12 Our committee heard eleven items. Ten items
13 were of a fiscal nature and enjoyed committee consensus,
14 those were items 3, 4, 5, 6, 9, 12, 14, 15, 17, and 30.
15 One item was placed on the consent calendar,
16 that was item 20.
17 We also heard a presentation from our Board's
18 legal office. We had an opportunity to meet staff and
19 to find out the various responsibilities that they have
20 and how they are structured to aid the Board in various
21 aspects of a legal nature.
22 We also had a presentation regarding our annual
23 rulemaking calendar which was placed on consent.
24 That concludes my report.
25 BOARD CHAIR MOULTON-PATTERSON: Thank you very

1 much, Mr. Medina.

2 And I have no speaker slips for any final

3 public comments, so with that the Board will go into

4 closed session.

5 Thank you. And again, Happy Holidays to

6 everybody.

7 (Thereupon the foregoing was concluded

8 at 4:42 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

2

3 I, DORIS M. BAILEY, a Certified Shorthand
4 Reporter and Registered Professional Reporter, in and
5 for the State of California, do hereby certify that I am
6 a disinterested person herein; that I reported the
7 foregoing proceedings in shorthand writing; and
8 thereafter caused my shorthand writing to be transcribed
9 by computer.
10 I further certify that I am not of counsel or
11 attorney for any of the parties to said proceedings, nor
12 in any way interested in the outcome of said
13 proceedings.
14 IN WITNESS WHEREOF, I have hereunto set my hand
15 as a Certified Shorthand Reporter and Registered
16 Professional Reporter on the 22nd day of December, 2002.
17
18
19
Doris M. Bailey, CSR, RPR, CRR
20 Certified Shorthand Reporter
License Number 8751
21
22
23
24
25