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MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

PERMITTING AND COMPLIANCE COMMITTEE

JOE SERNA, JR., CALEPA BUILDING

1001 I STREET

2ND FLOOR

COASTAL HEARING ROOM

SACRAMENTO, CALIFORNIA

MONDAY, JUNE 4, 2007

1:33 P.M.

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CERTIFIED SHORTHAND REPORTER
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APPEARANCES

COMMITTEE MEMBERS

Ms. Rosalie Mulé, Chairperson

Mr. Jeffrey Danzinger

BOARD MEMBERS

Mr. Wesley Chesbro

Mr. Gary Petersen

STAFF

Mr. Mark Leary, Executive Director

Ms. Julie Nauman, Chief Deputy Director

Mr. Elliott Block, Chief Counsel

Ms. Donnell Duclo, Executive Assistant

Ms. Wendy Breckon, Senior Staff Counsel

Mr. Harllee Branch, Staff Counsel

Ms. Gabe Aboushanab, Supervisor, LEA Program Assistance & Evaluation Section

Mr. Mark de Bie, Manager, Permitting & Inspection Branch

Mr. Jeff Hunts, Supervisor, Electronic Waste Recycling Section

Mr. Reinhard Hohlwein

Mr. Robert Holmes

Mr. Neal Johnson

Mr. Michael Leaon, Supervisor, Plastics Recycling Technology Section

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APPEARANCES CONTINUED

Mr. William Marciniak

Mr. Wes Mindermann, Supervisor, Solid Waste Cleanup Programs Section

Mr. Bill Orr, Branch Manager, Recycling Technologies

Mr. Ted Rauh, Program Director, Permitting & Enforcement Division

Mr. Scott Walker, Branch Manager, Remediation, Closure & Technical Services

ALSO PRESENT

Mr. George Eowan, CRRC

Ms. Nancy Ewert, Kern County Waste Management Department

Ms. Vicky Gallagher, County of San Diego

Mr. Scott Gordon

Mr. Chris Hall, representing Richard Guggenhime, Landowner

Ms. Laurie Hansen, Pactiv, Progressive Bag Alliance

Mr. Jeff Lamore, Imperial County, LEA

Mr. Jim McCabe, Clorox Company of Glad Manufacturing Company

Mr. Roel Meregillano, Alameda County

Ms. Laurie Nelson, Glad

Mr. Larry Sweetser, Rural Counties Environmental Services Joint Powers Authority

Ms. Pamela Williams, California Retailers Association

Mr. Peter Wood, Department of Toxic Substances Control

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PROCEEDINGS

COMMITTEE MEMBER DANZINGER: Good afternoon, welcome, everyone, to the June 4th meeting of the Board's Permit and Compliance Committee.

There are agendas on the back table.

Anyone who wants to speak on any of the items, you know the drill. Fill out a speaker slip and get it to Donnell, and you will have an opportunity to talk. Also, remember to turn off your cell phones and pagers.

Let me just quickly let you know, the reason I'm up here talking instead of our esteemed committee chair, Rosalie's been struck down with laryngitis.

But don't worry, I have taken measures to ensure that we'll be able to keep the meeting moving smoothly and expeditiously. I have prewritten notes to share with her if I have any questions: one says, "Huh, what was that?"; "I haven't gotten my Ph.D. yet. What did Howard just say?"; and, "Do I have to let Evan Edgar keep on going?"

So don't worry. We'll move on smooth.

Any ex partes?

COMMITTEE CHAIRPERSON MULÉ: I'm up to date.

COMMITTEE MEMBER DANZINGER: I'm up to date.

There are a few items pulled from the agenda, Item C, which is Board Item 4; and Item E, which is Board Item 6.

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So now we'll go to program -- oh, and let's call the roll.

SECRETARY DUCLO: Member Danzinger?

COMMITTEE MEMBER DANZINGER: Here.

SECRETARY DUCLO: Chair Mulé?

COMMITTEE CHAIRPERSON MULÉ: Here.

COMMITTEE MEMBER DANZINGER: Okay. Ted, Program Director Report.

P&C PROGRAM DIRECTOR RAUH: Thank you very much.

(Speaker coughs.)

P&C PROGRAM DIRECTOR RAUH: I've got something wrong as well, it seems.

I'm going to try to keep my remarks to a minimum but did want to make an announcement. We're extremely pleased to announce that Mark de Bie, Bill Orr, and Lorraine Van Kekerix have accepted appointments to the division chief positions to WCMP. If it pleases the committee, I will just take a moment to quickly highlight their background and experience.

Lorraine has served as the chief of the Compliance, Evaluation, and Enforcement Division. That's where she will serve. She has over 14 years of experience as a branch chief, over a variety of broad programs, including waste analysis, local assistance, and waste characterization; and has also served as an acting

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division chief in the past.

She holds an advanced science degree and has compliance and enforcement experience, and she also has extensive experience working with our stakeholders and currently supports the Board's efforts on a major legislative initiative active. Lorraine will be leading our efforts to improve the compliance partnership with LEAs.

Mark de Bie will serve as the chief of the LEA and support division. Mark has nearly 17 years of experience with the Board and nearly all of this experience has been in supervisory or management positions, most recently over the Permitting and Inspection Branch, and the Municipal Solid Waste Facilities Operations and Evaluation Branch.

His program experience includes working with and providing technical training and support to LEAs. Mark has also worked as a sanitarian in local government, served in the Peace Corps, and holds an advanced science degree. He will be leading our efforts and permitting for the 21st Century initiative.

Bill Orr will serve as the chief of the Cleanup, Closure, and Financial Assurance Division. Bill has over 15 years of management experience with the Board, over a diverse number of programs, including risk evaluation, technology development, and recycling technologies.

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He has also served as a division chief. Bill is a registered engineer and geologist, and has experience in permitting, closure, and site cleanup. He has also played a key role in the development of the Board's initial closure and financial assurance regulations.

Bill will be leading our efforts to identify, remediate, and prevent illegal dumping. And with that, I would ask everyone to give them a hardy welcome and our appreciation for them taking these positions.

(Applause.)

COMMITTEE MEMBER DANZINGER: Thank you.

P&C PROGRAM DIRECTOR RAUH: And that concludes my report.

COMMITTEE MEMBER DANZINGER: All righty. Thanks, Ted. Okay. Okay. So I guess we're going to take these up in order.

Let's go to Item B, Board Item 3.

P&C PROGRAM DIRECTOR RAUH: Yes. Item B is consideration of a revised full solid waste facility permit for Oasis Sanitary Landfill in Riverside County. And Bill Marciniak will present.

MR. MARCINIAK: Before I begin the item, there's a slight change in the agenda item. A clarity and correction was made in the agenda item. Key Issue No. 1 at the end of the second sentence, the words "if they

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operate beyond daylight hours" is being replaced with, "prior to adjusting the days or hours."

Anyhow, the Oasis Sanitary Landfill is located in unincorporated Riverside County. It is owned and operated by the Riverside County Waste Management Department.

The proposed permit provides for the following changes: The current permitted hours and days of operation are from 8:00 a.m. to 4:30 p.m. on the second Saturday of October and April, and increase in the number of days to eight days per year as allowed, and the hours could increase to 6:00 a.m. to 8:00 p.m. However, the operations are to be conducted during daylight hours only. And the operator is required to obtain prior approval from the LEA.

The proposed solid waste facility permit will allow the hours for receipt of refuse to be two days per week, from 6:00 a.m. to 8:00 p.m., with ancillary facility operating hours of 24 hours per day, seven days per week.

Waste receipt currently permitted is 400 tons per day. The proposed permit tonnage will be 400 tons per day of solid waste with additional 50 tons per day of green waste for beneficial use. Remaining capacity is also updated in the proposed permit to be 445,894 cubic yards as of January 2007. And the estimated closure date has changed from the year 2186 to the currently -- in the

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current solid waste facilities permit to 2021 in the proposed permit.

The LEA has certified the application package as complete and correct and reported facility information meets the requirements of the California Code of regulations. The LEA has determined that the permit revision is consistent with and supported by existing California Environmental Quality Act analysis.

Board staff have also reviewed the proposed permit and supporting documentation and found them to be acceptable. A prepermit inspection was conducted on April 14, 2007, with the LEA, and no violations of state minimum standards were observed.

Therefore, Board staff recommends option one, that the Board concur in the issuance of proposed permit, as submitted by the LEA, and adopt resolution 2007-118 for Solid Waste Facility Permit No. 33-AA-0015. Laurie Holk of Riverside County LEA as well as myself are available to answer any questions you might have.

COMMITTEE MEMBER DANZINGER: Thanks, Bill.

We quickly note that we have been joined by fellow Board Member and current, 2007, Humboldt State Alumni of the Year, Wesley Chesbro.

I don't have any speaker slips. Any questions from Board members?

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Okay. Do I have a motion?

COMMITTEE CHAIRPERSON MULÉ: I would like to move approval of Resolution 2007-118.

COMMITTEE MEMBER DANZINGER: Second.

Call the roll.

SECRETARY DUCLO: Member Danzinger?

COMMITTEE MEMBER DANZINGER: Aye.

SECRETARY DUCLO: Chair Mulé?

COMMITTEE CHAIRPERSON MULÉ: Aye.

COMMITTEE MEMBER DANZINGER: Okay. Can we put that on consent agenda for the Board meeting?

Thanks, Bill.

Item 5, Committee Item D, Vasco Road.

P&C PROGRAM DIRECTOR RAUH: This is consideration of a revised full solid waste facility permit for the Vaso Road Landfill in Alameda County. And Reinhard Hohlwein is here to present.

MR. HOHLWEIN: Good day. How are you doing?

COMMITTEE MEMBER DANZINGER: Good, Reinhard. What's up?

MR. HOHLWEIN: This item regards consideration of the issuance of a revised solid waste facilities permit for the Vasco Road Landfill, which is located in Livermore, near the eastern edge of all Alameda County.

This proposed revision will acknowledge the new

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permitted boundary that will resolve a long-standing legal issue regarding waste placed outside the boundary by the previous operator.

The proposed permit, as submitted, will not increase the permitted tonnage but will increase the daily traffic vehicle count from 600 to 625 vehicles per day, change the estimated closure date from 2015 to 2022, and change the permitted boundary from 222 acres to 246 acres. The solid waste facility permit for the landfill has not been changed since 1995.

The LEA has found the facility consistently in compliance with state minimum standards in operations but has been writing violations for the Public Resources Code regarding the boundary issue for several years.

For that reason, the site was under a stipulated notice and order for being outside the terms and conditions of that permit.

With the issuance of the revised permit, the situation will be resolved. The stipulated orders will be satisfied, and the site will be in full compliance.

At the time this item was written, two issues were still outstanding. Staff has now made all the required findings, and we will revise the item and the resolution prior to the Board meeting to reflect those findings.

Therefore, staff recommends that the Board concur

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with the revised permit as proposed by the LEA. And should the committee have any questions, we would be happy to answer them. The operator and the LEA are both here to answer any questions also.

COMMITTEE MEMBER DANZINGER: Thank you, Reinhard.

Any questions?

Okay.

BOARD MEMBER CHESBRO: Let me ask our staff if -- this is -- if my memory serves me correctly. The landfill where waste was disposed of, the boundary of the waste disposal area was moved actually off the property; is that correct?

MR. HOHLWEIN: It wasn't a deliberate situation, and what we're trying to --

BOARD MEMBER CHESBRO: I didn't say "deliberate." I'm trying to make sure I got the right word.

MR. HOHLWEIN: And I'm not trying to put words in anybody's mouth. I'm trying to catch back up to how it was discovered, and it was discovered through borings.

BOARD MEMBER CHESBRO: Well, I have a very specific question. So I just wondered if this permit raised any questions about the frequency of inspection or the LEA's data in terms of not having discovered this until now. So that's the real question, is whether or not there's any questions raised about the LEA and whether or

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not any improvements or corrections are necessary or to prevent this sort of thing from happening in the future. That's what disturbed me was just the --

COMMITTEE MEMBER DANZINGER: Is the boundary issue where all of these violations are coming from in prior years, are these like --

MR. HOHLWEIN: Correct --

COMMITTEE MEMBER DANZINGER: -- one month, so 12 months of violations?

MR. HOHLWEIN: Actually, they go once a week so they go more frequently than required.

BOARD MEMBER CHESBRO: My understanding was -- oh, I'm sorry.

COMMITTEE MEMBER DANZINGER: No, no, no. I was just curious.

So did the LEA discover this problem further back, and it's just taken a while to resolve, or -- so where's the problem? Is it the late discovery, or is it taking so long to resolve?

MR. HOHLWEIN: It's a good question. I think the LEA would be best able to answer that question. We could let them take a stab at that.

BOARD MEMBER CHESBRO: Your question I had from the briefing -- and your question is actually a very good one -- was that somehow it had gone some period of time

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without there being an awareness that this had occurred, and that was what set off some alarm bells in my mind, was, was this activity going on that clearly was off the permitted area, and had not been noted or enforced --

MR. HOHLWEIN: It's been a curious situation for us, as well, for a long time.

PERMITTING & INSPECTION BRANCH MANAGER DE BIE: Ma rk de Bie with Permitting and Inspection. And I think we need to hear from the LEA. It's staff's understanding that the situation was brought to the LEA's attention, and it wasn't the LEA that discovered it during an inspection opportunity. So, you know, staff was curious about, you know, how you could be going out to the site monthly or weekly and sort of not be cognizant that waste was being disposed outside the permitted and property boundary. But perhaps the LEA could go through the chronology of how they discovered the situation.

COMMITTEE MEMBER DANZINGER: That would be great. Good afternoon.

MR. MEREGILLANO: My name is Roel Meregillano with Alameda County.

The situation out there, I discovered it. I didn't discover it, but during one of our inspections, there was a drilling rig out there, and I questioned the operator who they were, and they said they just showed up

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recently and decided to probe the area.

The area where waste was placed was within -- within the inner fencing and within the haul road at the time, and didn't realize that area was actually outside the permitted boundaries. So basically it was discovered -- it wasn't discovered but the -- the property owner, adjacent property owner, decided to go to the site and drill borings at the site.

COMMITTEE MEMBER DANZINGER: So the property owner was drilling on the operator's --

MR. MEREGILLANO: Well, he said it was their own property at the time.

Maybe the --

COMMITTEE MEMBER DANZINGER: Well, I'm just curious.

BOARD MEMBER CHESBRO: Well, the question comes to my mind, Mr. Chair, is when you're -- this is a generic question. But of course, it applies specifically here. But when an LEA is out inspecting the landfill, what information do you have about what the boundaries are and how would you know or not know whether or not they are disposing of waste where they are legally permitted to dispose of it?

MR. MEREGILLANO: The map I was provided, it encompassed that whole area.

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BOARD MEMBER CHESBRO: It showed the -- an area on another property owner's land that was actually showed as part of the permit?

COMMITTEE MEMBER DANZINGER: What did your map tell you? What was your map telling you?

MR. MEREGILLANO: It told me that it encompassed that area, where waste was placed at. It was an irregular property boundary line, where it exited in and exited out. And it did not show --

BOARD MEMBER CHESBRO: So the permit was -- the boundary that was shown in the permit was inaccurate or incorrect? Is that what you are saying?

MR. MEREGILLANO: What I'm saying is --

COMMITTEE MEMBER DANZINGER: Was the map accurate or was the permit accurate?

MR. MEREGILLANO: The map was accurate. But prior to that, there was several change of property owners -- landfill operators and owners at the time, at the site, and that may be better explained by Republic Services here, that regards to what transpired. Because these things that happened was after the fact; I was not there at the time.

BOARD MEMBER CHESBRO: My larger concern, Mr. Chair, is not necessarily that this particular -- I don't know whether there was a significant environmental

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impact from this violation. But is the larger generic question about what is possible if we -- if we're unable through the LEAs and the existing permits and permit boundaries to determine whether waste is being disposed of properly. So it's more of a -- that's why I asked staff rather than initially asking you, because it's a broader question about whether or not we have the capacity to know whether waste is being disposed of at landfills, generically, not just at this landfill, and where it is permitted to be disposed of.

COMMITTEE MEMBER DANZINGER: Okay. Sir, yeah, please. But I think we still want to ask staff.

MR. GORDON: Good afternoon. I'm Scott Gordon. I'm here representing the permittee and applicant.

Let me see -- if you have a couple of minutes to indulge me, let me take you back and I think I can get at the root of the questions Member Chesbro is asking.

In 1988, Browning-Ferris Industries acquired from the Ralph family several parcels of land in Alameda County, one of them comprising the Vasco Road landfill. In addition to the parcel holding the landfill, which was parcel one, BFI also optioned some adjacent parcels. One of those was parcel three.

The expectation of BFI at the time was to expand the landfill on to that parcel. During the time that BFI

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had the property under option, a small area on this adjacent parcel three was inadvertently the site of some waste disposal. That is, literally as the LEA described it, this irregular property line allowed for a small amount of waste disposal to occur. The litter fence for the active site, the haul road, were all located on the adjacent parcel three. No one who ever visited that site, myself included and the then site manager, could tell where the property line was. There was no fence. There was no mark. All because the original construct of the purchase by BFI from Ralph Properties intended to acquire parcel three, although it was under option.

In January 2000, Republic acquired the site from Browning-Ferris Industries. And unbeknownst to Republic, the trespass had already taken place. The property owners, the Ralphs, didn't know the trespass had taken place. What brought it to light was the fact that in 2001, a legal dispute arose between the Ralphs and Republic services and BFI. And as a result of that, the Ralphs went out and wanted to survey the property line. And that begot the revelation that there was this small trespass area.

So that lawsuit was ultimately resolved favorably. All parties went away on a settlement basis. And the area in question, Member Chesbro, was evaluated in the County's

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Environmental Review before the use permit was, in fact, reissued. And the reason we're so long delayed in getting here really on this permit is because the County's process took a very long time. We have since -- the use permit was authorized, we processed a lot line adjustment, and that enabled us to come back today to be able to have the permit before you.

So it's a very odd, very unusual situation, because of the fact that that adjacent parcel was under option originally. So hopefully that long of an answer sheds some light on this.

COMMITTEE MEMBER DANZINGER: Well, yeah, I mean, I agree with you that it would be good if this was very unusual. I assume from the agenda item that the discovery was back in like '03. That's when the violations began. So there was a period of time before '03 where the LEA would be going out there, would be in possession of something, a map or whatever. There would have been dumping on parcel three. But for one reason or another, the LEA would not be aware of that or would not be able to acknowledge that in some way?

MR. GORDON: Actually, that disposal had long since occurred and that area was capped and covered. So if you went out to the site, you wouldn't notice that was an area. In other words, it wasn't an area of active

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waste disposal.

COMMITTEE MEMBER DANZINGER: Oh, it was the borings that discovered it.

MR. GORDON: Right. It was actually the borings resulting from the lawsuit which actually discovered it.

COMMITTEE MEMBER DANZINGER: And the borings were what, in '02, '03?

MR. GORDON: I believe in '03. Late '02, early '03.

COMMITTEE CHAIRPERSON MULÉ: So when was the waste disposed of?

MR. GORDON: Prior to the year 2000, because it was prior to Republic actually acquiring the site from Browning-Ferris Industries.

COMMITTEE CHAIRPERSON MULÉ: You don't know when?

MR. GORDON: Don't know when -- the actual date.

COMMITTEE CHAIRPERSON MULÉ: BFI doesn't know when?

MR. GORDON: I don't think anyone actually knows. We went through -- extensive depositions were taken during that lawsuit, and I don't think anybody was able to ascertain the actual date. And I sat through a number of those depositions. And I don't recall anybody was able to pinpoint.

COMMITTEE MEMBER DANZINGER: Okay.

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MR. GORDON: Hopefully that addresses the question.

COMMITTEE MEMBER DANZINGER: Thanks, Mr. Gordon.

BOARD MEMBER CHESBRO: Mr. Chair, my suggestion to the committee -- not being a member, but speaking as a Board member who is concerned about the consistency of our monitoring and enforcement -- would that be a question directed to staff to try to determine whether or not this is, in fact, an isolated circumstance, or whether or not there is any larger problem that needs to be addressed relative to the capacity of LEAs or the requirement that LEAs have accurate maps and the data they need to determine whether or not waste is being disposed of in the proper location. And it may be that this is just an isolated incident. So I'm not suggesting that a huge new staff project be created to go out and try to research every corner of every landfill in the state. Just a general assessment to try to determine.

COMMITTEE MEMBER DANZINGER: Yeah, I agree.

P&C PROGRAM DIRECTOR RAUH: I can certainly provide that information. Would you like it at the next committee?

PERMITTING & INSPECTION BRANCH MANAGER DE BIE: I was just going to indicate a few things that we currently do relative to this area. As the Board members know, one

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of the responsibilities of the state staff is to do what's called an 18-month inspection where we go out to every landfill once every 18 months. And as a matter of course during those inspections, state staff are encouraged -- and I can't tell you if we do it a hundred percent of the time, because there's different factors. But encouraged to walk the property boundary, and that one reason for doing that is to determine, you know, exactly where the boundary is and determine what sort of activities may be occurring on that.

So that's sort of a standard practice that we have to sort of calibrate things at least every year and a half, relative to the boundary and what's occurring. And certainly, there would -- be and there have been times during those inspections where staff did discover some unusual activities occurring at the boundary, made inquiries and had those questions satisfied.

I think the committee may be aware that we've had permits in the recent past where one of the parts of the revision was to adjust the boundary of the landfill, because, years ago, someone, previous owner, whatever, put waste outside the boundary and discovered it. Certainly an operator has a choice at that time to remediate that portion of the site, bring that waste in, you know, by clean closing that area. But many times, they just work

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with the adjacent property owners and absorb that, like in this case.

Each permit is required to include a meets and bounds description of the permitted boundary. So there is a technical description, not just -- we're not dependent on the diagrams or that sort of thing. There is a technical description in each permit. So if someone were to take the time and effort, they could actually determine the legal boundary of each site through that permit.

So we can provide the committee additional information about common practice and sort of, you know, how often this kind of situation has occurred or doesn't occur, and at the pleasure of the committee bring that back next month.

COMMITTEE MEMBER DANZINGER: There was -- I mean, it was closed and capped, and that's when it was discovered. But clearly, there was a point in time where the LEA and us, for that matter, whatever, would be going out to the site prior to 2000, on an intermittent basis. And, you know, you would have visibly seen the waste being disposed in parcel three. But either because it was a bad map or it was a good map, but it didn't align with the permit or whatever, you know, that was seen and nothing done. There was no recognition that, oh, wait a minute, this is going into something else. So I guess that's the

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point that Board Member Chesbro is getting at, it's back at that point in time when that was going on. Is that happening? How seldom? What steps do we take? Or what can we take to prevent that kind of thing from happening?

PERMITTING & INSPECTION BRANCH MANAGER DE BIE: Certainly, we can dig back into previous inspection reports and see what kind of information and interview people that were out at the site at that time and try to get a little bit more clarity of how this was missed and what we need to do to make sure it's not missed at other sites.

COMMITTEE MEMBER DANZINGER: Okay. Thanks, Mark.

Okay. Any other questions?

I'm going to move resolution 2007-121.

COMMITTEE CHAIRPERSON MULÉ: Second.

COMMITTEE MEMBER DANZINGER: It's been seconded.

Substitute the prior roll call.

This also goes on to consent.

Let's move on to Item F.

P&C PROGRAM DIRECTOR RAUH: Item F is the consideration of designation approval and certification of the County of Sacramento Environmental Management Department as the local enforcement agency for the County of Sacramento.

Gabe Aboushanab will make the presentation.

MR. ABOUSHANAB: Good morning, Committee Members,

or good afternoon.

Back in 1992, the Board approved the designation and issued certification to the environmental health division of Sac County Environmental Management Department as the LEA for Sac County.

However, since that time, we have recently underwent an internal restructure and moved the LEA across division lines into the Hazmat division, still within the same county department, and still with the same staff and budget and so forth.

So consequently, this movement of the LEA requires a revision in the existing certification documents and Board approval. So essentially, administerial [sic] action.

And as such, staff recommend the Board adopt option one, which approves the LEA's EPP issues, the certifications, and approves the designation. This would be through adoption of Resolution 2007-123.

I would be happy to answer any questions.

COMMITTEE MEMBER DANZINGER: Thank you very much, Gabe.

I only had one question on this item, but it's not related to the core issues of the item. I'm satisfied with the items.

But I wanted to ask a separate question, and I

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guess maybe I could direct this to you, Mark and Julie.

I don't know why on this item, but as I'm going through this item, it stuck out that we have, on Item H, reference to the 2001 Strategic Plan. And within that, we reference that and our strategic directives; and it reminded me that we still have that included in all our items.

I thought that it was our intent that our strategic directives would supplant the 2001 Strategic Plan, and so I don't know whether we need to -- I just want to throw that out, for all the board members, ultimately, to determine whether we need to continue referencing that strategic plan.

EXECUTIVE DIRECTOR LEARY: You are absolutely accurate, Member Danzinger. And it is our intent to modify the Board agenda item template in total here, in the coming months. But we certainly can move ahead to address that subpart right away. We'll just delete it.

In fact, we're in a process -- and John's not here to confirm. But we're in the process of replacing our discussion of the strategic directives on our Web site, with the portion that used to be devoted to the 2001 strategic plan. So that's being updated. It hasn't already occurred by today.

COMMITTEE MEMBER DANZINGER: And you're on top of

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it here in terms of the strategic directives, because I see that you are already getting those imbedded in here, which is great.

EXECUTIVE DIRECTOR LEARY: Got to modify the heading. Thanks.

COMMITTEE MEMBER DANZINGER: Absolutely.

BOARD MEMBER CHESBRO: May I ask, does the change of this trigger an evaluation of the LEA, or is that done on a regularly scheduled basis.

MR. ABOUSHANAB: It's actually a separate thing. It does not change.

BOARD MEMBER CHESBRO: So a change in the designation of who the LEA is, it's not --

MR. ABOUSHANAB: No.

BOARD MEMBER CHESBRO: Just out of curiosity, do you know how recently Sacramento has been --

MR. ABOUSHANAB: It's probably taken about a year-plus to get through the process.

BOARD MEMBER CHESBRO: How recently have they been through an evaluation?

MR. ABOUSHANAB: Oh, probably in the last year and a half.

COMMITTEE MEMBER DANZINGER: So this doesn't start the clock over. I mean, they still stay on the same track. So the next evaluation will be as regularly

scheduled.

MR. ABOUSHANAB: And had there been a problem with the LEA's performance, we would have made the issue clear for you. But we found no failures that are ongoing beyond anyone else really, at this point.

COMMITTEE MEMBER DANZINGER: Okay.

BOARD MEMBER CHESBRO: Thanks.

COMMITTEE MEMBER DANZINGER: All righty. Thank you.

No other questions?

I will move the resolution 2007-123.

COMMITTEE CHAIRPERSON MULÉ: Second.

COMMITTEE MEMBER DANZINGER: It's been moved and seconded.

Call the roll, I guess.

SECRETARY DUCLO: Member Danzinger?

COMMITTEE MEMBER DANZINGER: Aye.

SECRETARY DUCLO: Chair Mulé?

COMMITTEE CHAIRPERSON MULÉ: Aye.

COMMITTEE MEMBER DANZINGER: This can go to consent as well.

All righty. Item G.

P&C PROGRAM DIRECTOR RAUH: Yes, Member Danzinger. This is consideration of the scoring and evaluation process for the solid waste disposal and co-disposal site

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cleanup grant programs, funding coming from the Solid Waste Disposal Trust Fund.

And Wes Mindermann is here to talk about it. And he'll actually be here for the next several items. So take it away.

COMMITTEE MEMBER DANZINGER: It's our good fortunate.

SOLID WASTE CLEANUP PROGRAMS SECTION.

SUPERVISOR MINDERMANN: Good morning, Madam Chair.

I'm still on the old committee schedule.

COMMITTEE CHAIRPERSON MULÉ: I was just going to say, it's 2:00 in the afternoon.

SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: Good afternoon.

(Thereupon an overhead presentation was presented as follows.)

SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: Agenda Item 8 for your consideration today is for the Board to consider the proposed scoring and evaluation criteria for grants under the solid waste disposal and co-disposal site cleanup program for fiscal year 2007 and 2008.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: All of the funding

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activities under the program come from the Solid Waste Disposal Trust Fund. We have two grant programs: one for illegal disposal sites, and the other one, partial grants to public entities for solid waste disposal site cleanup.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: With respect to the scoring criteria, staff are not proposing any change from the scoring credit that were used for the last two fiscal years. The current criteria comply with all the statutory, regulatory, and policy requirements of the Board. And so we thought we would keep with the same scoring criteria that we have used.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: With respect to the evaluation process for grants, we're also proposing changes from last fiscal year. Our current grant evaluation process also complies with the Board policy and program regulatory requirements.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: Lastly, with respect to other requirements, we do require permit compliance statements from all the applicants. We have an

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environmental justice certification as part of the application. And staff are requesting, as we have in the past, a waiver from the geographic distribution of funds policy.

You may recall that the Board has a general policy to award grants to the highest ranking proposals based upon geographic distribution of the state's population.

Historically, the program grants, including the grants proposed for award today, 72 percent of the funds have gone to Southern California jurisdictions. But if you look at the program as a whole, which includes the Board-managed cleanups, 52 percent of the funds have gone to Southern California jurisdictions.

As specified in the Public Resources Code, the fundamental purpose of the program is to provide grants to support the cleanup of solid waste disposal sites, where the responsible party either cannot or will not clean up the site, or where they cannot be identified. As such, the grants provided under this program are consistent with that purpose, and would not be served, in staff's opinion, by the geographic distribution funds requirement. Accordingly, staff are requesting that our program be exempted from the geographic distribution policy.

That concludes staff's presentation. I would be happy to answer any questions.

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COMMITTEE MEMBER DANZINGER: Thank you, Wes. First, let me just note that we have also been joined by Board Member Gary Peterson. And more importantly, his advisor, Chris Peck.

(Laughter.)

COMMITTEE MEMBER DANZINGER: All right. Any questions on this item? Any questions?

BOARD MEMBER CHESBRO: My only suggestion would be that the question of exempting from the 60/40 split not be considered permanent, that it be reevaluated in a year just to see how it's played out.

COMMITTEE MEMBER DANZINGER: I agree. That's a good idea.

SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: What we're proposing is just for fiscal year 2007/2008, so we will go back to the Board next May or June for the next fiscal year request for consideration.

COMMITTEE MEMBER DANZINGER: All righty. No further discussion. Okay. I will move resolution 2007-124.

COMMITTEE CHAIRPERSON MULÉ: Second.

COMMITTEE MEMBER DANZINGER: It's been moved and seconded.

Let's call the roll.

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SECRETARY DUCLO: Member Danzinger?

COMMITTEE MEMBER DANZINGER: Aye.

SECRETARY DUCLO: Chairman Mulé?

COMMITTEE CHAIRPERSON MULÉ: Aye.

COMMITTEE MEMBER DANZINGER: Motion passes. Goes to fiscal consent? Just consent. Okay. All righty. Bear with me.

Item H. Wes?

SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: I'm back again. I know you have a full agenda, so I will probably be brief, and if there are any questions, I'll be happy to answer them.

(Thereupon an overhead presentation was presented as follows.)

SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: But Agenda Item 9 is for the consideration of grant awards for the solid waste disposal and co-disposal site cleanup program for the fourth and final cycle of fiscal year 2006/2007.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: Board staff have evaluated and are recommending approval of new grant proposals pursuant to the two grant programs under the program.

We have shown here one illegal disposal site

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cleanup grant to Sonoma County, in the amount of $500,000, to help partially fund a total illegal dumping program in excess of $1 million.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: And with respect to partial grants to remediate solid waste disposal sites, we have five proposals that staff are recommending approval for: one to Fresno county; two to San Diego County for three different burn sites; one to the City of Calexico; and one to the City of San Jose. Just as a note, the City of San Jose grant application was submitted after the deadline for our grant -- for our last grant cycle for fiscal year 2006/2007, but it's being recommended at this time, at the request of the applicant, to expedite the remediation because of the public health and safety concerns associated with the site.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: With respect to the status of the Solid Waste Disposal Trust Fund that the program operates out of, as you can see here, our unreserved balance was roughly $5.8 million in March. Since that time, we had one grant that the Board approved back, I believe, in March, also for cycle three.

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If the Board approves these cycle four grants, you can see, we'll be left with a net unencumbered balance of roughly $2.2 million. That concludes my presentation, and I would be happy to answer any questions.

COMMITTEE MEMBER DANZINGER: Any questions from the dais?

Okay. We have one speaker who would like to speak on this item. Vicky Gallagher, from the County of San Diego, Department of Public Works.

Welcome.

MS. GALLAGHER: Thank you. I appreciate your consideration of our grant requests. And I am here just to answer any questions you might have. Thank you very much.

COMMITTEE MEMBER DANZINGER: Thank you. Any questions?

Okay. I will move Resolution 2007-125.

COMMITTEE CHAIRPERSON MULÉ: Second.

COMMITTEE MEMBER DANZINGER: Moved and seconded.

Let's substitute the prior roll call. This goes on consent.

COMMITTEE CHAIRPERSON MULÉ: Fiscal.

COMMITTEE MEMBER DANZINGER: Fiscal consent. That's great.

Item I, Wes.

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(Thereupon an overhead presentation was presented as follows.)

SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: Committee Item I, Agenda Item 10, is for the consideration of a new project under the solid waste disposal and co-disposal site cleanup program.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: I will just skip through this one.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: The project being considered here today is for a Board-managed cleanup on what's being called the Neilsen Road illegal disposal site. The staff estimate that the cost is going to be roughly $1.6 million.

The funding source will be out of an existing remediation contract with AJ Diani Construction Company, and cost recovery would be applicable.

The site was operated over approximately a 23-year period and now contains an estimated 65,000 cubic yards consisting of wood waste, trimmings, construction, and demolition debris, and inert debris.

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The site enforcement history is detailed in the agenda item. With respect to cost recovery, in cases where the land owner was directly involved with the unpermitted accumulation of solid waste, the Board considers pursuing cost recovery for the fullest extent possible.

Such pursuit may include the imposition of a lien on the remediated property and/or the filing of a superior course action for judgment to be enforced against the landowner's other assets.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: Nevertheless, staff note that the landowner and his representatives have cooperated fully with the Board in recent weeks as this item was being prepared, and agreed to provide staff and its contractors full access to perform a complete remediation.

Moreover, the landowner, through his representative, have provided all information requested by staff to substantiate the inability of the owner to complete the remediation and his dire financial straits, including declarations of the extent of his assets, signed under penalty of perjury, and tax returns for the past five years, to the extent that there was sufficient income to warrant a filing of those years.

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In light of this, staff are recommending that the imposition of a lien on the property to assure that the Board recoups its cost to the extent possible upon the landowner's eventual sale of the property is an appropriate resolution to this cost recovery matter.

As you can see here, again, this is the current status of the trust fund. Because it's a Board-managed cleanup, it has no impact on the unreserved balance of the Trust Fund.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: If we look at our status of remediation contracts, you can see, our current Southern California contract with Recon is essentially zeroed out. This project would be done under the contract with AJ Diani Construction Company, which has about $2.7 million of funds and would leave approximately $1.1 million in funds for future projects.

Just as a note, we are proposing to put additional funds in these contracts next fiscal year, where we're going to wait for the budget to be passed, and take a look at the financial status of the trust fund before we decide on how much we will be transferring into the contracts.

Right now, it is -- it is supposed to be $1.75 million, but again, we'll be evaluating that after

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the beginning of the fiscal year.

That concludes staff's presentation with respect to this item.

COMMITTEE MEMBER DANZINGER: Okay. Wes, on the point that you mentioned about, you know, the imposition of a lien on property, the property owner is amenable to this, has actually sought this as a means of -- or as a cost recovery mechanism or approach?

SOLID WASTE CLEANUP PROGRAMS SECTION SUPERVISOR MINDERMANN: Yes.

COMMITTEE MEMBER DANZINGER: Okay. I think we would all be more comfortable to make sure that all the documentation that is generated on this item states that very clearly on everything.

SOLID WASTE CLEANUP PROGRAMS SECTION SUPERVISOR MINDERMANN: That's a good note. The other thing I would like to state too is, we've been working very closely with the legal office on this. And staff has made clear that at any time it becomes evident that there were any material misrepresentations in the landowner's declaration of assets, that the Board would reserve the right to pursue judicial action at that time.

So again, we're going on the declaration that they don't have the assets to perform the remediation, and that the only asset is property, and that's why we're here

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recommending a lien be placed on the property as a cost recovery mechanism.

COMMITTEE MEMBER DANZINGER: Just imagine putting the lien on a property is not the most comfortable thing for us to do. If it's something that they've sought and are comfortable with and they prefer, then let's make sure that's clearly stated.

Any questions on this item?

Okay. I will move Resolution 2002-126.

COMMITTEE CHAIRPERSON MULÉ: Second.

COMMITTEE MEMBER DANZINGER: It's been moved and seconded.

Let's call the roll.

SECRETARY DUCLO: Member Danzinger?

COMMITTEE MEMBER DANZINGER: Aye.

SECRETARY DUCLO: Chair Mulé?

COMMITTEE CHAIRPERSON MULÉ: Aye.

COMMITTEE MEMBER DANZINGER: Motion passes.

Place this on fiscal consent.

Next item, Item J.

SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: Last one for me, I promise.

COMMITTEE MEMBER DANZINGER: Okay.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: Committee Item J, Agenda Item 11, is for consideration of grant awards for the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program for the fourth and final cycle for the fiscal year 2006/2007.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: We have eight applications that staff have evaluated and are recommending approval for at this time. The total amount requested in these applications is $394,330. There is approximately $482,458 remaining in the trust fund for this fiscal year.

Eight applications were received, as I mentioned earlier. Seven applications are requesting the cleanup of illegal disposal sites, and there is one application --

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: -- requesting reimbursement of funds that have already been expended on a site in Kern County.

The application for reimbursement is being requested by Kern County on behalf of the private property owner. At the time of the cleanup, the land was inactive farmland, and the owner wanted to sell it to the

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Department of Fish and Game.

The Department of Fish and Game would not take it with garbage on it, so the landowner paid for the cleanup and is now seeking reimbursement under the program. After cleanup, the land was transferred to the Department of Fish and Game, and has been set aside for habitat conservation.

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SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: With respect to the status of the farm and ranch cleanup account, as I mentioned earlier, there was roughly $483,000 available. If the Board were to approve these grants, that would leave $88,000 for the remainder of the fiscal year.

That concludes staff's presentation. I would be happy to answer any questions.

COMMITTEE MEMBER DANZINGER: Thank you, Wes. We have two speakers. First, Nancy Ewert with Kern County Waste Management Department. Welcome.

MS. EWERT: Good afternoon. My name is Nancy Ewert, and I'm an engineering manager for the Kern County Engineering Waste Management Department. Kern County appreciates the consideration of the Board for this grant item, and we also appreciate the help and support of the staff for bringing this item forward.

If you have any questions, I would be happy to answer them.

COMMITTEE MEMBER DANZINGER: Thank you very much.

And our second, Chris Hall, who is here for Richard Guggenhime, land owner.

MR. HALL: Good afternoon. Chris Hall. And I'm here on behalf of Mr. Richard Guggenhime, who wanted me to express his appreciation of the work done by the Kern County staff as well as the permitting and compliance staff on helping to submit the grant and to review the case of the grant.

And I'm here to answer any questions that you may have.

Thank you.

COMMITTEE MEMBER DANZINGER: Thank you for coming.

Any questions from the dais?

BOARD MEMBER PETERSON: Madam -- Mr. Chair, I have a question. I'm looking at the -- just for information, Wes, please, Santa Clara County is $184,000 for that cleanup. Can you explain that to me, please? Why so much in the differentiation than the others? And it's 138 cubic yards. That's like five roll-on containers.

SOLID WASTE CLEANUP PROGRAMS SECTION

SUPERVISOR MINDERMANN: We did have that question, and we asked the applicant.

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From our understanding, the site is on very steep terrain, and so that's going to increase the cost of the cleanup significantly. So while it doesn't look like there's a lot of solid waste being cleaned up, to get to it is going to be very difficult and require a lot of manpower and a lot of equipment.

There's also a lot of fencing proposed in this grant. And they're proposing 8-inch chain-link fencing. And I don't remember the exact linear footage, but it was a significant amount.

And so not only is the material cost fairly high on that, but also the installation cost on such difficult terrain increases --

BOARD MEMBER PETERSON: Trying to fence it, so no one dumps there again; right?

SOLID WASTE CLEANUP PROGRAMS SECTION SUPERVISOR MINDERMANN: Right. Prevention measures are very important to the program, that the illegal dumping is not only cleaned up but there's some sort of prevention aspect to prevent it from happening in the future. Also, it's kind of a double-edged sword. I mean, the program provides a not-to-exceed amount in the grant.

If the costs exceed the grant amount, we also require the applicant to certify that they have the funds

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to cover the overages.

So what you may be seeing here also is, or I suspect you see on a lot of our grants, is grantees being very conservative to ensure that they have grant funds to cover the costs, if there's anything that's unforeseen comes up or any unanticipated costs.

BOARD MEMBER PETERSON: Great. Thank you, Wes.

COMMITTEE MEMBER DANZINGER: Okay. No more questions.

I will move Resolution 2007-127.

COMMITTEE CHAIRPERSON MULÉ: Second.

COMMITTEE MEMBER DANZINGER: It's been moved and seconded.

Call the roll.

SECRETARY DUCLO: Member Danzinger?

COMMITTEE MEMBER DANZINGER: Aye.

SECRETARY DUCLO: Chair Mulé?

COMMITTEE CHAIRPERSON MULÉ: Aye.

COMMITTEE MEMBER DANZINGER: That means that goes to fiscal consent.

On to Item K.

P&C PROGRAM DIRECTOR RAUH: Yes, Member Danzinger. That is discussion and request for rulemaking direction to provide an additional 15-day comment period for revisions to the temporary waiver of terms regulations.

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And Bob Holmes is here to present the item.

MR. HOLMES: Good afternoon, Madam Chair, Members.

This is per Board direction, a focused rulemaking change to existing regulations, the temporary waiver of terms regulations, which allow an enforcement agency to waive permit terms and conditions during a temporary emergency as defined in the regulations.

The focused revisions are to the definition of temporary emergency, i.e. what constitutes a temporary emergency; and to the Board's powers when they review the issuance of a temporary emergency.

We are requesting an additional 15-day comment period. We received four comment letters during the 45-day public comment period and the public hearing. And Attachment 1 to the agenda item summarizes those comments. And I was just going to go through those quickly for you. All four of the comment letters commented -- two of the comments relate to the definition of "temporary emergency", which was Section 1721.1. And the other three comments relate to the powers of the Board and the review of the use of the temporary emergency.

The first comment related to the definition. The existing definition states that a labor controversy or a disposal labor strike is not a temporary emergency. The four commenters would like that language stricken from the

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definition, therefore, making a labor controversy acceptable as a temporary emergency.

Staff's position is -- and we have some compromised language to offer, but we don't think that a wholesale change there to allow a disposal strike in all cases. Number one, we don't want to get in the middle of the labor controversy. And secondly, we are piggy-backing on other statutes. This is in the Government Code statute. The definition of a state or local declared emergency, that's explicit in that definition, that a labor controversy is not considered in those cases. So we're going to be piggy-backing on that language.

So our compromised language is to allow the use of a temporary emergency for a labor strike but not for the facilities that are subject to the labor strike.

In other words, if there is a -- if there is a labor controversy in a county, facilities that are not part of the controversy could declare a temporary emergency to handle, for example, the additional waste that can't be handled by the facilities that are subject to the -- that are part of the labor controversy.

Is that clear, just to make sure there's no questions?

COMMITTEE MEMBER DANZINGER: You are saying it clearly. I'm just not following it clearly. I will have

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to hear it from someone else as to why that constitutes a compromise, because I don't know -- if it's not the facilities that are affected by the strike, I don't know how it -- I don't know what problem it solves. I don't know what issue it resolves.

MR. HOLMES: The -- one of the specific examples we have is -- Orange County last year had a disposal -- a labor strike. And so it's a question of protection of public health and safety. So just like with any other disposal strike, the waste can accumulate on the streets. There is concern by the public health officer and by the environmental health department that they still needed to address that situation for --

COMMITTEE MEMBER DANZINGER: So the overage can be shifted to these other facilities that are not subject to the bargaining disagreement or whatever the strike is. And so --

MR. HOLMES: Correct.

And it would only be in the case where they needed to do that, and it may be that the other facilities already have room within their permit, already have the time allotted, and in that case there would be no waiver at all.

COMMITTEE MEMBER DANZINGER: Exactly. Okay.

MR. HOLMES: Okay.

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COMMITTEE MEMBER DANZINGER: Okay. That's cool. Thanks.

MR. HOLMES: The second comment relating to the definition is that commenters would like for the definition to explicitly allow for the unexpected closure of a solid waste facility in a service region to be considered a temporary emergency.

Staff's response is that we don't think a change is needed here, that the unexpected closure could be considered underneath the existing language on a site-by-site specific basis. And that is a discretionary action on the part of the LEA in reviewing the application for a waiver. And that it would -- may not be in all cases considered. So we don't feel it's necessary to -- or appropriate to add that to the definition.

Now, to the Section 17211.9, Board review of stipulated agreements, we had three commenters who stated that they would like the existing language to be maintained. They would not like any of the changes that were proposed during the 45-day comment period. And of course, this is one of the main reasons as I pointed out in the beginning, of the focused areas for doing this in the first place. And the existing language allows the Board, through its executive director, to condition limits, suspend, or terminate the operator's use of a

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stipulated agreement. But before he or she could do that, he has to find that the use of the agreement causes harm to public health and the environment, which is a very high standard.

So our proposed change there is to allow -- continue to allow those actions, i.e. condition limits suspend, but the executive director first has to consult with the EA so he's not doing it blindly.

And he only now has to show that the use of the agreement is not consistent with Section 17211.4, which is the procedural section the LEA has to go through before issuing the waiver; and/or may adversely -- actually, or, strike the "and" -- may adversely affect public health and safety of the environment. So that's a change from "will cause harm" to "may adversely affect."

The second comment related to the Board review of the agreements has to do with the period of time where a waiver was issued and then it was subsequently suspended or revoked by the Board. The commenter would ask that we provide language that precludes them from being cited for a violation during that period of time.

So the waiver was issued appropriately in good faith. It was subsequently revoked by the executive officer. They don't want to be cited for a violation during that time. So we've included language suggesting

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changes to address that situation.

And then finally, commenters asking that there be a -- we include a waiver -- I'm sorry, an appeals process, when the executive officer makes such an action, to suspend or revoke the use of a stipulated agreement.

Staff's response is, number one, there's not time for a waiver process, an appeals process. And any action by the Board staff can be appealed to the Board. That's an existing structure that can be utilized. So we are not recommending any changes to this nor are we recommending any changes to limit the executive director's delegation of that power.

So that concludes my presentation. We are recommending that the committee direct us to go out for an additional 15-day comment period for the changes I've outlined to you.

COMMITTEE MEMBER DANZINGER: Thank you, Bob. I have one speaker slip.

Does anyone on the dais want to ask any questions first? Or I will ask --

STAFF COUNSEL BLEDSOE: Madam Chair, or Sir Chair? Both?

Just one point of clarification. In Bob's explanation a moment ago, he did say that any action by Board staff could be appealed to the full Board. And I

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think what he meant could be referred to the full Board for, you know, the Board to act on the -- you know, take some action with respect to the way the staff handled the problem or the issue. It's not a formal appeal. Just wanted to clarify.

COMMITTEE MEMBER DANZINGER: Okay. Thanks, Mike.

Okay. One speaker slip. This is -- I'm having trouble reading this. It's O-win [phonetic] with --

(Laughter.)

COMMITTEE MEMBER DANZINGER: Oh, it's George Eowan with CRRC. Hi, George.

MR. EOWAN: Somehow, I knew that was going to happen, Sir Chair. Good afternoon.

I just had a couple of comments, and Bob's explanation of the language helped me understand it a little bit better. When I read the language on the labor strike, I didn't really quite get it. That could be me. But I would like to reserve the opportunity to work on clarifying the language to reach the conclusion that I think he's trying to reach, which is, if there is a labor strike and it does cause the waste to go to another facility that's not affected by the labor strike, that that facility could receive a temporary waiver for that amount of waste. I think that's okay. I really haven't conferred with our members, but I think that works.

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Then the second item on the unexpected closure, this one, we wanted in because it referred to a specific temporary waiver that occurred a couple of years ago. And it did deal with what the operator considered to be an unexpected closure of a landfill.

And the concern was from the other operator's point of view was that he was going to be receiving waste that would have put him over his waste limit. And we then filed for a temporary waiver, and we, in fact, got it.

But it was -- the process was very, very cumbersome, and it led to kind of this almost a policy issue of what is foreseeable and what isn't foreseeable.

And from the standpoint of the business involved, the landfill involved, that was going to be the receiver of this material, we didn't know whether or not that closure of the other facility was going to occur.

I mean, it had sort of been expected from time to time, but a lot of people tried to close the facility and it didn't happen, and then all of a sudden it was closed. So there was an issue of what's foreseeable and what isn't foreseeable.

And in this case, the other facility was closed by a regulatory agency. Well, we can't always know what another regulatory agency is going to do on a particular facility if we're in the same region or not. It may have

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appeared like we would, but oftentimes we don't. So we wanted that language specifically in there to clarify those kinds of situations, where particularly when it's involving other regulatory agencies. You know, we aren't privy to what regulatory actions are occurring necessarily at other facilities.

So that's really what we're looking for and to leave it just as a judgment call, having maybe gone through that one time, maybe it works. But that's clearly at the -- at the discretion of the executive director. And maybe Mark realizes it now, but the next one, if there ever is another one, wouldn't quite get it.

So what we're looking for is clarity in that regard, that if there is an unexpected closure, it does create a potential public health and safety issue. We think it's reasonable to look for that as a kind of clarifying language.

COMMITTEE MEMBER DANZINGER: Bob. Can you respond to that?

MR. HOLMES: It's staff's position that -- this is a very good example. In this case, the LEA evaluated the merits of the circumstance and determined that the situation met the definition of temporary emergency. Staff don't believe that that necessarily can be made a hundred percent, in all cases, when there's unexpected

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closure. We want them to be able to have the ability to evaluate each situation on a case-by-case basis.

So again, the current language does not preclude an unexpected closure from being considered a temporary emergency. But we don't feel that the unexpected closure in all cases would be.

COMMITTEE MEMBER DANZINGER: I don't know if these two things are related. I'm thinking back to when we were dealing with the minor change, substantial change, on permits, and we decided philosophically, as well as policy-wise, we thought it was prudent to have, you know, more defined lists of things that made it clear.

I don't know if this is apples and oranges or whether this is the kind of thing that merits, you know, a review under that -- you know, in that prism. I mean, is this the kind of thing that we want to have that kind of certainty on? I don't know. I'm just throwing that out.

I don't know if that's the kind of thing that we want to discuss it in those terms. But I don't know.

Does anybody have any --

STAFF COUNSEL BLEDSOE: Mr. Chair, if I could respond briefly. I mean, I think kind of the problem here is that the entire concept of this temporary waiver program is to deal with temporary emergencies of whatever nature might arise. And so I think Bob described it

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accurately.

The reason that we don't have any need to list the unexpected closure -- "unexpected" I guess is No. 1. But the unexpected closure, the LEA has to look at that, and figure out, now is this something that we've -- you know, that has been discussed in the newspapers for the last three months? Or is this, in fact, like a fire that happens at landfill X or transfer station Y, and the fire department says, "No more material coming in here."

So I think that that's really the job of the LEA, to make that determination. And the fail safe mechanism is really at the executive director level, since he or she has to confirm that basically that decision makes sense.

So to actually list the unexpected closure, No. 1, we would have to do a lot of defining to figure out what that means. But I think it's just an effort that really doesn't generate any benefit from the Board's perspective.

COMMITTEE MEMBER DANZINGER: I mean, I can see it would be easy in terms of natural disasters. You may not know when an earthquake is coming, but you know to put an earthquake on the list of unforeseeable events.

MR. EOWAN: One of the problems is that in the case that he's citing, you might read it in the newspaper for three months. But that doesn't mean that you are going to go ahead and go through the cost and the use of

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resources to revise your permit. That's the issue. It's -- when does that operator down the road or in that region decide, "Oh, I better go spend whatever I need to spend to completely -- you know, to revise my permit in order to accommodate this."

Well, he's not going to do that based on a newspaper article. He's going to do it for a variety of other reasons. Maybe that's one of them. But you know, so it becomes, again, that issue of what's foreseeable and what isn't.

But I do understand, you know, that you don't want to try and list every single thing and all that. And it really is about emergencies. But we're really looking -- we're not asking that you list everything and whatever isn't in isn't in, that kind of thing. I think it does requirement judgment.

But in this particular case, which is one of the reasons that I think you have these -- this language in front of you now, is that this is an area, this is a specific area, where it did cause a problem, and we're looking for clarity, so if it happens again, it won't cause a problem.

COMMITTEE MEMBER DANZINGER: Okay. I mean, our action today sends us out for another 15 days of comment. So we're not shutting this down. I guess that's an issue

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that can be further discussed and contemplated over the next couple of weeks. So okay. Thanks. Food for thought.

Bob?

MR. HOLMES: And I was just going to offer, of course with any rulemaking we have the statement of reasons, which we have used in the past to provide further clarity. That tool can be used in this case as well.

COMMITTEE MEMBER DANZINGER: Right.

Can we move this forward just by consensus, Michael? Right?

STAFF COUNSEL BLEDSOE: Yes.

COMMITTEE MEMBER DANZINGER: Okay. So then let me henceforth say that by the consensus of the committee, it moves forward for 15 days' comment.

Thank you very much.

Next. Is this Item M? L? Board Item 12.

P&C PROGRAM DIRECTOR RAUH: L.

Yes, this is an oral presentation regarding available tools and models for jurisdictional implementation. My understanding is that this item should actually have been agenda-ed for the Sustainability Committee. And there's been an agreement now to present it before the full board. So we would just like to just basically take it off today.

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COMMITTEE MEMBER DANZINGER: We defer that to full Board. Okay.

Are we still taking up Item M then?

P&C PROGRAM DIRECTOR RAUH: Yes.

COMMITTEE MEMBER DANZINGER: Okay. They're not linked.

P&C PROGRAM DIRECTOR RAUH: No. We're prepared to go forward with Item M, which is consideration of adoption of emergency regulations to implement statewide recordkeeping and reporting requirements for at-store recycling programs implemented under AB 2449.

And to make the presentation today are Bill Orr and Mike Leaon.

You're not Mike Leaon.

Better start looking at who's coming up here.

PLASTICS RECYCLING TECHNOLOGY SECTION

SUPERVISOR LEAON: Good morning, Madam Chair and Committee Members. Neal Johnson of the Plastics Recycling Technology Section will be presenting this item. This average.

THE REPORTER: What is your name?

PLASTICS RECYCLING TECHNOLOGY SECTION

SUPERVISOR LEAON: For the record, Michael Leaon, supervisor, Plastics Recycling Technology Section.

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(Thereupon an overhead presentation was presented as follows.)

MR. JOHNSON: Good afternoon. We are here for what is Item 11 on this agenda and Item 14 on the Board's agenda, consideration of the adoption of the emergency regulations to implement the statewide recordkeeping and reporting requirements for the at-store recycling programs, which are being implemented under AB 2449 of last year.

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MR. JOHNSON: The -- first I will go quickly through what the law requires, and then turn to the emergency regulations.

The law, which was passed last year, Levin's bill, 2449, requires the stores, as defined in the bill -- must collect and recycle plastic carry-out bags. They -- the stores must provide easily accessible, well-marked bins for collection of bags, and that the collected bags must be recycled. Stores also must make available reusable bags for customers.

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MR. JOHNSON: What stores are regulated? The regulations are, the statute speaks to supermarkets and retailers of more than 10,000 square feet with a licensed pharmacy.

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And there's an estimate -- this is at least 7,000 stores in California and maybe more.

Other retail establishments may also participate in the program. So this potentially makes a very large group.

The other stores do not have to use -- provide reusable bags, but they have to collect and recycle plastic bags if they choose to do so. Also, the bags will be presented with a specific language that says, "Please return to a participating store for recycling."

Then store operators are required to retain records and report to the board or local jurisdiction upon request.

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MR. JOHNSON: That brings us to the regulations. In the regulations, we have defined several key terms. First, comingled recycling rate. This is a -- to be the rate of plastic bags and all film plastics, and will be done by the Board through waste characterization studies, much like we do our standard waste characterization analysis currently, except instead of going to landfills, we'll be going to distribution centers or recyclers.

Compostable bags. One of the last additions to the regulations was an attempt to remove compostable bags from the purview of this law. And we have drawn a

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definition that basically says, these are bags that meet the ASTM standard and also reference the environmental labor law and the Public Resources Code with respect to compostable biodegradable and degradable bags.

Because of how, particularly, supermarkets and large retailers work, where they distribute through distribution centers and tend to recycle back through those, we created this concept of designated reporting parts, which will be entities that are involved in either the distribution of the bags or the recycling, who will report on behalf of the operators. The operators can report, and they can have a reporting party.

Measurement period, we chose a calendar year period with exception of -- for 2007, where the law goes into effect July 1, and so there's really only a half year.

The operator is the operator of the store in a supermarket, or a licensed pharmacy. And then store, we covered that already.

--o0o--

MR. JOHNSON: The recordkeeping tries to deal with the front-end which is the number of plastic bag carry-out bags distributed to the store, the back end, which is the recycling of the bags or film plastic bags. As I mentioned before, we have the comingled rate, which will

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determine, will probably be used by most operators of designated reporting parties and recyclables. They will also have to keep any copies of filing with the Board.

The operator has the ultimate responsibility for recordkeeping and reporting and that the operators and parties must retain those records for three years.

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MR. JOHNSON: As I said, the -- we have an annual report, which would be due April 1, for 2007, when we have a half year. We have adopted a concept of one certification form per operator. And I think you may later hear a comment about some of the problems that potentially creates. And the reporting parties, we wanted a separate form for each operator so we could track, so we have a chain of custody through the process.

The front end, as I said, was the weight of carry-out bags.

The back end, here our designated parties have an option. They could either report the weight of plastic carry-out bags recycled, or really report on the weight of total film plastic and convert that into weight of bags through use of the comingled recycling rate calculation.

And as I said, they can use that rate.

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MR. JOHNSON: And then finally, the other couple

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of issues we've had to deal with are confidential, proprietary, or trade-secret information. Much of the information we will see submitted fits under those categories as defined by California law. And then there's violations and penalties which are consistent with the statutory penalties.

And that completes my overview.

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MR. JOHNSON: We also ask you to adopt option one, which is approve emergency regulations as written, and adopt Resolution 2007-139.

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MR. JOHNSON: And you were sent, late Friday, a striked-out and underlined version of the regulations as it got amended after the last meeting of the advisory group, last Wednesday.

There are a couple of little glitches in that. So before the Board meeting, we will clean up the -- where it's a duplicate of -- in a couple of the sentences and a couple of space errors. And with that, I'm open to questions.

COMMITTEE MEMBER DANZINGER: Thank you, Neal.

I missed that meeting last week. I was out of town, had something else. But I understand from Member Mulé and others that it was a very productive meeting, and

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that we're continuing to make real good progress on this.

Are there any questions or comments from the dais?

COMMITTEE CHAIRPERSON MULÉ: I just want to thank staff and all the members of the advisory committee who worked on this. You did a great job of pulling all this together in a short period of time.

And the question that I have is, we received an e-mail this morning from Ms. Williams. And so are these some of the comments that will be part of the cleanup, that you were talking about, that you will bring back to the Board next week?

MR. JOHNSON: Yes, before we come to the Board, we will resolve that. I had brief discussions with Ms. Williams today. I think we are in general agreement on how to handle the issues.

One of them is a little bit of a confusion in the way it was written over the ability of the operators and reporting parties to report on, totally versus recycled bags. We're presuming most people do the total weight basis, but we want to give people the option of either one. And she understands, I think, what we're trying to do there. We'll add a little cleanup language to make it very clear what we're doing.

The other issue, I think, was the -- and this came out in the advisory group discussion on Wednesday with

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respect to wholesalers, and I think I won't say who the example used was. But where you have a large wholesaling outfit who has many clients and the burden of a separate form for each operator. And I think it's clear that we can allow a -- simply a list versus an additional form. We had briefly talked about something like a limited threshold of like 20 or 25 clients, so that it wouldn't be just anyone doing it.

And then probably that would also have an aggregate versus being able to break down by store. And that's going to be, I think, a policy question, when we come to the final regulations, how we're going to exactly handle that.

COMMITTEE MEMBER DANZINGER: Okay. Thanks. You know, I want to ask Pamela, because I have a speaker slip from her.

Would you like to come on up?

MS. WILLIAMS: Must not have too many short people addresses you here, on the mike.

(Laughter.)

MS. WILLIAMS: I too, at the risk of repeating the thank yous, wanted to thank Committee Member Mulé and also Mr. Peterson and all the other Board members here today for the committee's work and for all of the staff's work, because we really did do an incredible job in turning out

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draft regulations in about four hours of intense work over two meetings.

We are in conceptual support of the regulations. We are comfortable with you adopting them today. We just want to be sure that for the record, our issues are clear, that we still have outstanding, that we have also talked to staff about -- I think we've reached a resolution.

The first issue on my e-mail was regarding a redundant sentence. I think staff is comfortable with that. You all stop me if I'm not reflecting things accurately.

And the second issue was just to clarify that the weight of plastic bags coming into the store can indeed be measured, but the weight of what's measured at the back end is all plastic film together, not plastic bag weight.

And I think staff wants to provide that as an option. An option is fine. A mandate that that's the only way we report out the back end would not be consistent with what we've all talked about.

BOARD MEMBER PETERSON: Let me ask a question. Once we establish a comingled rate, that would be to the tune of figuring out how many plastic bags are going off the dock, even though they are included with film; correct?

MS. WILLIAMS: Right. And the way the regs are

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written, if I understand them correctly, is that we have an option of reporting total weight of plastic film or using your comingled percentages and assigning them accordingly to all plastic film and plastic bag plastic bags. Reporting --

BOARD MEMBER PETERSON: Comingled rate or plastic bags?

MS. WILLIAMS: Well, the total amount that comes out the back, as we've all discussed, is all plastic film. If we apply your comingled waste characterization study percentages, then we have the projected breakdown.

BOARD MEMBER PETERSON: Right.

MS. WILLIAMS: But we're not weighing plastic bags out the back.

BOARD MEMBER PETERSON: Some of the stores might want to do that.

MS. WILLIAMS: Right, as an option. But not --

BOARD MEMBER PETERSON: That's fine. We're in good shape.

MS. WILLIAMS: We are.

BOARD MEMBER PETERSON: Pam's good.

COMMITTEE MEMBER DANZINGER: Absolutely.

May I ask -- go ahead.

MS. WILLIAMS: Item No. 3, I think has to do with the wholesalers issue, which I think we'll come up with a

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compromise. Our issue is that there are for the small retailers, the smaller retailers, there are wholesalers that service them. They service 200 or so retailers.

It's particularly onerous to have to submit 200 different forms saying "I'm reporting for this." We would like some way of saying, "I'm reporting this poundage for all of these retailers."

What we may come up with is a threshold. If you are servicing over 20 or 25 retailers, then you can do a list. But underneath that, you have to do separate reports, something along those lines. So I think we can reach a compromise there.

The fourth issue was, again, I think just a phrase, "in lieu of reporting the weight of plastic bags," same issue of the plastic bag weighing.

And lastly, we also talked about sunsetting. And counsel clarified that these emergency regs will sunset long before the sunset on the statutes. So we'll just leave that a blank for the emergency regs and deal with it in the final regs.

And those -- that's the extent of my questions.

Did you have a question?

BOARD MEMBER PETERSON: No, no, I'm fine. Good job.

COMMITTEE MEMBER DANZINGER: Thank you.

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MS. WILLIAMS: Any questions?

COMMITTEE MEMBER DANZINGER: Thank you very much.

BOARD MEMBER PETERSON: Neal, when -- I guess we're in Section -- page 4, Section C, to contractually require the Board, we can't do that. I mean, that's between a retailer and the supplier; right?

MR. JOHNSON: I believe so. It -- when we originally -- the previous draft had used the term "ensure," and the advisory committee wanted something stronger. So we went to "contractually required." Mr. Branch and I have had a brief discussion today. And I think we're going back to something like "ensure" and probably add a sentence to the effect of one of the ways they can do that is through contract but not require them to do it as such. And I hope I'm not putting words in Harllee's mouth.

STAFF COUNSEL BRANCH: This is Harllee Branch, counsel with the legal office. I think you described our conversation accurately. And I think our concern is that by including a requirement for operators to contract or alter or amend contracts, we're going to run into issues, I think, with OAL, trying to get these through.

So I think we're going to go back to the original language, and then put a permissive, sort of, sentence at the end, saying "Operators may, at their discretion,

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contract with a designated reporting party to ensure retention of records."

BOARD MEMBER PETERSON: Thank you, Harllee.

I also would like to thank everybody who worked on this -- the workshops we did. Especially the staff did a great job, and so did the Board members who participated. It was -- we got through this pretty quick. And we didn't fight. It was great.

COMMITTEE MEMBER DANZINGER: I just received one other speaker slip. Laurie Hanson with Progressive Bag Alliance.

Hello.

MS. HANSEN: Thought you guys were going to get away with me not commenting.

I'm Laurie Hansen with Progressive Bag Alliance. And I would also like to say thank you to everyone. And, yes, it's amazing how we all work together on a very tight timeframe. And it's a good example of everyone working together.

I have one requested change as a result of Friday's -- that I haven't had a chance to tell staff about. It is under the applicability section of removing that last sentence, "These requirements do not apply to stores that only provide compostable carry-out bags as defined." Because you changed the --

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COMMITTEE MEMBER DANZINGER: I'm sorry. Where is it you're --

MS. HANSEN: I'm sorry. Page 1, under applicability. It's the second paragraph.

COMMITTEE MEMBER DANZINGER: Oh, okay. I see.

MS. HANSEN: And we had requested staff, working with some Board members, to make sure that compostable bags would not become part of the recycling stream. And one of the ways we were addressing that is adding a definition of compostable bags in the definitions section, which staff did. And they also clarified that the law covers retail establishments that give out plastic carry-out bags.

And so that last sentence in that paragraph, we're afraid, will send stores, perhaps, in the direction of purchasing compostable bags versus doing the recycling program. It highlights something that may not be necessary. And we think it's covered both in making it clear that this covers stores that use plastic bags, and the definition of compostable is under the definitions section.

COMMITTEE MEMBER DANZINGER: So you are suggesting that we would maybe strike that last sentence entirely.

MS. HANSEN: Yes, that would be my request.

COMMITTEE MEMBER DANZINGER: Do we have any issues

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with that?

Staff comment on that? None?

MR. JOHNSON: I think, conceptually, I would like to speak with Mr. Branch before we commit to doing that.

COMMITTEE MEMBER DANZINGER: Why don't you just put words in Harllee's mouth?

MS. HANSEN: I will get you my other 25 day pages of amendments.

COMMITTEE MEMBER DANZINGER: Thank you, Laurie.

Any other comments?

I just had one minor comment relative to the resolution. It's not a substantive comment, but the one, two, three, the fourth "whereas," which references Assembly Member Levin's letter to the Board, that just strikes me as an odd inclusion in the whereases.

Clearly, we welcome his letter, and we appreciate his leadership on the issue. But I don't know if it's inclusion here, as a whereas, serves any purpose other to infer that we needed a push to do our job. You know what I mean? It's sort of like the letter was appropriate; it hit the issues very well. But, you know, we were in our stride; we're doing the job. He's doing his job. I don't know that we need to put it in a whereas and give anybody the inference that we sort of needed a push from anyone to move forward with this. So I don't -- if anyone's

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comfortable with just excising that whereas from it, I think that might be a good idea.

BOARD MEMBER PETERSON: Excising. Okay. Okay.

COMMITTEE MEMBER DANZINGER: All righty. Okay.

If there's no further comment, I think by consensus --

BOARD MEMBER CHESBRO: Can I just ask one question?

COMMITTEE MEMBER DANZINGER: I'm sorry. Yes.

BOARD MEMBER CHESBRO: The exclusion of the compostable bags, was that directly authorized in statute, or were we directly authorized to make exclusions?

MR. JOHNSON: The statute doesn't specifically speak to it. The statute defines what a plastic carry-out bag is.

BOARD MEMBER CHESBRO: So it doesn't fit within the definition of a plastic carry-out bag?

MR. JOHNSON: That is what we feel; it doesn't fit the definition of a plastic carry-out bag, as the statute defined it. And we want to make that explicitly clear.

BOARD MEMBER CHESBRO: Okay.

COMMITTEE MEMBER DANZINGER: Okay. Then, by consensus, we'll just move this to the full Board for its consideration this week.

Thank you very much.

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THE REPORTER: Could we take a break?

Let's take a five-minute break.

(Thereupon a break was taken in proceedings.)

COMMITTEE MEMBER DANZINGER: Okay. We've returned, and let's get back to the agenda. We are on Item N. Item N, Board Item 15.

Ted?

P&C PROGRAM DIRECTOR RAUH: Member Danzinger, this is an item, consideration of a memorandum of understanding between the California Integrated Waste Management Board and the California Department of Toxic Substances Control regarding enforcement against fraud in the electronics waste payment system.

And Harllee Branch of the Legal Office is going to provide an overview of the MOU.

STAFF COUNSEL BRANCH: Thanks, Ted.

(Thereupon an overhead presentation was presented as follows.)

STAFF COUNSEL BRANCH: There were a number of issues that were behind the draft MOU that's before you for your consideration today. And I will just run through those real quick. Through an interagency agreement with the Department of Finance, we basically requested an analysis of any areas in the e-waste program we should pay

attention to, especially from a financial perspective, where we needed to shore things up. In November, we got a letter from DOF with some recommendations on how we could better protect the integrity of the e-waste account.

Department of Finance identified that the payment system was at a high risk for fraud; that the Board should institute prevention and enforcement measures; and as necessary, enter into MOUs with other agencies.

Now, with the e-waste -- Electronic Waste Recycling Act, there was overlapping enforcement authority between the Board and DTSC. And both agencies have found, in their discussions, that it would be necessary to clarify the roles and responsibilities of both agencies and to define the working relationship of both agencies.

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STAFF COUNSEL BRANCH: You have three options in front of you: to approve the MOU; disapprove the MOU; or provide other direction.

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STAFF COUNSEL BRANCH: We're asking that you approve the MOU and adopt the associated resolution.

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STAFF COUNSEL BRANCH: A brief overview of the act, SB 20 and SB 50 both from Sher, created the Electronic Waste Recycling Act, which was a comprehensive

payment system to encourage the recycling of electronic waste, specifically certain video display devices identified by DTSC as hazardous when they're discarded. These are called covered electronic waste or CEW.

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STAFF COUNSEL BRANCH: And the Act places separate responsibility on both the Board and DTSC with the Board being primarily responsible for management of the payments to recyclers who recycle the waste; and responsibility on DTSC to manage the e-waste as hazardous waste.

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STAFF COUNSEL BRANCH: The Act gave us both concurrent enforcement authority in separate provisions of California law, which I have listed here. I am not going to read them back to you.

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STAFF COUNSEL BRANCH: The Act doesn't make specific how to handle the concurrent enforcement authority issue, especially related to fraud.

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STAFF COUNSEL BRANCH: The program is, like I said, as DOF has stated as well, the program is at a high risk of financial fraud. Since the inception of the program, many dollars have been paid out to e-waste recyclers. We have that large a number of participants

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in the system -- 550 as of now, including something like 50 dual-entity collectors and recyclers. Since the inception of the program, the payment claims have been increasing; the amount of money we've been paying out has been significantly increasing.

Here are some of the figures:

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STAFF COUNSEL BRANCH: In 2005, we paid out approximately $29 million, constituting about 60 million pounds of e-waste. The next year, the payments and the amount of approved waste just about doubled.

And in 2007, I've been informed by staff -- here are some of the figures we have as of now, but we're on track to at least match in 2006 in the amount of money we're going to be paying out.

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STAFF COUNSEL BRANCH: From 2005 to 2006, you can see there is a significant increase in claimed reimbursement, close to 200 percent.

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STAFF COUNSEL BRANCH: Here's a little graph. The yellow is 2005; green is 2006. And it may look as if this was designed to match the theme of the slide show, but actually, I think, the staff person who did this is a Green Bay Packers fan.

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(Laughter.)

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STAFF COUNSEL BRANCH: So I will run through the DOF recommendations here. Again, they identified that we are at a high risk of fraud based on the enormous volume of state funds going out; millions of dollars.

There's a significant similarity to the Department of Conservation, CRV program, which has experienced fraud since the beginning of that program. And they have found that continued enforcement and vigilance is necessary to preserve state funds.

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STAFF COUNSEL BRANCH: DOF recommended that the Board take the lead role in detecting, investigating, and enforcing against fraud and to enter into MOUs with other agencies as necessary.

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STAFF COUNSEL BRANCH: Again, the Board and DTSC have overlapping authority. And as usually happens when you get two large bureaucracies together, you have the potential for conflict -- activity duplication, confusion. And the staff of both agencies felt that an MOU would help to alleviate these problems.

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STAFF COUNSEL BRANCH: So I will go through really

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quickly just the sort of a general overview of what the terms of the MOU looks like. We've defined roles and responsibilities between the agencies, with the Board being primarily responsible for the integrity of the account and for detecting fraud, following up as necessary. We're going to be seeing most of the paperwork that comes in, in the program. Our staff is going to sort of, at least, with the documentation, be kind of first line of defense, the first line of detection.

DTSC will be managing the hazardous waste aspects of the program, and they have an existing enforcement staff that is going to be extremely useful in being a field presence, conducting investigations, prosecuting or referring for prosecution as necessary.

--o0o--

STAFF COUNSEL BRANCH: I think I covered this first point.

The MOU is designed to have a front-loaded mutual decision-making process where -- when any indication of fraud comes up, the agencies will get together, discuss the facts, what are the issues, and make a decision right at the front of the process as to how they are going to proceed.

And once it does proceed, DTSC basically maintains control over field investigations and those sort of

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activities in consultation with the Board.

--o0o--

STAFF COUNSEL BRANCH: The MOU creates an e-waste fraud team of the two agencies. We've agreed to free exchange of documents and information, believing that this is going to make the enforcement process a lot smoother and more efficient. We'll be assisting DTSC with investigations as necessary.

Both agencies are allowed to do independent work on detection and investigation. We will both be tracking fund expenditures, and we'll be coordinating and sharing trading opportunities.

--o0o--

STAFF COUNSEL BRANCH: So the staff recommendation is to approve the MOU as currently written and adopt the associated resolution. Both the staff of the Board and DTSC support the draft MOU as written.

That concludes my presentation.

COMMITTEE MEMBER DANZINGER: Thank you, Harllee.

I just -- I had a quick question. In looking through it, the division of roles seems very clear in all the areas. You know, I mean, we oversee the integrity of the account. We would suspend or revoke, you know, collectors, recyclers. They've got the hazardous waste elements. They are going to administer the enforcement

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actions. The area where it was a little -- I wasn't precisely clear on fraud detection and trying to get an idea of what measures are in here that prevent duplication of fraud detection.

And depending on where I was reading, like one spot it looked like our fraud detection activities are going to be review of the documentation and their fraud detection will be the field activities. Is that true, or is there -- does this open the door for each of us to be doing the other as well, and that would create a little bit of confusion or perhaps duplication.

STAFF COUNSEL BRANCH: My understanding is, there's a fairly clear separation of duties. And yes, you're correct, DTSC is going to be, as I -- and Peter Wood is here. He can ask questions -- or can answer questions as well. But in my mind, I think the separation of duties is fairly clear.

DTSC is not going to be receiving payment claims. We're going to be receiving them. We're going to be reviewing them. We're going to see, you know, when we have duplicate names and addresses etc., where, you know, we can clearly see something not quite right is going on here.

DTSC is not going to immediately be getting that same paperwork, and coming to the same conclusion, doing

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their own work off that paperwork. It's usually going to be us, identifying it, and then consulting with DTSC as to what are we doing today now with this.

COMMITTEE MEMBER DANZINGER: Okay. I only ask --

STAFF COUNSEL BRANCH: And vice versa with DTSC.

COMMITTEE MEMBER DANZINGER: The detection is the hard part. That's the part that involves so much more elaborate, you know, construct in place and all the personal activity and everything. Jeff -- thanks.

ELECTRONIC WASTE RECYCLING SECTION

SUPERVISOR HUNTS: Mr. Chair, Jeff Hunts, supervisor with the e-waste program. Just want to add on to what Harllee was saying, that the Waste Board's role in this, while we are responsible for the payment system and processing and the claims, our awareness of this industry is not limited to the paperwork before us. We have a deep understanding and relationship with the participants in this industry with the collectors, with the recyclers. We're on the phone with them every day where we do site visits.

In getting back to your question, the potential for overlap or redundancy, I think what Harllee is saying is that the MOU outlines in clear distinction our responsibilities, but we will have complementary activities, theirs being the inspections of facilities,

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the guns and badge-type enforcement; ours being the payment system. But we both will be interacting with this industry in a cooperative and collaborative and complementary fashion.

COMMITTEE MEMBER DANZINGER: There's -- when we got the communication between us and DTSC up front. So we're not going to have situations where they go out and do an inspection, and we're not aware of it. And ten days later, or two weeks later, we're out doing an inspection because we saw something in the paperwork that triggered, you know, some suspicions and, you know, I mean, again....

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BRANCH MANAGER WALKER: Absolutely. If we see things in the paperwork, we don't go out and start poking around in -- well, that would be a more investigative fashion. We cooperate closely with DTSC. They do have the facility inspection responsibility, and that's their role.

We've -- our staff have taken training. We might join them for site visits. We might go out separately and do site visits and work with auditors, both perhaps the Department of Finance or perhaps contract auditors to look at the records associated with the payments.

I mean, most important about all of this, while the MOU spells out, in a formal way, the roles and

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responsibilities, ongoing communication will take care of those areas that -- where the detail isn't there.

STAFF COUNSEL BRANCH: It's written into the MOU that as soon as either agency has any information indicating fraud, that communication with the other agency will happen.

That's -- I mean, each agency is particularly situated to get information in their own unique ways, based on their mission. But, yes, we are going to be communicating with each other as soon as possible after we get information about fraud.

COMMITTEE MEMBER DANZINGER: Terrific. Okay. Thanks. Thanks, Jeff.

Any other comments? I have got one speaker slip. Peter Wood with the Department of Toxic Substances Control.

MR. WOOD: Yes, thank you.

Good afternoon. My name is Peter Wood. And I'm here today on behalf of the Department's new enforcement and emergency response program. I directly worked with Board staff to draft the MOU. I think that's a very workable document. And I think it presents a blueprint where we can develop a very good efficient fraud deterrent to protect the fund.

Today, I urge you to approve this MOU. And I will

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be happy to answer any questions you might have.

COMMITTEE MEMBER DANZINGER: Thank you, Peter. I appreciate it.

Okay. Well, I have no further questions.

COMMITTEE CHAIRPERSON MULÉ: I just want to thank you, Peter and DTSC as well as all the staff in putting together this MOU.

Thank you again, Harllee for your work.

STAFF COUNSEL BRANCH: Sure.

COMMITTEE MEMBER DANZINGER: Ditto. This is a hugely successful program that's been tracking the way we wanted and hoped it would track in getting our arms around the one major problem.

I will go ahead and move Resolution 2007-140.

COMMITTEE CHAIRPERSON MULÉ: Second.

COMMITTEE MEMBER DANZINGER: It's been moved and seconded.

Call the roll.

SECRETARY DUCLO: Member Danzinger?

COMMITTEE MEMBER DANZINGER: Aye.

SECRETARY DUCLO: Chair Mulé?

COMMITTEE CHAIRPERSON MULÉ: Aye.

COMMITTEE MEMBER DANZINGER: Motion passes.

This goes to the Board on consent.

Okay. Next item, Item O.

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P&C PROGRAM DIRECTOR RAUH: Yes, Member Danzinger Item O is consideration of allocation and additional award for the liquified natural gas from the Landfill Gas Demonstration Grant Program. It's from the Integrated Waste Management Account and this is a follow-up to an item and approval by the Board at your last meeting.

Today we have Scott Walker to present the item.

REMEDIATION, CLOSURE, & TECHNICAL SERVICES BRANCH MANAGER WALKER: Thank you, Mr. Chair and Board Members.

Scott Walker, Permitting and Enforcement Division.

This year's Budget Act provided permissive authority for up to $1 million in demonstration grants to produce at least 10,000 gallons per day of LNG from landfill gas that would otherwise be flared.

In February, the Board allocated $740,000 to this program. And we went out with a solicitation. And in May, the Board approved the award of $740,000 to one demonstration grant for the Altamont Landfill Project in Alameda County that was submitted by Gas Technology Institute.

The second and third ranked proposals were submitted by Prometheus Energy Company for the FR Bowerman Landfill in Orange County and the Kiefer Landfill Project in Sacramento County.

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We have identified an additional $260,000 in funding to consider allocation and award to the second or third place proposal. And so we're here today to consider that. And I would like to note that we contacted Prometheus Energy Company, and we verified its request for consideration of funding for the Kiefer Project, and then also that the difference in the requested amount of funding, which was $598,000 versus the $260,000 that the Board is considering, would be covered under their match. And they basically verified that.

In addition, they did verify that the Bowerman project was withdrawn. And the basis for this is that that proposal was submitted to ARB under a separate funding program. And it was successful and received a grant for $640,000. Kiefer did not, under the ARB funds.

So just a couple highlights on the Kiefer Landfill Project. It would produce 12,400 gallons per day of LNG from landfill gas otherwise flared. It would include a refueling station, a fueling station, that would primarily serve the County, which has a fleet of about a hundred LNG-fueled waste haul trucks, displaces about 7500 gallons per day of diesel fuel, resulting in, besides the reduction in pollution from diesel emissions, a reduction of CO2 emission around the order of 30,000 tons per year.

And with the three projects, we're going to be

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doing a real credible effort in this state, not seen by any -- certainly no other state is anywhere close to this, of demonstration of over 40,000 gallons per day of LNG from landfill gas. So it's really exciting. And it could apply to other biogas too, from MSW residuals, dairies, waste water treatment plants.

So in conclusion, staff recommend the Board approve the award of liquified natural gas from the Landfill Gas Demonstration Grant to Prometheus Energy Company for the Kiefer Landfill Project and adopt Resolution 2007-138, Revised.

And I would also want to note that Tim Israel from Sacramento County is present today to support the project and answer any questions.

COMMITTEE MEMBER DANZINGER: Thanks, Scott. Do we have any questions on this?

I will move Resolution 2007-138, Revised.

COMMITTEE CHAIRPERSON MULÉ: Second. It's been moved and seconded. Let's have a roll.

SECRETARY DUCLO: Member Danzinger?

COMMITTEE MEMBER DANZINGER: Aye.

SECRETARY DUCLO: Chair Mulé?

COMMITTEE CHAIRPERSON MULÉ: Aye.

COMMITTEE MEMBER DANZINGER: Motion passes.

Go on fiscal consent.

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Thank you.

Okay. Item P.

P&C PROGRAM DIRECTOR RAUH: All right. Item P is in response to the Board's adoption of strategic directives at its February 2007 meeting including Strategic Directive 8.9. It deals with the Board's role in illegal dumping. This item is an update of the staff's plan to address its strategic directive.

The staff is carrying out the following activities: Establishing an interagency work group to develop approaches to dealing with the problem of illegal dumping prevention, enforcement and cleanup. This group will build on recommendations of the Board-sanctioned Illegal Dumping Task Force which presented its recommendations to the Board at its March 2007 meeting.

At that meeting the Board directed staff to develop implementation plans for the task force's recommendations and other options and report back to the Board for further consideration.

This work will be completed in a phased approach and presented to the committee during two committee meetings held in -- we currently plan in September and November.

The second prong of this effort is developing a model for close coordination and mutual support between

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the Board and local agencies that are making a significant effort to stop illegal dumping.

Staff will be working with Imperial County and other local governments who are interested in developing this cooperative model that brings together state and local resources to remediate and enforce against and prevent illegal dumping.

Committee Chair Mulé recently toured part of Imperial County and viewed 47 sites, recently identified in that county that are all combinations of either tires or municipal solid waste but were all illegal disposal sites.

Jeff Lamore is here today and, if desired, can provide an update on what the County's been doing to address those 47 sites and all of the other aggressive actions they have in place to deal with the illegal dumping.

We plan to partner with progressive counties such as Imperial to develop and effectuate a local-state model that addresses these issues.

The third component of our effort is to evaluate and propose to the Board regulatory and/or legislature initiatives that will enhance the state and local efforts to prevent and respond to illegal dumping. This effort will be presented to the committee in its December

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meeting. And basically we hope to have that information available with the direction from a strategic directive.

And that's my introduction. And I have Scott here again to give us a little bit more detail and also Bill Orr will be overall managing the project for us in his new role as division director.

REMEDIATION, CLOSURE, & TECHNICAL SERVICES

BRANCH MANAGER WALKER: Thank you. Scott Walker, Closure -- Cleanup Branch. I'm still getting used to this reorg idea, so bear with me.

I'm just going to add to what Ted presented to you. And I will probably leave it open more to questions. I know we are really pressed for time here. But again, the broader aspect of illegal dumping, you know, it's an intentional act on private or public property that is typically done for economic gain, and imposes risks to the public health and the environment degrades quality of life and affected communities and is also very costly to mitigate.

Frequently, innocent property owners are victimized by culprits who we have a lot of difficulty identifying and enforcing again. In some cases the property owners are also directly involved. Recurrence at sites is a problem. And also once you clean it up, it pops up in other areas. Persistent problems. Mostly

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sites are very small and ephemeral. However, some of these sites reach monstrous proportions by multiple dumpers. The Cleanup Program has just been involved in quite a few. We normally get involved in the biggest and baddest one with a Board-managed approach.

The scenarios of illegal dumping throughout the state vary tremendously. They span the entire state, from the north coast to the southern desert areas, and the scenarios are frequently very local in their nature.

The illegal dumping programs are primarily implemented at the local level, within code enforcement departments, but lots of times the response is spread out amongst different departments. In some cases, LEAs play a major role. And Ted brought up Jeff Lamore in Imperial County. There's an example of an LEA that's really out in front with their illegal dumping problem.

There's key elements associated with successful programs that we've identified so far. Prevention, surveillance, and enforcement, which includes surveillance and enforcement, community outreach and education, then constructed barriers, fencing, signage. And then there's cleanup, just removing the waste and restoring the site, considered separate. Both together are required to address the problem.

Now, strategic directive SD8, as Ted mentioned,

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includes a specific requirement that the evaluation, by January of 2008, of potential statutory and funding options to enhance local and regional capabilities to prevent and redress illegal dumping. And this ties directly into the state and local Illegal Dumping Task Force that Ken Stewart, on behalf of the Board, led and came in front of the Board in February to present the results of the report and the findings of the task force.

This was a coordinated effort and it had three components: The first is to assess the statewide extent of the illegal dumping problem. The second was the amount of resources that local jurisdictions spend annually combating the problem. And third, assess local jurisdictions' needs to combat the problem.

There's a 22-person roster of local, state federal, and private representatives also. And the report was presented in the agenda item. Again -- and I would urge those interested to refer to that agenda -- actually, I'm sorry. I said February. It's actually March agenda item -- March 2007, Agenda Item 10.

In that report, there were 24 recommendations that the task force came up with. And I'm not going to get into the details.

But there's four categories: statutory, funding, existing program, resources. And as Ted mentioned we are

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going to bring additional items for direction concerning the implementation of the task force recommendations. They have high priority ones and the other is lower priority. And obviously, we would bring these back in front of the Board as to the implementation that we'll be coming forward.

And while we're dealing with the broader aspects of illegal dumping and the strategic directive, it's also important to note that we are -- we have existing resources and existing initiatives on regional dumping problems that continue.

And Ted mentioned the 47 sites in Imperial County that were identified as a result of the CHP aerial surveillance contract, that our Tire Program -- Darryl Petker manages.

And so the idea here is to focus on that effort to assist the locals, develop a collaborative approach. You know, we want to really work out, obviously, not make their job more difficult by coming in and all of a sudden making it more difficult for them. But we really need to look at how we can help them and essentially establish a collaborative-type of approach tailored to this area that we might be able to use in other areas of the state. Like North Coast, it's possible, we could go in the forest lands, desert lands, even urban areas, to apply the

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approach to.

And so there's a lot of focus there. And Jeff's here. He could speak of it, if the Committee would like. And we've been working quite closely with Jeff on this. He's had quite a bit of success to date getting a lot done. But they have a tremendous, overwhelming, problem in Imperial County, New River Area, and the border on this issue.

The other thing to point out is that we've had other ongoing successes. And again, the cleanup programs and tire programs, we've made a lot of efforts -- farm and ranch grants, local government waste tire grant, a solid waste cleanup program, primarily through the grants. And you heard earlier today, we had a Sonoma County grant that the committee's passed. And that one is really a -- to really upgrade and, in other words, expand their efforts on illegal dumping. And also the Calexico grant was another one that really helps address this issue.

But we need to keep in mind that the cleanup program is not the answer. It helps. We obviously need -- you know, locals have to take it on after the cleanup grant is over. So we try to tailor these projects to help them develop the best approach that they could, in the future, take on and maintain themselves without the Board's funding after it goes away in the grant cycle.

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So another way -- another area -- you know, the Board's probably heard a lot about -- you've heard a lot from me about Torres Martinez collaborative. We've had a number of cleanup projects and we are working here with a very unique collaborative effort that extends beyond just cleanup -- prevention, enforcement, coordination.

Coordination amongst the agencies involve a loan. It is a tremendous effort. Torres Martinez collaborative is an example. And that's the type of thing that we are continuing to work on. But also, you know, obviously the broader aspects of illegal dumping, we're working on context of strategic directives, the task force recommendation.

And so to conclude the presentation, I would just like to reiterate that, you know, as Ted mentioned, we'll be bringing additional items before the Board. We're looking at, for the strategic directive requirement in January, doing an illegal dumping workshop, somewhat similar in view to the climate change workshop in December, hopefully, that we think could really help with this requirement in January to do that.

So the other note is, obviously, Bill Orr will be leading a work group. We're going to need a lot of help from the other programs of the Board -- legal office, the sustainability division, public affairs, legislation.

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Their help is going to be essential in this work group.

So I would be happy to answer any questions from the discussion. And again, Jeff's here from Imperial County to talk a little further on it. But we will obviously be coming back and tracking this issue and working a lot with the Board on this.

Thank you.

COMMITTEE MEMBER DANZINGER: Thank you, Scott. Thank you very much.

I mean, you know, this is not one of the sexiest programs we have. I thought it was striking, it was brought up right after the LNG project, which is incredibly exciting.

But it goes to the heart of the most important responsibility we have. The most important responsibility any environmental agency has, which is the protection of our people and our resources.

So it's critical. I know that I will be interested when the recommendations come forward when we see more of this.

You know, you point out No. 9. I would be interested to see how much we see in those previous three that all relate to the expanded authority for the Board in dealing with some issues. Because I think that's going to be critical, because I just don't think we have enough.

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And we don't have enough of a hammer.

Now, I've got one speaker slip. But aside from that, I don't have a speaker slip from Jeff Lamore, but I wanted to give him an opportunity if he wanted to step up. I know he had a long trek to get here. If you wanted to make any comments, we would love to hear it.

MR. LAMORE: Jeff Lamore with Imperial County LEA. I just wanted to commend staff for their presentation. I appreciate their support. I'm here to answer any questions you may have.

COMMITTEE MEMBER DANZINGER: I just have one general question that relates to the prevention theory, which of course is always the preferred method of detailing with these problems is presenting them before they become problems.

I mean, 40-something sites -- 47 problem sites that we know of. What are the causes? I mean, what are the primary causes for such a large concentration of illegal sites? We can go into all kinds of different issues. We don't have to go into all of them, but I'm curious whether any of them would be valuable for us to hear for the purposes of targeting our programs.

MR. LAMORE: I think the biggest issue is lack of education. I think that's one key component that we need to focus on and the enforcement tool.

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A lot of it is, you have indiscriminate dumping that becomes an attractive nuisance for other illegal dumpers. If you can't catch them in the act, then to be able to actually hold them accountable after the fact is oftentimes difficult. And we're in the process right now of drafting a local ordinance that will help give us the teeth to go after those types of illegal dumping activities.

But in the meantime, ultimately, if you can't find a responsible party, ultimately the victims, the property owners, become the responsible party, and they are directed to do the cleanup at any given time. I mean, this is just one strip of area of the valley that we focused on. We see this every day.

Calexico has been riddled with illegal dumping activity. We continue to focus on that area. We're looking at it, more of a multifaceted approach. We are providing -- we go over the farm and ranch cleanup and abatement grants. We have the Waste Tire Enforcement Branch that we utilized to help to try locate that type of activity.

We are actually having amnesty cleanup events throughout the unincorporated area. We're trying to encourage these sites and the location to the nearest landfill. Oftentimes, they have to travel 30, 40 miles to

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the nearest landfill.

So trying to encourage some of the private landfills to develop -- and also, working with the cities, I've tried to get them to develop transfer stations for these weekend warriors where they want to do the cleanup, backyard cleanup, instead of travel 30 miles one trip or one direction to actually have a transfer facility in that area, so they can take it to these local places, where it's more convenient. We're trying to provide a disposal opportunity for them that's more convenient. So it's just kind of working everything -- working it all together and working with many local groups to put things -- trying to get these things in place.

COMMITTEE MEMBER DANZINGER: When you do catch people, illegally dumping what kind of authority do you have in terms of penalties?

MR. LAMORE: Penalties -- essentially, we catch -- it's rare someone in the act. But when we do, we will hold them there. We don't have the authority to do that. But oftentimes, we can persuade them to stay there. We will contact the local sheriff's department or local police to come out and cite them. And then it's been placed on the DAs as to whether or not they want to go ahead and prosecute this. With the process we're creating now, what we're doing is we're setting up a system where

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we can actually cite them on the spot.

We have a hearing officer which they could appeal it to, or we also can go to court as well. But there's a fine that's issued at that point. Which also carries the weight of the fine as well as they are still subject to the cleanup. So it's something of a tool we can use to go after them that way as well. So that's something that currently does not exist in state law that at the local level, we have the right.

COMMITTEE MEMBER DANZINGER: Right. Okay. Thanks. Thank you very much.

I mean, have we -- we don't have that authority now. That's part of the authority you go after. But are there any criminal penalties associated with illegal dumping on the books? Have we ever been involved in any kind of illegal dumping, however -- no matter how bad it was, right, where the responsibility part was identified, was perhaps even apprehended, that resulted in any jail time? It's not authorized; right? It's not on the books? I mean, the most egregious illegal dumping can or not result in jail time?

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BRANCH MANAGER WALKER: I'm not aware of it, other than hazardous waste. But certainly, penalties -- enforcement is a major effort, a major aspect of looking

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at authority issues, statewide that can help the locals. Normally, it's a misdemeanor, yeah. And it's generally a low priority for prosecution.

COMMITTEE MEMBER DANZINGER: Well, that would be why. But that wouldn't be why it wouldn't be on the books. And I can think of a lot of reasons that can land you in jail, and a lot of them are a lot less disruptive than what might be a really dangerous dumping activity.

SENIOR STAFF COUNSEL BRECKON: CDAA got a -- This is Wendy Breckon, senior staff counsel, California Integrated Waste Management Board.

CDAA did achieve jail time in a couple cases. There were solid waste cases. They include tires too. Under the Penal Code, not the Public Resource Code.

COMMITTEE MEMBER DANZINGER: Yeah, exactly. I'm not asking under PRC. Just anywhere.

STAFF COUNSEL BRANCH: Yeah.

COMMITTEE MEMBER DANZINGER: Okay. I have one speaker slip. Larry Sweetser, RCRC.

Well, are you here on behalf of RCRC this time?

MR. SWEETSER: Larry Sweetser representing Rural Counties Environmental Services Joint Powers Authority.

Actually, to follow up on your comment, I have been a part of the illegal dumping task force as well on behalf of the rural counties. And the presentation by the

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district attorney's association was very helpful, because it does give some ammunition. But mostly, as it was pointed out, it does hinge on most -- if it's hazardous waste or tires, where the catch is not so much pure garbage.

But I do want to extend a lot of thanks to Mr. Ted Rauh for mentioning progressive and rural counties in the same sentence. We don't hear that very often. But I do want to tell you, a number of our jurisdictions has implemented a lot of extensive efforts on illegal dumping.

Del Mar County has been involved with that extensively. Butte County has a person dedicated aggressively to looking for it. So we are doing a lot of things out there, because there is a lot of land for dumping.

And we do support this item and the Board's efforts. We kind of look at this item as applying what we learned in the task force to real life situations. I think that's going to be really helpful in the future.

I was disappointed when I initially read the item, that is you only found 47 dump sites in Imperial County, but the staff pointed out that was only along two rivers. There are many more out there in many areas.

And illegal dumping in a major issue in our area. We are interested in being part of new future work groups

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on that issue.

We do get a lot of the same questions from our counties, repeatedly, on prevention and enforcement, what can you do. A lot of them are looking for the same answers. And the task force did come up with some good recommendations. And we look forward to that implementation further on.

And just keep in mind, as the fees -- and there are many proposals for increasing fees are going up. As more waste is prohibited from landfills, we are going to see more and more illegal dumping, especially in the rural areas. There's a lot of land for that.

So I just look forward to the implementation of this project -- and if there's anything we can do to help. Most importantly, on that, just as the Board does learn more things they can continue to share that information with everyone. It will be really helpful, because there is a big issue and a lot of us have that same problem.

So thank you.

COMMITTEE MEMBER DANZINGER: Thank you, Larry.

Okay. If there are no other comments, I would close this item out.

MR. LAMORE: One more quick comment. Just to -- as part of maybe a suggestion, the LEA support services, and the loan program, the equipment loan program, the

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helicopter might be a good addition to that. If you want to consider that, that was very helpful for this last event.

COMMITTEE CHAIRPERSON MULÉ: I think I brought that up last month to use that with the local LEAs.

P&C PROGRAM DIRECTOR RAUH: And actually, an item that you will be hearing with respect to the five-year tire plan, we have actually asked for some increases in some of the contract areas to be able to provide more resources for both the helicopter and surveillance equipment for local government.

COMMITTEE CHAIRPERSON MULÉ: Thank you.

COMMITTEE MEMBER DANZINGER: Thank you very much.

Let's move on to our last item, Item Q, Board Item 18.

P&C PROGRAM DIRECTOR RAUH: Yes, this item is consideration of request by Glad Manufacturing, Medical Action Industries Incorporated, Pactiv Corporation, Poly American LP, and Trinity Packaging Corp., for exemption from compliance of the postconsumer material content requirements of the Plastic Trash Bag Law for the 2006 certification period.

And here to present the item today is Sue Engle, Mike Leaon, and Bill Orr.

Take it away.

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MS. INGLE: Hello, Committee Members. This is our last item today. So we have decided to cut out some of the slides and I will spare you some of the history.

(Thereupon an overhead presentation was presented as follows.)

MS. INGLE: This is a table of the five companies that are requesting exemptions. And we put them in order by the tons of bags that were sold. And what I wanted to point out with this is, Poly America, Glad, and Pactiv Corporation are three of the largest companies supplying in California, whereas Medical Action and Trinity are very small companies.

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MS. INGLE: We're going to start with the exemptions requested. We're going to go through each company. And the first company is Poly America. And this is a history of Poly America's postconsumer material use. And notice that they have increased their usage over -- since 2001 to 2006. From 2005 to 2006, they increased their use by almost 300 tons. Poly America has been granted an exemption each year from 1999 to 2005.

The last year this company was in compliance with the 10 percent postconsumer requirement was in 1998.

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MS. INGLE: Staff reviewed the documentation

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presented with Poly America's exemption request, including a list of suppliers that they contacted. Staff met with Poly America reps and requested further information on PCM testing results and feedback.

The company continues to rely on baled film that is reprocessed by Poly America for use in their own trash bags. They also claimed a very large amount of postconsumer material that they use in other film products that they manufacture.

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MS. INGLE: Glad Manufacturing has used little PCM from 2001 to the present. For the 2004 reporting period, Glad and Pactiv were each granted an additional exemption at the December 2005 Board meeting.

Since the 2004 reporting period was essentially over, the conditions for the exemption would take place over 2006. Glad was denied an exemption for 2005.

Over the past several years, Glad claimed large investments in equipment modifications that were to be completed by September 2006 in order for them to start using PCM.

As it turns out, the equipment modifications were allocated to other manufacturing lines within the plant. Recently, Glad informed Board staff that when a viable supplier is found, Glad will need to start new equipment

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modifications.

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MS. INGLE: During 2006, Glad participated in quarterly meetings with Board staff and furnished quarterly reports. Over the past two years, Glad has been working with one supplier and continues to test PCM from this supplier.

Although Glad told staff early in 2006, the company could use up to 3 percent postconsumer material in their trash bags, this never happened. In fact, Glad is no closer to using and purchasing PCM than they were in 2003, when the exemption was based on equipment modifications to incorporate postconsumer in their multilayer bags.

Last year, Glad purchased 115 tons of PCM and incorporated this material into production, but discontinued purchasing PCM, claiming the material is sourced from agriculture and was contaminated with TNPP.

Glad provided very little information on how the air sampling testing was conducted -- the analysis and the results. Glad notified staff in February that they would not be able to meet their 10 percent requirement for 2007.

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MS. INGLE: Pactiv Corporation's history shows

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another decrease in PCM use from 2001 to present. Yet, their sales of regulated plastic trash bags have also increased.

Pactiv manufacturers the Hefty Bag and another bag called the Renew brand, which uses significantly large amounts of PCM. But unfortunately, the Renew brand is not -- does not have a large consumer base in California.

As with Glad, Pactiv was rewarded -- was awarded a conditional approval in 2004.

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MS. INGLE: Starting in 2003, Pactiv promised to use significantly more PCM because they completed 3.5 million in capital improvements to modify their production lines but these improvements have not appeared to increase PCM use in their manufacturing.

Although Pactiv has the ability to reprocess resins from baled stretch film, they have used only 1.1 tons of resin. Pactiv committed to increasing their PCM resin content because they no longer clean and pelletize postconsumer materials, so they rely on postconsumer reprocessors.

Pactiv was not granted an exemption for 2005, but worked towards meeting the commitments of their 2004 conditional approval. Pactiv representatives met quarterly with Board staff and provided quarterly reports

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to staff. They also participated in additional meetings during 2006 and 2007 that included various PCM suppliers and Board staff.

Pactiv has established a postconsumer materials stewardship program to qualify potential suppliers, resulting in one supplier that's now able to provide clear PCM. Pactiv has an internal PCM usage for 2007 of 1 million pounds or 500 tons over the next 12 months, that they would start to like -- they would like to start using in August.

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MS. INGLE: We're moving on to Medical Action Industries which reported zero tons of PCM during 2006. The company was out of compliance for 2005 because they failed to report. Medical Action was in compliance for '02, '03, and '04 and has a continuous trend of increased sales since 2002 to present.

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MS. INGLE: Medical Action Industries is located in West Virginia and did not supply required documentation to obtain an exemption for 2006.

They sent a letter stating high cost of labor, energy, and PCM was making it difficult for them to stay in business.

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MS. INGLE: Trinity Packaging Corporation used 2.1 tons of PCM in 2006 to achieve a 1 percent PCM ratio. Sales have decreased since 2001 for Trinity, a company located in New York.

Trinity did not supply the required documentation to obtain an exemption for 2006, and provided only a cover letter stating "inability to obtain PCM from their suppliers, citing competition from other manufacturing companies that's limited their feed stock.

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MS. INGLE: Going to our options, option one would approve the exemptions.

Option two has two parts to it: 2A would allow the company to meet a PCM targeted usage. And 2B would be to meet quarterly with Board staff.

Option three would disapprove the exemptions.

And option four recommends the Committee take no action.

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MS. INGLE: Staff recommended a conditional exemption for Pactiv to commit to using a specified amount of PCM for the remainder of 2007. But on Friday, staff and Pactiv representative discussed this conditional exemption, and Pactiv has concerns about setting a targeted usage for the 2007 reporting period.

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Therefore, staff would like to change the recommendations to deny Pactiv's exemption request, predicated on discussions with Pactiv representatives.

Staff recommended Poly America receive a conditional exemption -- options 2A and 2B, which would be meeting a targeted PCM amount and meeting with Board staff quarterly.

Today, staff spoke with Poly America representatives about a conditional exemption. At this time, Poly America is willing to meet the conditional approval of quarterly meetings with Board staff and to set a targeted PCM usage.

However, we do not have a targeted amount to give you today. But staff will be meeting with Poly America representatives this week and will have a targeted PCM number that we'll bring forward to the Board meeting next week.

Option three would deny the exemptions. And staff recommended that Glad Manufacturing, Medical Action Industries, and Pactiv Corporation, and Trinity Packaging be denied exemptions for the 2006 reporting period and to place these companies on the list of noncompliant companies for 2006 reporting and place them on the Board's Web site.

This concludes my presentation.

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Do you have any questions?

COMMITTEE MEMBER DANZINGER: Thank you, Sue. Are there any questions, comments up here on the dais?

Okay. Then let's hear our speakers.

First, Laurie Nelson on behalf of Glad.

MS. NELSON: Mr. Chair, Members, Laurie Nelson on behalf of the Glad Manufacturing.

And I think we are here not celebrating, but commemorating or commiserating to honor our tenth anniversary like Poly America, when we once were able to comply with the trash bag recycled content requirement.

This is our tenth anniversary of having to come back and ask for an exemption. I'm sure Mr. Chesbro and Mr. Fredenburg will be just thrilled that this is still ongoing.

Ten years ago, the manufacturers, including Glad, were meeting the 10 percent PCM. Since then, we have had a change in the marketplace. We have had the plastic lumber markets take off. We've had railroad ties. All the durable goods have a ravenous need for this film plastic, and they are using it. It's a higher, better use. They can use it. They are not as sensitive. And it's durable and they can -- it's longer-lasting.

But that change does bring us back before you again for the sixth year of decreasing PCM every year.

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And you have seen it not with Glad but with every other manufacturer, large manufacturer, which does source its own material.

So previously, this company's been dinged for not making any progress at all. This is the company that previously did meet the 10 percent level. We exceed or meet all the other environmental standards in this state. We have spent hundreds of thousands of dollars -- in fact, we have spent millions of dollars to comply with this law.

And we've even come -- not even come close to the 10 percent requirement. So what I'm here today to do is ask you to approve our exemption request. And I want to tell you why. I think we've put forth a good faith effort, and I wanted to update you on our current efforts.

So we have contacted numerous suppliers, similar to Pactiv. You know, 80, 90, a hundred suppliers have been contacted. We all end up with the same -- we end up with one supplier. There's another supplier that has possibilities, but basically we're working with one supplier.

The Glad company had showed the largest increase in PCM of any manufacturer before you today. We went from .03 to 1.4 percent, almost a five-fold increase.

Now, how does that compare to the others? One of them went down to zero; one went from 3 percent to 1

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percent; one stayed steady at .04 percent; one increased to about .5 percent. And again, we went from .03 to 1.4. And staff is recommending that they deny our exemption.

I wanted to just run through some of the other things the company has done since Senator Chesbro wasn't here before. We did have a source reduction that took place. We had 4 percent source reduction in our ForceFlex bags. That's a savings of over a million pounds of plastic that is not going into California's 7.5 million pounds nationwide.

And despite the denial of an exemption last year, we continue to meet with your staff on a quarterly basis to talk about what it is they expected, if we were on track to receive an exemption. We discussed about our trial run, our equipment, we talked about our safety concerns. And somehow this train we were all supposed to be riding on together went way off the track because we were surprised when they recommended us for not getting an exemption.

We've also kept staff abreast of our capital improvements. We have talked about the -- having a link to our Web site to recycle plastic bags. We are now in the process -- and I think this is the crux of the matter. We're in the process of using a material that's new to us. That's ag film.

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Initially, we did this risk assessment. We spent about $25,000. And what we found that concerned us was the variation. It's the variation that leads to the unpredictability. And that's what we need to evaluate. We need a larger pool of data so we can ensure that our workers are safe. We are willing to do this. We are willing to spend about a quarter of a million dollars to do so.

I only mention that amount because I want to see how seriously we do take our worker safety. Your staff's denial of our exemption request appears to center on this issue. And I want to quote, "Glad use of PCM is primarily based on its concern over worker exposure to toxic air contaminants. However, based on information presented by Glad, staff does not agree this obstacle has merit."

Your own contractors, Dr. Green, from Chico State, said two things about recycled plastic material. He said, there should be no hazardous materials. He also said there should be no TNPP, which is the chemical referenced earlier by Sue Ingle.

So there's additional information that we provided the Board in our confidential letter. But I just want to summarize that to penalize this company, because of our worker safety concerns, we don't think is good public policy. We would invite the Board's toxicologist to meet

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with our toxicologist to better understand our concerns and why we think additional testing is necessary.

Separate and apart from that issue, we have increased our PCM use five-fold. Again, that is the largest percentage increase of anyone before you today. And surely, that is progress that needs to be acknowledged and rewarded.

Finally, we have used more PCM in 2006 than any time in the last five years. And so for those reasons, we do request for an exemption from the 10 percent PCM requirement due to insufficient quality and quantity of supply.

I have Jim McCabe with me to answer any technical questions the Board may have.

COMMITTEE MEMBER DANZINGER: Thank you, Laurie.

Any questions from up here to Laurie?

BOARD MEMBER CHESBRO: One thing I agree with you on is that it's disappointing to come back and see the status of the amount of recycled content, not just with the company you represent, but across the board.

I got to say, if you went and talked to let's say, Joe Garbarino or any number of haulers that -- you certainly wouldn't have them saying, "Gee, there's suddenly a demand for plastic and we now have someplace to take our plastic, and there's been value established."

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My question for you is, what is it about the uses that you are describing as, you know, the plastic lumber and the railroad ties, that gives them the advantage, the supposed advantage, that allows them to get their hands on the material rather than the company that you represent and the other bag manufacturers?

MS. NELSON: Sure. That's a really good question. And part of it is just the nature of the beast. Trash bags are probably the worst place to try to put in recycled content. They are the thinnest and they have gotten thinner over the years.

And so any kind of an imperfection or contaminant breaks the bag apart and if you put it into a plastic lumber, they can use it. It's not as sensitive.

BOARD MEMBER CHESBRO: That's a technical argument.

MS. NELSON: Yes.

BOARD MEMBER CHESBRO: But it doesn't explain the market question: Why would the manufacturers of those other products be more able to get their hands on the material than Glad or other --

MS. INGLE: My understanding, Senator, is, they can use material that is -- because their product is less sensitive, technical, is because they can use material that is not as clean as we need ours to be. We need it to

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be really clean when it gets to us. So they can use -- they can pay for it. It's less clean. So it works for them, whereas for us, we would be at the tail end of the dog, and we get what's left over of those who are willing to put the effort into clean it.

But it's in our best interest. I mean, it's still cheaper than virgin content. So it's in our best interest to look for it everywhere, and when we find it, use it.

COMMITTEE MEMBER DANZINGER: Well, gosh, we could go on and on about this item. And I can't even follow my own notes. I have got so many here.

I wanted to pose a couple questions. But are you with Glad or --

MR. McCABE: Good afternoon. My name is Jim McCabe. I'm with the Clorox Company of Glad Manufacturing Company. It's a wholly-owned subsidiary.

We can get our hands on PCM. The problem is the quality. And you need a higher quality. As the contract report stated, we need a level one or grade one material to be able to blow the bags. Fortunately, for other uses, they don't need that clean of material. And so it's more readily available to them. So that's -- our market is rather limited.

BOARD MEMBER CHESBRO: There are not -- there's not recyclers available who can process the plastic to get

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it to the grade that you need it for, to manufacturer bags.

MR. McCABE: Apparently not.

COMMITTEE MEMBER DANZINGER: You list like 115 or something that you identified or searched for?

MR. McCABE: Certainly. And we identified ten that had stated that they could meet the specifications that are outlined in the law. So they provided us samples. We ran through them. And of those, one of them met those specs. So we started working with them. Unfortunately, their source is an ag source. And with that brought some issues.

Now, we didn't even bring up those issues until we had actually done a couple of runs. We used 115 tons. When we started to seriously consider it, it got to our toxicologist and they said, "Hey, there may be some worker issues here. We need to start looking at samples."

So they pulled 20 samples. And out of those samples, they would -- they found four or five chemicals. Not every sample had those chemicals. And the concentrations varied.

When we did an exposure assessment, when we ran it, all those levels were very low. We ran it at a hundred percent. There were absolutely no issues with those chemicals. We could run this PCM with our trash

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bags.

Unfortunately, when we pulled those 20 samples, it indicated that there was such variability that there's likelihood that there could be other chemicals and at different concentrations. It was decided that we needed to get a bigger baseline to better understand all the PCM that's coming in before we were going to expose our workers. And that's the plan going forward, right now.

COMMITTEE MEMBER DANZINGER: I don't want to cut you off, sir, but I want to ask staff to respond with two things in particular. I'm interested -- and I don't know that I want to get this committee meeting down into a huge scientific debate. But it's -- obviously a crux of the issue here is your assertion that we've got worker safety issues and the variance of the testing and all this and that.

And we have staff comment in the item that you are satisfied that those issues don't rise to a level where it should be an obstruction to utilizing the material. So I would like to hear a little bit more about that.

The other thing I would like to hear is, last year, when the item came before us, staff's recommendation was to provide a conditional exemption. And the vote of the Board was to deny the exemption. But I would like, in a summary fashion, what are the key differences between

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Glad's posture last year and their posture this year. Take those in any order that you want. But those two, I would like to hear more about that.

RECYCLING TECHNOLOGIES BRANCH MANAGER ORR: This is Bill Orr with the Recycling Technologies Branch. I would like to make a couple of general observations. And then if Mike wants to amplify on those, we could.

I think in looking at the first issue, there's sort of a separation in the risk management world between toxicologists and risk assessors and risk managers. And I just want to state, right off the bat, that we didn't look at the information that was provided by Glad from -- we don't have a staff toxicologist.

We were basically relying on the information that was provided by Glad and looking for what their basis was to do additional testing and additional risk assessment. And the frustration that staff has is, they couldn't tell us what their basis -- you have heard about the variability of material. But what chemicals they are going to look at, what the basis is, is it an OSHA concern, is it a Prop 65 concern?

They were -- they didn't really give us anything by which they were going to do this additional risk assessment.

COMMITTEE MEMBER DANZINGER: They indicate in

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their input to you that these were Prop 65 related issues?

RECYCLING TECHNOLOGIES BRANCH MANAGER ORR: They did initially, yes, they did.

And from what Jim McCabe just indicated, the testing that they have done to date does not trigger anything related to Prop 65 or any OSHA standards. So we are sort of left grappling. You know, we're not the ones saying, "You should test for this."

We are basically relying on the information. And based on the information that we have, we say -- we don't have the basic that they want -- that they are going to do these additional risk assessments.

This issue was actually brought up for the first time in regard to the 2004 exemption request. And at that time, they said, "Well, we're not really making a worker health and safety issue out of it." But it's continued to persist.

So I just want to clarify for the record that it's -- staff isn't determining using their toxicologist that their information is inadequate. What we're saying is, they haven't provided us with any basis for the additional risk assessment -- what it's looking for, what the parameters will be, what the thresholds are.

COMMITTEE MEMBER DANZINGER: So that you could make a determination that there is a problem.

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RECYCLING TECHNOLOGIES BRANCH MANAGER ORR: It's just basically a nebulous issue.

The other piece, in terms of the difference between our recommendation last year and our recommendation this year, as Sue indicated in her presentation, there was sort of an offset of a year between when the conditional approval was made and when we could actually work together to try to work through the supplier issues. And so last year, when we made the recommendation, it was without the experience of having worked together for a year to try to resolve the issues and actually get them to start to buy PCM.

So the staff recommendation is based on having worked with them over the course of a year plus. And when we started off, we were very -- we were very hopeful. And we sort of have a tale of two companies, if you will, between the direction that Glad went and the direction that Pactiv went over the course of that year.

The beginning of the year with Glad, they were starting to use PCM. They were starting to test it, to do production runs. They would come up with this 3 percent level. And we thought things were really good.

Then about mid-year, as was indicated, they started balking at it based upon the agricultural film sources. They discontinued any additional purchase. And

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they have also indicated that they have discontinued conversations with other suppliers that have agricultural sources pending the resolution of these risk -- nebulous risk issues.

So it's based on the experience that we've had where we thought, at the beginning of last year -- when we were bringing forward our recommendation last year, things were looking very promising. After the Board took its action and these other issues came up, it went south.

COMMITTEE MEMBER DANZINGER: So you are saying, Bill, that, you know, the third method of achieving compliance or at least in this case getting a conditional exemption, about the reasonable efforts and all this and that, that we include in that determination not just the cooperative -- the degree of cooperation but the outlook, you know, whether they are poised to move forward. Because it seems that there have been companies in the past that have gotten a conditional exemption in part because it looked like they were ready to make some real progress.

RECYCLING TECHNOLOGIES BRANCH MANAGER ORR: That's correct.

COMMITTEE MEMBER DANZINGER: So I guess, this is all happening in random order here. But it seems, my first thought is that the vehicle that was responsible for

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nearly all of Glad's progress over the past year, the ag film, is something that would otherwise demonstrate promise and potential in the coming year and beyond. But we're being told that it's all really in limbo, because we don't know, you know, whether you are going to be able to continue doing it, you may continue to get testing and variances, that ultimately prove whether we know in 6 months or 12 months or 18 months or whatever that you really are not going to be able to go that route. And we may find ourselves in 18 months, you all having to make a determination, okay, we've got to cut the cord on this, and we're going to have to go in another direction.

Is that a proper characterization? I don't want to put words in your mouth.

MR. McCABE: Not completely. We continue to search for PCM. We've looked at a number of suppliers. Every -- we met with them quarterly, and just about every quarterly meeting, they suggest another supplier. We met with them, couldn't find anything.

We have found another supplier, an ag film source. So that really doesn't help us. So we continue to look for PCM. We cannot depend on one supplier. We don't do that for any of our products.

Now, with regards to capitalization and expenditure, we mention that as an option. That has never

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slowed down our process or the incorporation of PCM. We simply threw that out to them because we knew that that was something that we were going to have to consider if we were to use PCM.

Now, we have other options. We can share capital. We can stop producing a bag and produce PCM in another bag. There's lots of options. But their presentation indicates that this is a barrier to us and it's not.

COMMITTEE MEMBER DANZINGER: Well, then I mean -- okay. I may be speaking out of scope. This may be something that the fellow Board members are not interested in.

But as a demonstration of your continuing commitment to seek out any opportunities to get PCM, whether it's ag or other sources, are you inclined to accept an option that establishes a targeted PCM, such as the one that Pactiv decided that they didn't want to go with?

MR. McCABE: Unfortunately, knowing our position, which is, we're still struggling to utilize this material, and that we're halfway through this year, I don't think we can stand up here and provide any quote. It's not reasonable at this point.

BOARD MEMBER CHESBRO: Mr. Chair?

COMMITTEE MEMBER DANZINGER: Yes.

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BOARD MEMBER CHESBRO: You described your attempts from sort of a reactive standpoint that you have said isn't it available, and the ones that either no or it's come back in a way that is not acceptable from the suppliers.

In other aspects of your business, if you have a specification that you need to meet, do you accept from suppliers that no, that's not available, or do you say, "This is what we need," so find a supplier who will work to come up with a system to deliver what it is you need? It just doesn't sound like a typical business situation where you have something that your business requires you to have and you can't go out in the marketplace and find a way to find or procure a supplier who will supply to that specification, even if your first request may come back with, "No, we don't have anything with that available," or somebody gives you a sample and you say, "No, that doesn't meet the specification."

So I'm just curious why this is different than it would be -- and maybe I'm misunderstanding the way business works, your business works. But just seems, from what I understand business typically does -- from my many years ago when I was once in the private sector -- if you got -- especially in business of the size that you are talking, about you have some economic clout in the

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marketplace, and it seems like somebody -- you say, "This is what we need and we're willing to pay for it," somebody's going to find a way to provide it to you.

MR. McCABE: Sure, I think that's reasonable. That -- you know, you would go out and you would seek an optimal specification that would meet your product qualifications. And in that process that you identify, "Gee, the market doesn't have anything out there for me. We're going to have to do more research to refine those specifications."

And so we've done that. We've accepted raw materials that haven't met all the specifications, whether it's a high melt index or more moisture or things of that nature.

I think the history has shown, though, that these specifications are pretty minimal in order for us to be able to produce these bags, which apparently from a technical perspective is difficult. To blow these thin films, you need a high quality material.

BOARD MEMBER CHESBRO: I guess it just boggles my mind that all these years later and your able representative characterized it correctly -- I have been watching this for a long, long time -- that somehow or other, this market niche that's needed to support what your business and others need, has not developed, has not

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come to pass over time. And somehow or another, it hasn't been -- and I recognize that there's easier and cheaper uses for the material. I'm accepting that argument, that that's likely the case, that there's lower grade requirements for other uses of the material.

But it still doesn't convince me that there's not a way to find a procurer who will work with you to find a way -- I mean, a supplier. I keep saying "procurer." A supplier who will work with you to find a way to deliver the grade that's necessary to meet the requirements of the law.

MR. McCABE: Well, it's certainly not a monetary incentive that's causing us not to go out and look. Because the more PCM we can put in, the greater our profits. So from a business perspective, there's a driver right there.

Unfortunately, you can't do it. Unfortunately, the profit that we would make by even putting in the two and a half to 3 percent is going to get chewed up by us conducting the worker safety stuff. But we're going to continue to do. You know, regardless of where this is going, we're going to continue to work with our supplier, we're going to continue to look for other PCM. Because there's a good business decision.

COMMITTEE MEMBER DANZINGER: Okay. Thank you very

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much.

I've got a speaker slip from Laurie Hansen with Pactiv, if you would like to speak at this point.

MS. HANSEN: Thank you. Laurie Hansen representing Pactiv. And not only are you back watching us, the same two Lauries, but I have less wrinkles from all those years ago. More gray hair though.

(Laughter.)

MS. HANSEN: So thank you very much. Thank you very much, Board Members and staff. I would really like to extend my sincere appreciation by the company -- from the company that has worked on this all year, because they have met quarterly with us and spent a lot of time on phone calls and a lot of extra time calling suppliers and putting joint projects together to evaluate. From that standpoint, the suppliers that are out there, what they can provide, and then we went ahead and went through the testing and the process.

I would just like to take a minute and summarize some of the things that Pactiv did do this year, in 2006. We increased the number of contacts to 96. We've gone through the supplier list of California a couple of times now. We've hired an inside purchasing person, and this has been going on throughout 2006 to actually focus only on purchasing postconsumer. We worked with the Board. We

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identified, as a result of some of the our meetings with the Board staff, three new potential suppliers -- excuse me, from the meetings with the Board staff, ten potential suppliers and ended up going ahead and testing seven of those ten.

We have three potential suppliers identified. One is actually in the ordering stage and the other two are in the qualifying stage. We had one very serious supplier who we're ordering from that had a problem with heavy metals. And Pactiv actually went back and changed their product stewardship process, and changed our internal specifications to be able to stretch those standards so that we could use that material. And we have set an internal goal of increasing our purchasing by 1 million pounds by August.

And we really wanted to extend our appreciation again to the potential of having an exemption. But unfortunately, we're going to have to respectfully decline that. And the reason is, is because we do not want to be embarrassed when we can't meet a target because of the quality and the volume out there. And we don't want to embarrass you by hitting a target -- setting a target and not meeting it either.

So we would respectfully decline the exemption. But we would also request that the quarterly meetings

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continue so that staff remains apprised of what's going on at Pactiv and of our process. Or if there's a lack of process, then we can know also, long before this time next year.

So thank you. I'm happy to answer any questions.

COMMITTEE MEMBER DANZINGER: Yeah, I certainly support the quarterly meetings continuing. There was one bullet that you had here, among your documented efforts. The first one says, developed a stewardship system of certifying potential postconsumer resin suppliers.

Can you tell me what that involves? Because I'm curious whether any of that has anything to do with your comments, Wes, about going out there and trying to change, you know, what the suppliers can do to conform to what you need.

I mean, what does that mean, a stewardship system of certifying these folks?

MS. HANSEN: As I understand it, Pactiv has its own product stewardship. They have their own internal procedures on what they can use and what they can't use within their plants, the same as Glad as far as exposure and all of those issues.

They took some of those product stewardship outlined goals, moved them over to a new person and what they are doing is going out and working with the suppliers

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to steward that postconsumer material and put it through their system. I don't know all the details. And in fact, one of those calls with the staff, that was pretty detailed out.

But they are making the efforts to work with the suppliers as I understand it.

COMMITTEE MEMBER DANZINGER: Was Pactiv's experience also that they had identified a substantial number of suppliers but had only found that, like, one could provide them what they needed or --

MS. HANSEN: Those are our product specifications. Those are the specifications to be able to use the postconsumer. They are the testing standards. It's the melt index. It's how the postconsumer material has to perform in blowing the bubbles in the manufacturing process.

COMMITTEE MEMBER DANZINGER: Okay. Okay.

MS. HANSEN: And all of the other product stewardship questions, I can get you the answers. But I don't have them all. That's for sure.

COMMITTEE MEMBER DANZINGER: Any other questions?

Thanks.

BOARD MEMBER CHESBRO: Mr. Chair, I will decline to make any jokes about Ground Hog Day, but I do want to ask the staff though to make sure I understand and direct

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the other committee members -- the committee members, I'm not a committee member -- to page -- the slide on page 5.

And make sure I understand it correctly. Does this say that there were five applications for exemptions, but there are 28 companies that are in compliance that are, in fact, using about twice as much plastic as those applying for exemptions are saying they are currently using? Is that --

MS. INGLE: Yes, you are correct. We did a comparison of the 28 companies that were in compliance and the five companies that requested exemptions. And we found that the sales were twice as much, almost, by the compliant companies. And yet, they had used almost the same amount of PCM. So what we're noticing is that the 3,000 or the 2,955, that's the number of tons that's needed for the exemption companies to be in compliance on an overall basis.

BOARD MEMBER CHESBRO: Well, Mr. Chair and Committee Members, I would just submit that those 28 companies have found a way to find the material in the marketplace.

COMMITTEE MEMBER DANZINGER: Well, I would agree wholeheartedly. And again, even in a broad general view, it's a challenging law in some respects. Someone may be able to make a debatable point that it's unworkable in

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some respect. I don't know.

But again, last year, I know where I was on this last year. I'm not much different this year. Last year, in fact, I think staff even had two that they were recommending a conditional exemption, that we didn't agree with. And we denied the exemption.

I mean, after so long, we have to put some degree of focus on outcomes. We have to look at that. And we can't pour over the same stuff over and over.

Now, that's not to deny that there are some market obstructions out there. But it seems like there are some folks out there. Maybe they are doing that kind of stuff, where they are going to suppliers and they are saying, "Okay, you are producing this. We need this. You know, you want our business. Give us this." And apparently, it's working for those folks.

Laurie, did you have some more comments?

MS. NELSON: Just a point of clarification. That is a different kind of resin probably. It's HTPE as opposed to linear low density so they can use cartons and those sorts of things.

COMMITTEE MEMBER DANZINGER: I'm not denying that. You know, it's probably an issue to take up with the legislature. I'm sure you are sick of hearing people say that to you. I'm sure as some people are sick of seeing

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the item come back.

Okay. Well, then, let's -- let me take a look at these resolutions. Here's -- I'm going to move Resolution 2007-142 to be revised to add Pactiv to the list of those that, you know, under that seventh "whereas," denying the exemption.

COMMITTEE CHAIRPERSON MULÉ: Second.

COMMITTEE MEMBER DANZINGER: It's been moved and seconded.

Call the role.

SECRETARY DUCLO: Member Danzinger?

COMMITTEE MEMBER DANZINGER: Aye.

SECRETARY DUCLO: Chair Mulé?

COMMITTEE CHAIRPERSON MULÉ: Aye.

COMMITTEE MEMBER DANZINGER: Okay. Then I'm going to move Resolution 2007-143, striking Pactiv for conditional exemption under option two.

COMMITTEE CHAIRPERSON MULÉ: Second.

COMMITTEE MEMBER DANZINGER: Been moved and seconded.

Call the roll.

SECRETARY DUCLO: Member Danzinger?

COMMITTEE MEMBER DANZINGER: Aye.

SECRETARY DUCLO: Chair Mulé?

COMMITTEE CHAIRPERSON MULÉ: Aye.

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COMMITTEE MEMBER DANZINGER: Okay. Motion passes. This will go to the full Board on consent.

P&C PROGRAM DIRECTOR RAUH: Member Danzinger? We will be working with the last company to make sure that they --

COMMITTEE MEMBER DANZINGER: Poly America?

P&C PROGRAM DIRECTOR RAUH: Poly America. And so we may be coming back to you, asking that the resolution be pulled.

COMMITTEE MEMBER DANZINGER: Yeah, if the number doesn't jive [sic], then we can pull that and deal with that.

Okay. Do we have any other public comment? Okay. Our business being completed, we adjourn the meeting.

(Thereupon the California Integrated Waste Management Board, Permitting and Compliance Committee meeting adjourned at 4:40 p.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. KENYON, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California Integrated Waste Management Board, Permitting & Compliance Committee meeting was reported in shorthand by me, Kathryn S. Kenyon, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of June, 2007.

KATHRYN S. KENYON, CSR
Certified Shorthand Reporter
License No. 13061