MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

Joe Serna Jr., CalEPA Building

1001 I Street

2nd Floor

Coastal Hearing Room

Sacramento, California

Tuesday, May 19, 2009

9:41 a.m.

HE SUK JONG
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12918

A P P E A R A N C E S

BOARD MEMBERS

Ms. Margo Reid Brown, Chair

Ms. Sheila Kuehl

Mr. John Laird

Ms. Carole Migden

Ms. Rosalie Mulé

STAFF

Mr. Mark Leary

Mr. Elliot Block

Ms. Tracey Cottingim

Ms. Kristen Garner

Mr. Howard Levenson

Mr. Bill Orr

Ms. Rubia Packard

Mr. Ted Rauh

ALSO PRESENT

Mr. Glenn Acosta

Mr. Harllee Branch

Ms. Grace Chan

Mr. Jeff Danziger

Mr. Evan Edgar

Mr. Tom Estes
Ms. Mindy Fox
Ms. Elizabeth Huber
Mr. Tim Gage
Mr. Chuck Helget
Mr. Jeff Hunts
Mr. Sidney Israels
Mr. Nick Lapis
Mr. Bill Magavern
Mr. Paul Miller
Mr. Michael Mohajer
Ms. Rachel Oster
Mr. Gary Petersen
Ms. Kyra Ross
Mr. Robert Shantz
Mr. Scott Smithline
Mr. Kent Stoddard
Mr. Larry Sweetser
Mr. David Tieu
Mr. Joaquin Wright

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1 CHAIRPERSON BROWN: I'd like to call this
2 meeting to order and ask Kristen to call the roll.
3 EXECUTIVE ASSISTANT GARNER: Kuehl?
4 BOARD MEMBER KUEHL: Here.
5 EXECUTIVE ASSISTANT GARNER: Laird?
6 BOARD MEMBER LAIRD: Here.
7 EXECUTIVE ASSISTANT GARNER: Migden?
8 BOARD MEMBER MIGDEN: Here.
9 EXECUTIVE ASSISTANT GARNER: Mulé?
10 BOARD MEMBER MULÉ: Here.
11 EXECUTIVE ASSISTANT GARNER: Brown?
12 CHAIRPERSON BROWN: Here.
13 Any ex partes to report?
14 (No audible response.)
15 CHAIRPERSON BROWN: I'd like to remind all
16 of our audience participants and Board Members to turn
17 your phones to the vibrate mode and ask everybody
18 to -- I'll announce we are going into closed session
19 at the conclusion of our regular business -- and ask
20 everybody to stand for the Pledge of Allegiance.
21 (Whereupon, the Pledge of Allegiance was recited in
22 unison.)
23 CHAIRPERSON BROWN: Thank you. I'll just
24 quickly announce, because I skipped over that part,
25 there's agendas in the back of the room. If anybody

wants to speak to any items, please bring the speaker slip up to the front.

And we're going to kick off this morning with a very special presentation. A somewhat bittersweet morning, but we have invited back Board Member Gary Petersen to pay special tribute to him for the time that -- and the contribution that he made to this Board.

So, Gary, we're going to ask you to stand at the microphone.

(Music playing in the background.)

MR. PETERSEN: (Inaudible.)

CHAIRPERSON BROWN: Pardon me?

MR. PETERSEN: (Inaudible.)

CHAIRPERSON BROWN: Stand at the microphone.

MR. PETERSEN: Okay. Here I am.

CHAIRPERSON BROWN: Okay. I can't see right now.

MR. PETERSEN: Is this on or off? This is on.

CHAIRPERSON BROWN: It's on.

MR. PETERSEN: I'm ready.

CHAIRPERSON BROWN: So we're going to hear everything.

So special presentation, and we have a

1 resolution for Gary, so I'm going to read part of it
2 while we do a little screen thing.
3 MR. PETERSEN: Great.
4 CHAIRPERSON BROWN: Whereas -- are we ready?
5 What happened to the music? It says "music" before I
6 start reading.
7 Whereas, the California Integrated Waste
8 Management Board was established to oversee
9 implementation of the nation's most aggressive waste
10 diversion mandates while leading the effort to create
11 a sustainable economy driven by markets for new
12 products made from recycled material resulting in a
13 safer, healthier environment.
14 And, whereas, in the Board's 19-year
15 history, perhaps no Board Member has embodied the
16 recycling ethic more than Gary Petersen.
17 MR. PETERSEN: Oh, that's very nice.
18 CHAIRPERSON BROWN: And, whereas, Gary built
19 a small --
20 MR. PETERSEN: Oh, shit.
21 CHAIRPERSON BROWN: -- empire from the
22 wheels of his VW bus up, managing along the way to
23 outgrow his long hair and leisure suit.
24 (Laughter from audience.)
25 CHAIRPERSON BROWN: Whereas, Gary played a

1 pivotal and colorful role in California's recycling
2 history, co-founding both the California Resource
3 Recovery Association and the National Recycling
4 Association, facilitating enactment of the California
5 Beverage Container Redemption Act and co-writing the
6 California recycling policy that ultimately led to the
7 enactment of AB 939, the Integrated Waste Management
8 Act.
9 And, whereas, Gary has advised governors and
10 presidents on recycling policy and sustainability, as
11 well as influential personalities, hence his
12 reputation as a "recycler to the stars."
13 And, whereas, Gary brought a perspective to
14 the Board's deliberations that was grounded in real
15 street smarts about recycling and was unfailingly fair
16 in his considerations but firm in his convictions.
17 And, whereas, Gary took strong interest in
18 and helped to shape the Board's approach to many
19 issues, including recycling market development,
20 conversion technology, used oil recycling, marine
21 debris, and everything plastic, especially plastic
22 bags, and the lasting relationship that he personally
23 established between the Board and the Environmental
24 Media Association.
25 And, whereas, the Board will miss his

1 dynamism of a person, who can only be described as a
2 force of nature, who relentlessly pursued an expansion
3 of California's recycling revolution, who wanted to
4 see our success reflected in the new name California
5 Recycling Board, and who incredibly found the time to
6 serve also as the Board's Commissioner of Fun.
7 Now, therefore, be it resolved that the
8 California Integrated Waste Management Board and Staff
9 thank Gary Petersen for his leadership and his
10 friendship, wish him many happy years of poking
11 around, and proclaim May 19 as the California
12 Recycling Board Day in his honor.
13 MR. PETERSEN: Wow. How about that?
14 (Applause.)
15 MR. PETERSEN: I'll get you for this. I
16 will get you for this.
17 Well, is it my turn?
18 CHAIRPERSON BROWN: No, I think there might
19 be a couple of people on the dais who want to say a
20 couple of words first, and then we'll let you chime
21 in.
22 MR. PETERSEN: I'll be quiet.
23 CHAIRPERSON BROWN: Anybody want to be the
24 first up at bat for Gary?
25 BOARD MEMBER MULÉ: Well, let me be the

first.

MR. PETERSEN: There you go, Rosalie.

BOARD MEMBER MULÉ: Here we go. Let's see. Gary, when you were first being considered for the Board, Chris and I were on our way to San Francisco for a radio interview, and you called us and you had reminded me when I first met you --

MR. PETERSEN: I was going to talk about that a little later.

BOARD MEMBER MULÉ: Okay. Well, then I'll just mention it --

MR. PETERSEN: Okay.

BOARD MEMBER MULÉ: -- which I had completely forgotten that Gary and I actually met each other in Hawaii on a sunset cruise at --

MR. PETERSEN: That's right, Rosalie, over drinks.

BOARD MEMBER MULÉ: -- over drinks, of course.

MR. PETERSEN: Do you remember?

BOARD MEMBER MULÉ: With umbrellas in them; fancy drinks with the umbrellas in them.

MR. PETERSEN: We had everything.

BOARD MEMBER: And I had completely forgotten that Gary and I had met at a recycling

1 conference, the Hawaii's Recycles Conference when I
2 was with BFI back then and you were with Recycle
3 America.
4 And then I recalled that as we had that
5 conversation, and it just kind of brought back all
6 these memories. And then the thought that I would be
7 able to work once again with you was very intriguing
8 to me because, as I recalled, this guy was full of
9 energy, so to speak.
10 And I have to tell you, Gary, I miss you
11 very much here at the Board. I miss your brilliance.
12 You're -- really, you are a brilliant person.
13 MR. PETERSEN: Tell my wife that, will you?
14 BOARD MEMBER MULÉ: Your knowledge of this
15 industry, the historical perspective you have is
16 something that I value and cherish, because you go
17 back. You are one of the original recyclers, you
18 know, and I tell everybody that. And I just miss
19 your -- again, your energy, your perspective on things
20 because what you brought to this Board was not only
21 the passion for recycling and protecting the
22 environment, you also brought a sense of practicality
23 because of your involvement in the business aspect of
24 recycling. And so you brought such a unique
25 perspective as the member in the environmental seat,

1 and I just don't know of anyone that could fill your
2 shoes in that seat.
3 And so for me, I just want to thank you for
4 the good times we had while you were here, and I miss
5 you already terribly, but that doesn't mean that we
6 won't stay in touch. So thank you for all of your
7 work here at the Board and the work that you will
8 continue to do because I know you're not stopping, and
9 so I really look forward to working with you in the
10 future. Thanks, Gary.
11 MR. PETERSEN: Thanks, Rosie. Wow.
12 CHAIRPERSON BROWN: John?
13 BOARD MEMBER LAIRD: When everyone was
14 giving you a standing ovation, I wanted to start
15 chanting "Four more years, four more years" because I
16 think it's a crime that you're not doing that, and I
17 feel like it was an incredible lost experience to not
18 be able to serve more than a few months with you
19 because I could learn a lot.
20 MR. PETERSEN: Thank you, John. This would
21 be the riot side of the dais, though.
22 BOARD MEMBER LAIRD: Exactly. I think it
23 was just a very overt move to break up the
24 troublemakers.
25 MR. PETERSEN: I agree.

1 BOARD MEMBER LAIRD: And the interesting
2 thing is when I saw that picture of you, it's like I
3 thought, "Well, you know, maybe I knew him after all
4 in that era."
5 (Laughter from audience.)
6 BOARD MEMBER LAIRD: And I think the
7 interesting thing that I take away -- and, by the way,
8 thank you for the recycled furniture. It's got a good
9 home, and it was passed on with the love with which it
10 used to live.
11 MR. PETERSEN: Perfect.
12 BOARD MEMBER LAIRD: But one of the
13 interesting things about getting older is that you
14 actually get a chance to see people that made life
15 decisions earlier in life to make a difference, to
16 follow their dream of just making an overall
17 difference in the world around us. And what you saw
18 in that stream of pictures is somebody who's done it
19 and somebody who really decided they were going to
20 change the recycling world and make it an ethic and
21 somebody who spent his entire adult life doing that.
22 And so while we're here to thank you for the service
23 on the Board, I would just say thanks for living out
24 your dream and making such a difference for everybody
25 around you.

1 MR. PETERSEN: Thank you, John. Very nice.
2 CHAIRPERSON BROWN: Very nice. Thank you.
3 Sheila?
4 BOARD MEMBER KUEHL: Well, I feel the same
5 way, Gary, about the loss. It's a personal loss not
6 to be able to serve with you and benefit here on the
7 Board from, you know, really, a lifetime of devotion
8 to the ideal of recycling from the very beginning,
9 from the notion that at the 30,000 foot level what you
10 do in promoting recycling is really saving the earth,
11 and that's not lost because you're still doing that
12 work and you will continue to. But I think you can
13 see that you're irreplaceable because you haven't been
14 replaced. And my hope is that a very misguided
15 governor who thinks that he was punishing the Board by
16 not reappointing you but actually was punishing the
17 people of California might just wake up to what this
18 Board does and what it needs, and what it needs is
19 your reappointment, but there's nothing you can do
20 about that.
21 So to honor you, I want to say that I intend
22 to try to keep in as much touch as possible to seek
23 your advice on it because the Board is severely
24 diminished without your reappointment. And,
25 especially, the one person who is totally identified

1 from the statute on with the forward-thinking that
2 recycling and all of the attendant, you know,
3 keep-it-out-of-the-landfill ideas really embody. So I
4 honor your service and look forward to some, hopefully
5 soon, awakening so that we can have you back on the
6 Board. Whether you would want to or not, that would
7 be up to you, but thank you so much.
8 MR. PETERSEN: That's a tough one.
9 BOARD MEMBER KUEHL: Thank you so much for
10 all your service.
11 MR. PETERSEN: Thank you, Sheila. Very
12 sweet. Thank you. Thank you.
13 CHAIRPERSON BROWN: Carol?
14 MR. PETERSEN: Hi, Carol.
15 BOARD MEMBER MIGDEN: Howdy.
16 MR. PETERSEN: Howdy.
17 BOARD MEMBER MIGDEN: So I think I've
18 replaced you as the resident wisecracker.
19 MR. PETERSEN: Good.
20 BOARD MEMBER MIGDEN: And I'm altogether not
21 comfortable with that as a singular operative because
22 I did, although we had brief overlap, very much enjoy
23 observing how you comported yourself either raucously
24 or intelligently, and it seemed to me there was always
25 a great range in performance. And just look at how

1 difficult it is to get through this tribute in a
2 one-way fashion. You have a irresistible impulse to
3 interrupt us even during the most complimentary times.
4 MR. PETERSEN: Pretty good, huh? Us
5 recyclers know how to do it.
6 BOARD MEMBER MIGDEN: So I think that's
7 worth noticing, and we will begin to diagram your
8 personality on the Board.
9 But, nevertheless, I looked forward very
10 much to joining this Board to learn from you and
11 really observe firsthand just a dedicated real
12 recycler, as we say, by profession, by advocacy, by
13 inclination, by good virtue. And I feel it's in a
14 learning curve, and I'm hopeful -- I'm a bit
15 distressed. Today is election day, and things may be
16 occurring that aren't part of our projected path. And
17 this Board as well as its members and its department
18 have taken quite a shellacking by not looking at
19 consequential, often as a punching bag for -- and I
20 want to say to everyone, you know, I'm proud to be a
21 part of it and be part of the good works that we do
22 here even if we get subject to some buffoonery now and
23 then that is ill-deserved. And I think you're a
24 sterling example and have been a kind of exemplary
25 Board Member that I would aspire to emulate. So I

1 feel like a little bit, unlike Rosalie, that I didn't
2 get a chance to know you that well, and I certainly
3 feel the absence of your good cheer.
4 MR. PETERSEN: Well, call me up. We'll
5 talk.
6 BOARD MEMBER MIGDEN: Yeah, I think you
7 ignored a few e-mails of mine, but that's neither here
8 nor there.
9 MR. PETERSEN: Ask Chris and e-mails.
10 BOARD MEMBER MIGDEN: Neither here nor
11 there, you know. So, I don't know, I'll try again.
12 But, in any event, I feel like you're, just
13 by looking here, part of the family and part of a
14 very, very prominent part of the history and what
15 makes this, I think, a very undervalued but
16 well-operating Board and agency, and that part of your
17 performance and guidance helped to bring us to some
18 tremendous successes. Thank you.
19 MR. PETERSEN: Thank you, Carol. That was
20 very nice. Thank you.
21 Madam Chair?
22 CHAIRPERSON BROWN: Well, Gary, there's been
23 so much said that it would be hard to find something
24 unique and different.
25 MR. PETERSEN: My pockets are heavy.

1 CHAIRPERSON BROWN: You know, at this time
2 of year with the traditional school year ending, we
3 talk about the contributions teachers make to the life
4 of the children. And in a very small way, Gary, as I
5 came on to the Board, you were my teacher. You showed
6 me what I needed to know to contribute to this
7 organization. And for that, I will be forever
8 grateful because I wouldn't know what I know about the
9 contributions that recycling and what we do would make
10 without your interpretation and your policy direction
11 and your guidance. You have tremendous knowledge, and
12 it's ironic that the bill that you started with that
13 was so passionate is numbered 2020, because you had
14 clear vision for the future.
15 And in the implementation and charting the
16 course for 939, you set this state head and shoulders
17 above any other state in this nation. And for that
18 contribution, you have created a tremendous legacy in
19 California. And I think we all -- and I can speak for
20 myself, but I think all of us are tremendously
21 grateful for the contribution that you've made, and I
22 feel very fortunate to have been a part of the Board
23 when you served here and to learn from you.
24 We will definitely miss your policy
25 perspective and knowledge up from this dais as we

1 contemplate some of the issues that are before us in
2 the next decade and the implementation of AB 32. So
3 we will call upon you. We will look for your guidance
4 and advocacy -- continued advocacy at our meetings.
5 So thank you for being here. We will miss you
6 tremendously.
7 MR. PETERSEN: Thanks. Margo, that's
8 amazing. Thank you, everybody. Is it my turn?
9 CHAIRPERSON BROWN: I guess it's your turn.
10 MR. PETERSEN: Okay. First of all, I love
11 all you guys, and let's just put this all together.
12 This is the best agency in the state, bar none. And
13 why? Because we're all out on the street doing stuff.
14 And with the new rules and all the staff getting on
15 the street, this is really important. So I'm really
16 proud and I'm really grateful to have been able to
17 work with all of you.
18 And for the Board, where shall I start? Oh,
19 John. Well, John and Sheila and Carol, think about
20 what we've got sitting here is the legislatures always
21 used to pick on us, maybe still does, and -- we have
22 to work on the Governor's office some more. But with
23 these primo legislatures sitting here, across the
24 street doesn't have a chance, and I'd like to see more
25 of that happen.

But before you go across the street, we have to change the name of this Board. I've tried for three -- how long was I here? -- for three-and-a-half years, and we've got to get that changed. It's silly. Waste Refuse and Recycling News is now the new name for that. And NorCal changed their name to Recology. We got to get going here.

Anyway, John, it was great. It's too bad I can't sit next to you up there and cause trouble.

Rosalie, I love you. You did not tell them about the moonlight -- I mean, the sunset dinner we had. You didn't bring that up.

BOARD MEMBER MULÉ: You're going to embarrass me.

MR. PETERSEN: Yeah, I'm going to embarrass you. It was perfect.

And, Jeff -- well, she made me -- I won't even tell you how many mai tais she made me drink. It was horrible.

BOARD MEMBER MULÉ: That's our secret, Gary.

MR. PETERSEN: And we're off the beach at Waikiki. Unbelievable. You didn't tell them about that part. Shame on you, Rosalie. You'll never make a reporter.

Hey, Madman Jeff. Hey, Jeff. Hey, so it's

1 been wonderful. Bravo. Thank you. And you're
2 brilliant, and I really love working with you. Thank
3 you.
4 Carol, I'm sorry we're not going to be able
5 to serve together and do things. But, definitely, I'm
6 around if you want some advice or, if you want me to
7 nag you about something, I will.
8 And, Sheila, we go way back to L.A. days,
9 and you're a pro, and I love you to bits. And so this
10 is really great, and thank you for what you said.
11 Now, Madam Chair, I'm going to miss you too;
12 I'm going to miss all of you. But thank you. This is
13 great.
14 It's nice to have the microphone where I can
15 say whatever the hell I want. So I have to tell you
16 I'm here today -- I was torn because today is
17 May 19th, and May 19th in Los Angeles is -- my
18 softball team is the Camel Shits. And it's Camel Shit
19 Day in L.A., and it's by proclamation of the city
20 council and the mayor's office in L.A. So they're
21 having a party, but I decided to come to this party,
22 so I just want you to know that.
23 Now, for some of the staff. Howard, I don't
24 like you. I never have. And you have made this so
25 much fun, and you are such a prince.

1 Now, I've known him -- well, he's an
2 antique, but I've known him for a long, long time, and
3 he's been wonderful to work with.
4 Mindy and Tom, amazing. Elizabeth, Ted,
5 thank you. Mark, you guys have all been great.
6 Thanks, Counselor. You kept me out of trouble.
7 And now for you, Pat -- and I would like to
8 name everybody here, Corky, all of you guys, but --
9 oh, there's Paul. Hi, Paul.
10 Anyway, Chris Peck -- I'm going to burn you
11 for this -- what a prince. We've been together and
12 friends for 35 years now. And I wouldn't have come
13 here -- I called him up, and I said the governor wants
14 me to do this. Tamans (phonetic) all over me, yada,
15 yada, yada. And I said, "Peck, what are you doing?"
16 He says, "Well, I work in Government
17 Affairs."
18 I says, "You want to be my advisor, and you
19 want to do this together? Because if you don't say
20 yes, I'm not coming." He said yes. And it was just a
21 wonderful, wonderful time. He is brilliant in what he
22 knows and how to work this town. I'm a recycler. I
23 come here, I don't know what I'm doing. But, anyway,
24 we had a grand run, and it was wonderful, and you are
25 the best.

So with that, I guess I'm done, and I want to thank you all. You're a hoot, and I love you all. Thanks.

(Music playing.)

CHAIRPERSON BROWN: Okay. I think you all somewhat know the drill. We're going to do some photos with Gary, we've got a resolution to present, and we've got cake. What a surprise. It's cake for Gary. So we'll invite you guys to meet us out in the lobby for cake. We're going to take a couple quick photos, and then we will start with the meeting shortly.

(Music playing.)

(Recess from 10:06 a.m. to 10:29 a.m.)

CHAIRPERSON BROWN: For the record, I will note that all Board Members are present on the dais. And I think the next item -- do we have any ex partes to report from our caking.

(No response.)

CHAIRPERSON BROWN: Everybody is up-to-date. And then next is our Executive Director's report.

Mark?

EXECUTIVE DIRECTOR LEARY: Thank you, Madam Chair. Good morning. Good morning, Members.

A quick heads up on a couple items we'll be

1 bringing to you in the next few months. We haven't
2 forgotten about that item regarding the north-south
3 split in terms of grant -- am I not on? Can you hear
4 me okay? -- about the grant fund split, the
5 north-south split relative to grant program awards.
6 Staff will be giving you a summary how the split is
7 used. In finalizing, there will probably be some
8 options here in item in the very near future.
9 We'll also be addressing several other grant
10 requirements and requesting some direction from the
11 Board. These additional items will be brought to you
12 as a result of the work being done as part of our
13 internal grant process improvement work group headed
14 by Rubia and Shirley Willd-Wagner. The work group is
15 looking at a number of areas with the purpose of
16 improving grant processing and management, fiscal
17 accountability, and grant data collection and tracking
18 and addressing general stakeholder concerns.
19 Breaking here to the really good news, last
20 Thursday -- where is Roni? Roni come back in?
21 Hey, Evan, do me a favor and ask Roni Java
22 to come in if she's still out there. Oh, she's got.
23 Lee's got it.
24 Last Thursday the -- I'll talk slowly
25 here -- the State Information Officers Council

1 presented its Annual Lifetime Achievement Award to
2 Roni Java of our staff. And I'm going to give her two
3 minutes to get back in here.
4 On a separate note, on more awards, I also
5 wanted to let you know that the Board's 3,000 Mile
6 Myth Campaign won a Silver Award from the State
7 Information Officers Council and a Merit Award from
8 the International Association of Business
9 Communicators. We give thanks to John Myers and Jamie
10 Cameron-Harley -- Jamie was here earlier also -- for
11 their efforts on that project.
12 She's not out there. Anyway, I won't
13 embarrass Roni by calling her out, but so you know,
14 she got the Lifetime Achievement Award of the State
15 Information Officers Council for 20 years of service
16 to the State of California as a Public Information
17 Officer, writer, editor, photographer, photo
18 researcher, event coordinator, Web and publications
19 expert, and project manager. And of those 20 years,
20 more than half were spent here at the California
21 Integrated Waste Management Board. We want to
22 recognize Roni for her great achievement during --
23 CHAIRPERSON BROWN: There she is.
24 (Applause.)
25 CHAIRPERSON BROWN: Perfect timing, Roni.

1 EXECUTIVE DIRECTOR LEARY: Roni, I just was
2 reporting to the Board as part of my Executive
3 Director's report about your Lifetime Achievement
4 Award from the State Information Officers Council last
5 week, and I guess this comes as a surprise to you.
6 (Applause.)
7 EXECUTIVE DIRECTOR LEARY: Let me speak for
8 all of us when I say I know how much we appreciate
9 your talents and skills. We've enjoyed working with
10 you these past years and hope you will continue to
11 lend us those skills, as I'm sure you will; no doubt
12 in my mind. Congratulations on your Lifetime
13 Achievement Award.
14 MS. JAVA: Thank you.
15 EXECUTIVE DIRECTOR LEARY: No need to say
16 anything. I just wanted to make sure the Board was
17 aware.
18 MS. JAVA: Thank you.
19 EXECUTIVE DIRECTOR LEARY: And with that,
20 Madam Chair, I conclude my report.
21 CHAIRPERSON BROWN: Thank you, Mark.
22 Any questions?
23 (No response.)
24 CHAIRPERSON BROWN: Okay. We have a very
25 full agenda, so we will jump right in. And for

1 planning purposes for our audience participants, I
2 will let you know that we intend to work straight
3 through to the end of the agenda; we will not be
4 breaking for lunch. And if you are feeling faint,
5 please feel free to take a break and go down to the
6 cafeteria and bring some lunch back because we will
7 probably have lunch brought in when we start feeling
8 faint.
9 So the consent agenda items 1, 2, 3, and 13
10 are on the consent agenda.
11 Any Members wish to pull any items?
12 BOARD MEMBER MIGDEN: So move.
13 BOARD MEMBER LAIRD: Second.
14 CHAIRPERSON BROWN: It's been moved by
15 Member Migden, seconded by Member Laird.
16 Kristen, can you call the roll?
17 EXECUTIVE ASSISTANT GARNER: Kuehl?
18 BOARD MEMBER KUEHL: Aye.
19 EXECUTIVE ASSISTANT GARNER: Laird?
20 BOARD MEMBER LAIRD: Aye.
21 EXECUTIVE ASSISTANT GARNER: Migden?
22 BOARD MEMBER MIGDEN: Aye.
23 EXECUTIVE ASSISTANT GARNER: Mulé?
24 BOARD MEMBER MULÉ: Aye.
25 EXECUTIVE ASSISTANT GARNER: Brown?

1 CHAIRPERSON BROWN: Aye.
2 The consent agenda passes.
3 Items 11 and 14 will be heard on fiscal
4 consent. Items 9, 10, and 12 were heard in committee
5 only. No items were pulled; Item 4 revised; 5
6 revised; 6, 7 and 8 will be heard by the full Board.
7 So we'll move first to permitting and
8 compliance and ask Committee Chair Mulé if you have a
9 brief committee report.
10 BOARD MEMBER MULÉ: Very brief. Thank you,
11 Madam Chair. We did hear three items for permits.
12 All were approved and just placed on the consent
13 agenda. Items 4 and 5 were moved to the full Board,
14 and items 6, 7, and 8 are to be heard here at the full
15 Board as well. That concludes my report. Thank you.
16 CHAIRPERSON BROWN: Okay. Thank you.
17 Strategic Policy, we had a couple of
18 committee items and one item that will be heard on
19 fiscal consent. And in the Market Development and
20 Sustainability Committee, we will hear fiscal consent
21 item. And I think we'll move first, quickly, to our
22 first fiscal consent item, which is 11.
23 Howard?
24 MR. LEVENSON: Thank you, Madam Chair.
25 Howard Levenson with the Sustainability Program. And

1 Item 11 is your consideration of adopting the biennial
2 update of the five-year tire plan. And we've had
3 extensive discussion on this plan in both February and
4 at last week's committee meeting.
5 As you know, statute requires the Board to
6 update this plan and adopt it every two years. It's
7 due for that update, and we've had extensive
8 discussions and revisions in February. You provided
9 us with a number of specific changes that we
10 incorporated into this new revision.
11 Last week's committee meeting, you didn't
12 have any additional changes, but you did ask us when
13 we do send this forward to include a cover letter that
14 addresses some of the remaining funding issues and the
15 unexpended -- the funds for which we don't have
16 expenditure authority, and so we intend to follow that
17 direction when we do finally transmit that.
18 So Staff recommends -- one other thing I did
19 want to say just for the record and everybody's
20 listening is to indicate once again that we will be
21 conducting a program evaluation. We will be coming
22 back to you in August with a presentation -- a
23 detailed presentation on market trends relative to all
24 the different tire uses and a layout of that
25 evaluation process and timeline.

1 So with that, Staff recommends that you
2 adopt resolution 2009-70.
3 CHAIRPERSON BROWN: Thank you, Howard.
4 Any questions?
5 Do we have a motion?
6 BOARD MEMBER MULÉ: Madam Chair, I'd like to
7 move Resolution 2009-70.
8 BOARD MEMBER KUEHL: Seconded.
9 CHAIRPERSON BROWN: It's been moved by
10 Member Mulé and seconded by Member Kuehl.
11 Kristen, can you call the roll?
12 EXECUTIVE ASSISTANT GARNER: Kuehl?
13 BOARD MEMBER KUEHL: Aye.
14 EXECUTIVE ASSISTANT GARNER: Laird?
15 BOARD MEMBER LAIRD: Aye.
16 EXECUTIVE ASSISTANT GARNER: Migden:
17 BOARD MEMBER MIGDEN: Aye.
18 EXECUTIVE ASSISTANT GARNER: Mulé?
19 BOARD MEMBER MULÉ: Aye.
20 EXECUTIVE ASSISTANT GARNER: Brown?
21 CHAIRPERSON BROWN: Aye.
22 The motion passes, and we'll move next to
23 Item 14.
24 Howard?
25 MR. LEVENSON: Thank you again, Madam Chair.

Item 14 has a very lengthy title, but it concerns the use of fiscal year 09/10 funds to provide funding for the eligible applicants in the '08 and '09 cycles for the Tire-Derived Product Grant Program and the Rubberized Asphalt Concrete Grant Program.

This would basically allow us to fund almost six dozen additional applicants for these kinds of projects, get that money out on the streets very quickly, which I think is very beneficial for both our diversion efforts and for the general economic climate that we're in.

Staff recommends that you adopt Resolution 2009-62. Thank you.

CHAIRPERSON BROWN: Thank you, Howard.

Any questions?

BOARD MEMBER MULÉ: Madam Chair, I'd like to move Resolution 2009-62.

BOARD MEMBER LAIRD: Second.

CHAIRPERSON BROWN: It's been moved by Member Mulé, seconded by Member Laird.

Kristen, can you call the roll?

EXECUTIVE ASSISTANT GARNER: Kuehl?

BOARD MEMBER KUEHL: Aye.

EXECUTIVE ASSISTANT GARNER: Laird?

BOARD MEMBER LAIRD: Aye.

1 EXECUTIVE ASSISTANT GARNER: Migden?
2 BOARD MEMBER MIGDEN: Aye.
3 EXECUTIVE ASSISTANT GARNER: Mulé?
4 BOARD MEMBER MULÉ: Aye.
5 EXECUTIVE ASSISTANT GARNER: Brown?
6 CHAIRPERSON BROWN: Aye.
7 The resolution passes. Thank you all.
8 And we'll move next to full Board Item 4.
9 Ted.
10 MR. RAUH: Thank you, Chair Brown. I'm Ted
11 Rauh with the Waste Compliance and Mitigation program.
12 Item 4 revised is a request that the Board consider
13 and improve a contract in the amount of $250,000 with
14 Environmental Science Associates to carry out the
15 Board's approved statement of work to develop a
16 statewide program environmental impact report for
17 anaerobic digestion facilities.
18 The Board has established Strategic
19 Directive 6.1. It calls for a 50 percent reduction in
20 the amount of organics being disposed in landfills by
21 2020. Anaerobic digestion facilities can play a
22 significant role in achieving this directive.
23 The concept of developing a program, EIR,
24 for anaerobic digestion facilities was identified
25 during the organics roadmap discussions in 2008 as one

1 of the key actions the Board could take to help
2 facilitate and overcome barriers to citing organic
3 diversion facilities.
4 At a January 2009 meeting, the Board
5 approved an allocation of $250,000 for this work. And
6 during its February 2009 meeting, the Board approved
7 the scope of work.
8 If approved by the Board, the contractor
9 will prepare and distribute a program Environmental
10 Impact Report which assesses the impact of citing new
11 and expanding existing anaerobic digestion facilities
12 in California. When completed, the document will
13 reduce the need for deflective reviews and should
14 expedite site-specific environmental documentation
15 that may be required for CEQA compliance by local lead
16 agencies who are performing site assessments.
17 Environmental Science Associates has
18 successfully completed a very competitive request for
19 qualification selection process. Staff described this
20 process in the agenda item and further provided
21 additional information in a memo to the Board, dated
22 May 15, 2009. Copies of this memo are also in the
23 back for those of you in the audience who are
24 interested in reviewing it.
25 And a three-member panel independently

1 reviewed the contractor's qualifications and responses
2 to questions asked during the interview portion of the
3 selection process. After an independent tally of the
4 panel members rating Environmental Science Associates
5 as highly qualified, that contractor -- well, "My
6 cousin Guido" was selected.
7 Staff has met with the company
8 representative to negotiate fees for the work. Staff
9 has found that the budget submitted was consistent
10 with the request for qualifications and is fair and
11 reasonable. In addition, Mr. Paul Miller, actually
12 with the contractor is here to answer the questions
13 you may have regarding the company's qualification and
14 their ability to perform the Board's approved scope of
15 work.
16 Staff recommends that the Board approve
17 Environmental Science Associates as the contractor and
18 which would develop the statewide program
19 Environmental Impact Report consistent with the
20 Board's approved scope of work for a contract not to
21 exceed $250,000 and adopt Resolution No. 2009-66
22 revised. And that concludes the initial Staff
23 presentation.
24 CHAIRPERSON BROWN: Thank you, Ted. We have
25 one speaker, and that's Nick Lapis.

1 MR. LAPIS: Good morning, Madam Chair and
2 Board Members. I'm going to keep my comments short.
3 Nick Lapis with Californians Against Waste. We are
4 strongly supportive of this whole process and with
5 this program IDIR. And I just want to say that the
6 Board gets a lot of flack on a lot of different
7 issues, but it's really innovative things like this
8 that show the value of this Board, and we think this
9 is a really good idea, and, moving forward, I think
10 it's key for pushing anaerobic digestion. Thank you.
11 CHAIRPERSON BROWN: Thank you very much,
12 Nick.
13 Any questions or comments?
14 Sheila?
15 BOARD MEMBER KUEHL: I just wanted to assure
16 Mr. Miller this had nothing to do with ESA in terms of
17 putting it over till today but only that the
18 information that I got as a Board Member was simply a
19 copy of the resolution with the three letters ESA
20 filled in, and that I found insufficient because, when
21 I Googled "ESA," 15 different companies came up and I
22 didn't know who they were.
23 So my request last week really was really to
24 the staff to make certain -- and I know that Mark
25 understands -- that we get the information about

1 proposed contractors early enough to have some idea
2 about who they are before we say yes.
3 So thanks to Mr. Miller for being here, but
4 it wasn't really about the company's qualifications.
5 CHAIRPERSON BROWN: Thank you. Do we have
6 any other questions? comments? motion?
7 BOARD MEMBER MULÉ: I'd like to move
8 Resolution 2009-66 revised.
9 CHAIRPERSON BROWN: It's been moved by
10 Member Mulé, seconded by Member Kuehl.
11 Kristen, can you call the roll?
12 EXECUTIVE ASSISTANT GARNER: Kuehl?
13 BOARD MEMBER KUEHL: Aye.
14 EXECUTIVE ASSISTANT GARNER: Laird?
15 BOARD MEMBER LAIRD: Aye.
16 EXECUTIVE ASSISTANT GARNER: Migden?
17 BOARD MEMBER MIGDEN: Aye.
18 EXECUTIVE ASSISTANT GARNER: Mulé?
19 BOARD MEMBER MULÉ: Aye.
20 EXECUTIVE ASSISTANT GARNER: Brown?
21 CHAIRPERSON BROWN: Aye.
22 Next is 5 revised.
23 MR. RAUH: Agenda Item 5 revised is a
24 request that the Board consider and approve a contract
25 with Kennec, Incorporated, for an amount not to exceed

1 $165,000 to carry out the Board's approved statement
2 of work to develop for the state of Baja, Mexico, a
3 model tire management plan framework and provide
4 technical assistance to the state of Baja, Mexico, as
5 it develops the waste tire management plan portion of
6 its integrated waste management plan.
7 The flow of used and waste tires across the
8 border between the state of California and Baja,
9 Mexico, has been a concern for over ten years.
10 Environmental concerns include the build-up of large
11 tire piles in Baja which often burn, causing regional
12 health impact. Waste tires also wash into California
13 from Mexico as a result of storm events.
14 The Board has attempted to address these
15 concerns through successive iterations of the
16 five-year tire plan for Waste Tire Recycling
17 Management Program. It has initiated outreach
18 training, enforcement, coordination, and planning
19 coordination. Education programs in the Cross-Border
20 Tire Flow Study the Board was briefed on in April of
21 this year are recent examples of the work emanating
22 from the Board's fourth iteration of the tire plan.
23 The Cross-Border Tire Flow Study recommends,
24 among other things, that California work with Baja,
25 Mexico, on waste tire management and planning at both

1 the state and local levels.
2 The Board's ongoing border efforts,
3 including the focus of this proposed contract, have
4 been coordinated with CalEPA's Deputy Undersecretary
5 for California-Mexico border issues.
6 The statement of work for this proposed
7 contract includes extensive coordination with
8 stakeholders. Kennec, Incorporated, has made it clear
9 that they are committed to working with stakeholders
10 at each critical stage of the contract. Michael
11 Blumenthal has contacted the Board, suggesting that
12 close coordination between this project and the Border
13 Environmental Cooperative Commission is needed. Staff
14 and Kennec agree. The staff has provided the Board
15 with a response to Mr. Blumenthal's suggestions, and
16 copies of this response are available in the back of
17 the room. If the Board approves the contract, a
18 planning session will be held with the Border
19 Environmental Cooperative Commission and other key
20 stakeholders, including a representative of the
21 Undersecretary's office and Mr. Blumenthal, to fully
22 flesh out all related activities before the final work
23 plan for the contract is completed. In addition,
24 continued coordination with this group will be
25 maintained throughout the contract.

1 Kennec, Incorporated, was selected for the
2 contract award through the State of California's
3 request for proposal secondary contracting approach.
4 Kennec was the only bidder. The selection panel
5 independently reviewed Kennick's proposal and found
6 the contractor to qualify to carry out the work.
7 Staff has provided more detail on the selection of
8 Kennec, Incorporated, in a memo to the Board, dated
9 May 15, 2009. Copies of that memo is also -- are also
10 available in the back of the room.
11 In addition, Mr. Joaquin Wright, the senior
12 vice president of Kennec, Incorporated, is here and
13 available to answer any questions you have regarding
14 the company's qualifications and ability to perform
15 the Board approved statement of work.
16 Staff recommends the Board approve Kennec,
17 Incorporated, as the contractor for the approved
18 statement of work for a contract not to exceed
19 $160,000 and adopt Resolution No. 2009-69 revised.
20 And that concludes the Staff presentation.
21 CHAIRPERSON BROWN: Thank you, Ted. All
22 right. Thank you, Ted.
23 We have a couple of questions or comments.
24 BOARD MEMBER MULÉ: Madam Chair, if I could
25 start, please. Thank you.

1 Last week at the committee meeting I asked
2 for additional information regarding relevant work
3 experience of the recommended contractor and, just for
4 clarification purposes, relevant work experience in
5 preparing these kinds of work plans, not specifically
6 for Mexico -- Ted, as you indicated in e-mail -- but
7 work experience relevant to creating and developing
8 these kinds of work plans.
9 And I appreciate the information that staff
10 did provide to us; however, for me, I did not see any
11 evidence here of relevant work experience. And so I'm
12 having trouble supporting this recommendation because
13 the contractor has done some great work with this
14 organization on civil engineering projects. But,
15 again, I don't see anything in the information that I
16 received regarding relevant work experience in
17 developing these kinds of work plans.
18 Thank you, Madam Chair.
19 MR. RAUH: May I address that question?
20 CHAIRPERSON BROWN: Sure. Go ahead, Ted.
21 MR. RAUH: A couple of things that I would
22 note and, clearly, the representative of Kennec can
23 also chime in as well. When the Board directed Staff
24 to first begin work in this area, we made an extensive
25 search of who might be available that have carried out

1 this kind of tire planning. We first went to
2 university system where we thought we might be able to
3 locate individuals who were -- consortium of folks who
4 could do it, and we were not successful there.
5 When one thinks about it, the state of
6 Mexico -- or, Baja, California, does not have a plan
7 now. There's not been extensive work in this area
8 that we could identify. And when we went out to reach
9 out to contractors across -- through our selection
10 process, we did not get anyone who came in and
11 expressed a strong-standing experience in actually
12 doing tire planning work.
13 But in the case of Kennec, we found a
14 contractor who is very knowledgeable about tires,
15 tires facilities, tire-related work, has managed
16 significant engineering and environmental planning
17 projects. We felt that the match between their
18 experience and understanding the tire industry, their
19 understanding of engineering and planning projects,
20 environmental issues, and their willingness to work
21 very closely with both Staff and the appropriate
22 officials for Mexico, that we had the best match we
23 could make, given our attempts up to this point. And
24 that's why we're here today suggesting that Kennec
25 proceed.

1 I might not have been as clear in terms of
2 what Staff's intention is and what Kennick's intention
3 is. We fully see this contract moving forward with a
4 consortium of Mexican officials, Southern California
5 interested parties, the tire industry, as well as
6 CalEPA, in terms of providing that overall oversight
7 and perspective on what needs to be done.
8 This national group that I mentioned also
9 has extensive understanding of what's going on and
10 what is going on in the country of Mexico with respect
11 to planning. So we're hoping that that combination
12 will bring us a winning product.
13 CHAIRPERSON BROWN: (Inaudible).
14 BOARD MEMBER MULÉ: Not at this time. Thank
15 you, Madam Chair.
16 CHAIRPERSON BROWN: Sheila?
17 BOARD MEMBER KUEHL: Well, I also have some
18 concerns. I think Kennec is a great company in terms
19 of what they've done. And Rosalie indicated that she
20 felt uncomfortable because of a lack of experience
21 making these plans. I feel uncomfortable because of a
22 lack of experience with Baja or anything to do with
23 the international aspect of this, which is key. And
24 to indicate that if we, you know, enter into a
25 contract -- and this is not anything about Kennec

1 because they are certainly a fine company.
2 BOARD MEMBER MULÉ: Right.
3 BOARD MEMBER KUEHL: But it would sound like
4 our expectation was that the contractor would then
5 have the opportunity to learn about what it is we are
6 hiring them to do in terms of working cross-border, in
7 terms of making a plan, et cetera.
8 And I understand, when you only have one
9 applicant, it's very difficult not to grant a contract
10 to that applicant. But sometimes in a contracting
11 situation, it would appear that either we haven't been
12 innovative enough in outreach in terms of the company
13 or companies that might be able to present themselves
14 as having some cross-border experience with something
15 or fluency not only in the language but perhaps in
16 dealing with the government of another country. You
17 know, it's different. I mean, it's quite different.
18 And I reflected quite a long time on what
19 Mr. Blumenthal sent us in his letter, his two requests
20 that if we do the contract they should meet with
21 everybody. But it sounded to me like his preference
22 was to work with the parties before we made the
23 commitment to the contract.
24 I read the Staff's answer indicating that
25 there had been a lot of meetings and there is not

1 sufficient structure across the border, but then the
2 recommendation was "Let's grant the contract and ask
3 them to have some meetings with everybody."
4 So I guess that might be a good thing to pay
5 $160,000 for people to figure out, you know, kind of
6 what to do with everybody, form an advisory group,
7 et cetera. My preference would be I'd like to see
8 some more bids and in that perhaps more information
9 about why Kennec is more qualified than others to do
10 this cross-border work.
11 CHAIRPERSON BROWN: So let me make a
12 proposal. Since it's apparent that we don't have
13 sufficient votes today to move this item and grant a
14 contract, can I withhold taking a vote, put this over
15 to next month for reconsideration, and direct Staff to
16 go out -- I know you've looked for other contractors,
17 but maybe in a different way look for other people
18 through an RFQ or directed -- I mean, I'll defer to
19 you, Mark, to see if there are -- if we can maybe
20 revise the scope of work to make it a requirement and
21 part of the work that needs to be done and add some
22 qualifications or minimum qualifications that we want
23 to see in a contractor before we let a contract go --
24 or approve a contract.
25 I know it's a short time frame, but I think

1 it's important that we find the right contractor to do
2 the work so we come out with a product at the end of
3 the day that will give us the information that we're
4 looking for.
5 MR. RAUH: Since Kennec has come today,
6 would it be possible to have them -- at least have an
7 opportunity to address these issues?
8 CHAIRPERSON BROWN: Sure, absolutely.
9 Please come forward. And by no means do we
10 want to indicate that you're not part of process
11 moving forward, but we want to ensure that we get the
12 work product at the end that we're looking for.
13 MR. WRIGHT: (Inaudible).
14 CHAIRPERSON BROWN: You can press the button
15 on the microphone. There's a little button that will
16 make the light go up on the base. Did it turn to
17 green?
18 MR. WRIGHT: No.
19 CHAIRPERSON BROWN: Tracey, can you go and
20 see if the microphone is working?
21 MR. WRIGHT: Hello. It's on. Pardon me.
22 Well, thanks for letting us at least speak
23 on our behalf, I guess. I understand -- and we work
24 with the Board on other contracts, and it's our best
25 interest to see your best interest. So as much as

1 it's not a comfortable situation in some regards, we
2 do understand, and our interest is your interest. And
3 when we work for you -- which we are currently, and we
4 would like to do this project as well -- we try to
5 work as an extension of your staff, and that means
6 your best interest is our best interest. So I don't
7 really have a whole bunch to say in regards to that is
8 we want to support the Board. We think the Board is
9 great. Kennec and the Board, we love that marriage,
10 when it happens.
11 What I can speak to is that maybe we didn't
12 make ourselves clear in our qualifications that relate
13 to this specific, you know, request for a quote. And
14 one of the areas when we were reflecting on this --
15 and I did speak with Mr. Blumenthal, and I understand
16 this may not go forward beyond this point, but we do
17 have a meeting set to talk about all the issues and
18 what's there.
19 But what I can bring, I guess, at this
20 moment to talk about this and our experience is that
21 we work with tribes a lot. And tribes are sovereign
22 nations, and so we are very accustomed to dealing with
23 some of those issues that you've mentioned in terms of
24 Baja and cross-international borders. When we deal
25 with the tribes, we're dealing with -- everything that

they deal with is a sovereign nation. We're dealing with cities and counties and state and federal all at once, so we are accustomed to that type of environment. It's just that there aren't very many projects so to speak where we would be at the border making plans in conjunction with Baja, but we do that type of things in conjunction with tribes.

We just completed the Colville Integrated Waste Management Plan. That's a tribe in Washington. We're working with the Yurok to do some casinos. So we do have some relevant work experience, and maybe it was not in our SOQ stated very clearly. So that's what I could bring, you know, directly to you. I'm not interested in, obviously, trying to fight for something that isn't in the best interest of the Board, but we feel we could bring something to this. And we would like to, if at all possible, of course.

BOARD MEMBER KUEHL: One of the qualifications that was listed was the ability to speak and work with personnel in Spanish.

MR. WRIGHT: Yes.

BOARD MEMBER KUEHL: Does Kennec have a few senior staff that are bilingual?

MR. WRIGHT: We have one senior staff bilingual engineer, and we have a businessperson that

1 we subcontract with who is used to -- worked with the
2 Costco organization and is used to NAFTA and the
3 Mexican environmental laws and doing trade back and
4 forth, and that's who we brought as our team to do
5 that. And he's located in San Diego, and as well our
6 engineer is located in Long Beach, which is the right
7 region. You know, obviously, running this out of
8 San Francisco isn't really -- or Sacramento isn't
9 really appropriate, but we have the staff in the L.A.
10 area.
11 BOARD MEMBER KUEHL: So maybe there's a way
12 that we could understand in looking at qualifications
13 where there's an intention to subcontract for some of
14 these pieces so that we could understand what the
15 whole package looks like, or perhaps I missed that and
16 it was in there. I don't know.
17 BOARD MEMBER MULÉ: I did not see.
18 MR. WRIGHT: Well, upon our review of what
19 we turned in, learning we were the only person -- you
20 know, not to speak poorly of ourselves -- but we did
21 not present some of that stuff very clearly.
22 CHAIRPERSON BROWN: Well, that was probably
23 not wise.
24 MR. WRIGHT: I understand.
25 CHAIRPERSON BROWN: I mean, we're looking

1 for qualifications and if you omitted submitting
2 information because you were the only applicant, I
3 think --
4 MR. WRIGHT: That is in there. It is in
5 there. Sorry to interrupt.
6 CHAIRPERSON BROWN: I am concerned about
7 that particular comment because just because you're
8 the only applicant doesn't mean that we are going to
9 extend the contract or approve the contract.
10 MR. WRIGHT: I fully understand that.
11 CHAIRPERSON BROWN: So I think what we need
12 to do today, because I'm not comfortable now
13 supporting either, I'd like to put this over to next
14 month. You know, I'll refer to our chief counsel. It
15 doesn't necessarily disqualify Kennec, but I think we
16 have some more work to do.
17 MR. BLOCK: Well, if you're talking about
18 putting this out for bids, we would have to start at
19 the beginning, and we probably could not get this done
20 by next month. I'll look to program for timing-wise,
21 but we'd basically have to put a new RFQ out.
22 CHAIRPERSON BROWN: Well, then we're going
23 to have to discuss how we move this forward. I mean,
24 Kennec can reapply if we put it out to a new bid with
25 a refined scope of work that more clearly defines and

1 maybe look for a consortium of organizations that can
2 bring in the expertise that maybe you don't have or
3 are as strong in some areas where we have some
4 discomfort that will allow us to consider the contract
5 in the future.
6 Mark?
7 EXECUTIVE DIRECTOR LEARY: Madam Chair, I
8 think it's perfectly appropriate if you're not
9 comfortable awarding this contract, and don't. And
10 there's no value to putting it over to next month
11 because, I think, as Elliot suggests, we'll have to
12 start a new process, which we will.
13 All I'd ask is, potentially, given the
14 feedback you've now given us, that we will have to
15 revise the scope of work to include some of these
16 dynamics and suggestions for improvements.
17 Would you grant me the authority to approve
18 that scope of work, or would you like -- I was just
19 going to suggest that would you need --
20 BOARD MEMBER KUEHL: I have a memo dated
21 May 15 about Staff recommendation for award of
22 contract, and at the end, it says all of the
23 qualifications that we're looking for are listed at
24 the end of this e-mail. So I turn to the end of the
25 e-mail, and it says "The following qualifications

1 shall be considered important. Each proposal must
2 include a description of the resources demonstrating
3 an individual or team members' ability to perform the
4 work," and there are a number of bullet points listed,
5 and several of them, really, relate to our questions.
6 So I don't think that we're starting all over. I
7 guess in the evaluation process people are probably
8 thrown off by the fact that a company that we know and
9 value very much was the only applicant, so what are we
10 going to look for.
11 But I think what the Board is saying is we
12 really do want to look for the ability of this company
13 to work with the Mexican government, to work with
14 local entities in the Mexican government and their EPA
15 agency so that we feel comfortable that this is --
16 there's some cultural competency there because
17 otherwise we're going to look foolish too.
18 CHAIRPERSON BROWN: Right.
19 BOARD MEMBER MULÉ: And, Madam Chair, if I
20 may, again, referring to the same document that Sheila
21 just referred to, I mean, the qualifications from the
22 RFP clearly state here "experience with design,
23 development, and production of waste management tire
24 plans."
25 And so, again, I don't know that we

1 necessarily need to revise the scope of work. I mean,
2 to me, the scope of work was pretty clear -- the scope
3 of work and the qualification requirements were pretty
4 clear to me.
5 And, also, in that, I mean, some of the
6 panel members had indicated that the proposal did not
7 specifically describe experience in tire management
8 planning or tire-related issues within border region.
9 So, again, it seemed like even on the part of the
10 panel members -- the evaluation panel members, they
11 were having some doubts about this. And all I'm
12 saying is that, again, as a proposer -- I used to do
13 this when I was in the private sector. I mean, I
14 would clearly state what my specific experience was
15 pertaining to the requirements in the RFP. Now, you
16 may in fact have this experience. But, again, as I
17 stated earlier, I just didn't read it anywhere.
18 And, again, as Chair Brown had indicated, if
19 we do put this out for another RFP or RFQ, you're more
20 than welcome to participate in that process.
21 CHAIRPERSON BROWN: I think we're clear,
22 then. A new scope of work is not required, but we
23 would like to go out for a new process.
24 Encourage you to apply and clearly state the
25 scope of work, your qualifications in all areas.

1 Sheila?
2 BOARD MEMBER KUEHL: I wanted to ask you a
3 question because it's possible you didn't completely
4 toot your own horn sufficiently, so I wanted to ask
5 you a question in terms of what the Panel Member No. 2
6 wrote on his or her evaluation and why they
7 recommended you, because I don't know who the panel
8 members were.
9 MR. LEARY: Right, and I'm not privy to that
10 either.
11 BOARD MEMBER KUEHL: It says, "Recognizing
12 that the project to develop a framework to be used by
13 Baja, California, to my knowledge, would be the first
14 of its kind" -- this is written by Panel Member
15 No. 2 -- "the example of the landfill project and its
16 translation into Spanish indicated that the contractor
17 could develop a similar approach to the project
18 described in the scope of work."
19 Is that a landfill project translated into
20 Spanish by Kennec?
21 MR. WRIGHT: Yes.
22 BOARD MEMBER KUEHL: So perhaps that
23 would have been or maybe this was something we don't
24 know fulfilled --
25 MR. WRIGHT: It was included.

1 BOARD MEMBER KUEHL: -- the qualifications,
2 or I didn't see kind of in what -- in your materials.
3 MR. WRIGHT: Well, not on our Web site, but
4 in the proposal we submitted, we submitted a Spanish
5 version and an English version of a waste management
6 plan.
7 BOARD MEMBER KUEHL: And I'll speak only
8 individually as a new member, I guess it must be
9 almost like having whiplash to have new Board Members,
10 some who in the past might have said, "Don't tell me
11 all this stuff, I'll just go with it." And now we're
12 sitting here going, "Please tell me all this stuff or
13 I won't go with it," and I do understand that that can
14 be a problem.
15 But, as I said last week, I feel much more
16 comfortable, when I'm voting for a grant or a contract
17 or whatever, to have information that indicates that I
18 feel good about it. And if the problem is only that
19 we don't have sufficient information, then maybe the
20 Chair will say get that information out to everybody
21 and maybe we could do it next month. I don't know.
22 But I didn't feel from the information that I got that
23 there was sufficient experience.
24 CHAIRPERSON BROWN: Well, unless there's a
25 reason that we need this contract on this fiscal year,

1 I think it's probably prudent to put it out and
2 encourage Kennec to please apply and toot -- as Sheila
3 mentioned, toot your own horn, make sure that there's
4 a clear understanding of the experience that you have
5 in order to fulfill the scope of work in the contract.
6 I don't think that a process going out one
7 or two months is going to impede our ability to use
8 the information once the contract is fulfilled. So I
9 think it's not an urgency thing, so we're just going
10 to allow you to resubmit.
11 MR. WRIGHT: Okay. Thank you, Madam Chair.
12 CHAIRPERSON BROWN: Thank you.
13 MR. WRIGHT: Thank you, everybody.
14 CHAIRPERSON BROWN: And with that, we will
15 move to Item 6.
16 MR. RAUH: Thank you, Chair Brown. Item 6
17 is a discussion and request for rulemaking direction
18 on noticing revisions, the proposed Phase II
19 regulations on long-term postclosure maintenance,
20 corrective action, and financial assurance for an
21 additional comment period.
22 California has long been a national leader
23 in addressing the issues of assuring operators
24 maintain solid waste landfills until the waste no
25 longer poses a threat to public health safety or the

1 environment.
2 The key method in ensuring landfills are
3 always maintained in a safe condition is financial
4 assurance for postclosure maintenance and corrective
5 action.
6 Long-term financial assurance ensures that
7 the landfill owners recognize and plan for the
8 extended maintenance requirements landfills have and
9 account for the potential risk of upset conditions
10 that may occur.
11 The Board recognizes the potential for
12 public health safety and environmental concerns
13 resulting from poorly maintained dry-tuned landfills.
14 The Board adopted a long-term postclosure financial
15 assurance requirement for these landfills in 1990.
16 These requirements included a financial assurance
17 demonstration of 15 times the annual cost of
18 postclosure maintenance on a rolling basis.
19 This requirement pre-dated the federal
20 subtitled D requirements put in place in 1997,
21 requiring financial assurance for the first 30 years
22 of closure, which can only be extended by government
23 finding of continuing risk.
24 The Board modified its financial assurance
25 level to be consistent but maintained its requirement

1 that financial assurance and operator responsibility
2 are retained beyond 30 years until conclusive
3 information is presented to the Board, the LEA, and
4 the Regional Water Quality Control Board, that the
5 waste no longer poses a threat.
6 California also established financial
7 assurance requirements for known and reasonably
8 foreseeable water quality corrective action in 1991.
9 This program includes operating and closed landfills.
10 Under federal requirements, financial assurance is
11 only required for known corrective action.
12 While the majority of the country utilizes
13 the financial assurance requirements of the federal
14 program, the Board has continued to study this issue
15 and improve its program.
16 Looking ahead in 2003, the Board identified
17 several issues, including landfills were closing in
18 increasing numbers, landfill postclosure maintenance
19 costs were not declining, and despite the fact that
20 landfills would have to continue to maintain the sites
21 after 30 years, the potential financial exposure to
22 the State could be very large.
23 Legislature took note of the Board's efforts
24 and recognized the importance of this issue in 2006
25 with the passage of AB 2296. The Board has already

1 responded to this legislation with the adoption of
2 Phase I regulations that substantially improved the
3 reliability of financial assurances by improving the
4 cost -- the postclosure cost estimates which are their
5 underpinning.
6 We are here today to continue the discussion
7 of the appropriate levels of financial assurance. At
8 last Tuesday's Policy Committee workshop on proposed
9 Phase II regulations, the Board engaged the
10 stakeholders and staff in a discussion of how to
11 potentially change the current financial assurance
12 framework for both postclosure maintenance and
13 corrective action.
14 As a result of that discussion, Board
15 Members at the workshop directed Staff to provide
16 descriptions of the options that the Board can
17 consider for further Staff direction.
18 Attachment 9 provides a broad list of
19 options for postclosure maintenance and corrective
20 action and financial assurances. Included with each
21 option is a general description of its impacts and
22 pros and cons developed based on the comments and
23 submittals of Staff, Board Members, and stakeholders.
24 Also included in Attachment 9 is similar information
25 the Board may utilize in responding to the legislature

1 with recommendations for further financial assurance
2 statutory needs per the requirements of AB 2296, which
3 is the subject of the next agenda item, No. 7.
4 At this point I would like to turn the mic
5 over to Bill Orr, who will make a brief presentation
6 to facilitate your discussion of the postclosure and
7 corrective action financial assurance options
8 contained in Attachment 9.
9 Bill.
10 MR. ORR: Thank you, Ted.
11 Good morning, Madam Chair, Board Members.
12 For the record, my name is Bill Orr, Chief
13 of the Cleanup, Closure, and Financial Assurances
14 Division. I will be making a brief presentation this
15 morning.
16 CHAIRPERSON BROWN: Maybe.
17 MR. ORR: Maybe. There we go.
18 Just real quickly, these are the policy
19 questions that the Board and stakeholders have been
20 working on for the last several years.
21 CHAIRPERSON BROWN: Right.
22 MR. ORR: I'm going to move on to the next
23 slide that provides in brief form the different
24 regulatory options that were discussed at the
25 workshop.

1 The things I'd like to emphasize is that in
2 regard to Option No. 1, which is the 49 X, that would
3 be a rolling 49 X throughout the postclosure
4 maintenance period; similarly for 43 X, that would be
5 rolling.
6 Dropping down to Option No. 5 -- Option
7 No. 4, that would actually be a rolling 30 X with a
8 step down to a rolling 15 X if certain triggers or
9 criteria were met. And then similarly on the current
10 Phase II regulatory proposal, it would be a 30 X
11 drawdown to a rolling 15 X with a step down to a
12 rolling 5 X.
13 So, essentially, what that means in regard
14 to options No. 4 and No. 6 is that you stay at
15 whatever that threshold is unless you opt to pursue
16 those step-downs.
17 So moving on to the next slide. In regard
18 to the policy options for corrective action, the first
19 one looks at continuing with the current Phase II
20 proposal.
21 The second one presents the option of
22 setting the level by either the most expensive water
23 quality corrective action event or the replacement of
24 the entire funnel cover, whichever is greater.
25 And then the third one would take more of a

1 site-specific risk assessment based approach to
2 developing a corrective action plan for each landfill
3 and providing the level of financial assurance
4 accordingly.
5 In addition to the policy options that were
6 discussed at the committee meeting last week, this
7 should actually refer to Attachment 6, but this is a
8 list of the suggested non-policy changes that are
9 included as the first grouping to Attachment 6.
10 And the only thing I wanted to clarify on
11 this, unless the Board has any specific questions on
12 that, is under the next to the last bullet on the
13 right-hand side where it says "Remove the word
14 'anticipate' for clarity," that's in regard to the
15 closure cost estimate, and we would substitute in
16 there "as delineated in the plan."
17 So one of the issues that's been talked
18 about is defining the differences between closure and
19 corrective action -- postclosure and corrective
20 action. This would make a direct reference to the
21 plan instead of some separate list of items. So I can
22 go into this particular slide in more detail if the
23 Board would like.
24 But sans that, the options for the Board
25 would be to make specific changes and notice the

1 regulations for an additional 45-day comment period if
2 the changes are not sufficiently related, which
3 basically means you would restart the rulemaking
4 process.
5 The second option would be to make specific
6 changes and notice the regulations for at least 15
7 days, and that could be 15, 30, 45, whatever the
8 Board so chose. But that would be a continuation of
9 the current rulemaking process.
10 The third option would be to direct Staff to
11 develop additional regulatory language and come back
12 to the Board with that language prior to seeking
13 rulemaking direction.
14 And then the final option would be whatever
15 the Board so directed.
16 So unless there are any questions at this
17 point, I will -- actually, I'll turn it over to
18 questions.
19 CHAIRPERSON BROWN: Thank you, Bill. We are
20 anticipating speakers, so maybe we'll hold Board
21 Member questions until after speakers, if everybody's
22 okay with that.
23 Our first speaker is Tim Gage.
24 MR. GAGE: Good morning, Madam Chair and
25 Board Members.

1 CHAIRPERSON BROWN: Good morning.
2 MR. GAGE: I'm Tim Gage with the Blue Sky
3 Consulting Group, a small public policy and economics
4 consulting firm that I founded with a gentleman by the
5 name of Matthew Newman.
6 We've been retained by Waste Management and
7 Republic Services to help think through the financial
8 assurance problem that you face today. And I think
9 it's fair to say that my remarks apply equally to
10 Board Item 7 as well as Item 6.
11 You have a set of slides in front of you --
12 and I'll be relatively brief. Some of this is
13 slightly duplicative of what the staff has already
14 provided you with. But as it relates to slide No. 2,
15 basically, the issue here is trying to achieve the
16 goal of ensuring that the State's financial exposure
17 is minimized in a sensible and efficient manner.
18 The staff on Slide No. 3 has identified four
19 categories of postclosure costs. And depending upon
20 the expectation of how frequently these costs are
21 incurred, they should be dealt differently in terms of
22 the way in which you work them through, the solution
23 to the financial assurance issue.
24 Predictable costs, in my view, should be
25 funded explicitly. Infrequent costs or unpredictable

1 costs are better dealt with through some sort of
2 insurance type approach.
3 On slide No. 4 we have laid out what we
4 think is a framework that you could use for thinking
5 about this issue where you would address the
6 divestiture problem. And I addressed this briefly in
7 my remarks at the committee meeting last week,
8 addressed the divestiture issue separately through
9 legislation, and that could, at least potentially,
10 reduce the State's overall financial risk fairly
11 significantly.
12 The large components, I think, if dealt with
13 in this fashion, can in effect reinforce each other in
14 terms of the strength of the overall financial
15 assurance structure.
16 On to Slide No. 5, more specifically as it
17 relates to divestiture. As I mention, we believe that
18 dealing with this legislatively in the way that it's
19 described on this slide could significantly reduce the
20 State's exposure as a result of a divestiture
21 circumstance. Statutory fix would largely eliminate
22 this concern and could significantly reduce that
23 exposure.
24 Now, in doing so, you have to be careful,
25 though, I think, to make sure that when the statute is

1 written, it's written in such a way that you can
2 capture the financial assurance that you actually need
3 as it relates to operators who have landfills that may
4 be transferred to another owner. Simply pointing to
5 the existing financial assurance requirements is
6 probably not sufficient to do that.
7 On to Slide No. 6, the second leg, if you
8 will, in the three-legged stool that we've identified
9 for an overall approach to this issue relates to
10 putting together an insurance pool.
11 And as you know from the staff's discussion,
12 this issue has had very extensive deliberation and
13 discussion on the part of Staff and stakeholders over
14 the last period of a year. So the legislature in its
15 wisdom has not chosen, to date, to adopt a statute
16 that would put such a pool in place.
17 However, from our perspective, we don't
18 think that that should dissuade you from returning to
19 this issue because we think it provides an important
20 safeguard for the State, particularly in terms of
21 exposures that the State has which, at least based on
22 Staff's representation in their materials, would not
23 actually be addressed by the financial assurance
24 mechanism as it applies to individual operators. And
25 so we think it's important to put in an insurance pool

1 of some sort in place to address those issues.
2 Now, there are a lot of details that need to
3 be worked through as it relates to this issue. There
4 certainly has not been consensus on the part of the
5 staff or the stakeholders as it relates to those
6 issues, but I know of no reason why some consensus
7 could not be developed. And that would depend on a
8 variety of issues related to whether or not it's one
9 pool or two, what kind of coverage is involved, and
10 under what circumstances might the State actually be
11 able to tap that pool.
12 I would like to go on to Slide No. 7. This
13 is really the heart of the issue that you've been
14 addressing in the regs themselves in the discussion
15 that Staff has laid out for you. And from my
16 perspective, it seems that dealing with the
17 divestiture issue and understanding where you stand
18 with respect to the question of putting an insurance
19 pool in place, our precursors to knowing where you
20 should land as it relates to these particular issues.
21 The slide No. 7 lays out, basically, the current
22 status of the circumstance. And you can see from this
23 slide the concern that led to the Montanez Bill and
24 led to the question of whether or not the State's
25 current arrangement as it relates to financial

1 assurance is adequate. Certainly, it was the
2 consensus at that point in time, but it is not. And
3 you can see, as you look at these issues, that that is
4 well the case.
5 Slide No. 8 really addresses the issues
6 that, in our view, you need to work through as you the
7 address the question of how to structure a postclosure
8 maintenance and corrective action financial assurance.
9 Some of these issues relate to how do you define what
10 costs should actually be included. And that goes to
11 the definition of postclosure maintenance and
12 corrective action activities, whether or not some sort
13 of a step down, as Staff has identified in the
14 regulations, is appropriate or not, does that provide
15 you with adequate financial assurance, and, if you
16 went with some sort of step-down approach that was
17 based on performance, how would that performance be
18 defined and how would it be actually enforced over
19 time.
20 And that's an issue that Staff has expressed
21 some concern over because their concern is to whether
22 or not they would have the expertise as it relates to
23 evaluating that performance.
24 We think, again, though, that there's
25 probably a way to "skin that cat" in terms of thinking

1 about requirements that would be imposed on operators
2 to come to the Board to make a showing of how they've
3 done and, more particularly, the status of the
4 landfill that they're operating.
5 And, lastly, Slide No. 9, our conclusion.
6 It basically just restates our view here that these
7 three pieces that I've identified, working together,
8 in my view, provides the State with the maximum in
9 terms of security as it relates to the potential for
10 not just exposure to postclosure maintenance and
11 corrective action costs but other kinds of things that
12 might occur more drastic in nature but potentially
13 infrequent that could drive up significant costs.
14 And, again, the staff in their materials has indicated
15 that the scheme that they laid out in terms of the
16 regs that were considered at the previous Board
17 meeting do not really anticipate covering those costs,
18 they were looking to some sort of a pool in order to
19 address those issues.
20 With that, I'll stop and see if there are
21 any questions from any members of the Board.
22 CHAIRPERSON BROWN: Thank you very much.
23 Any questions? Sheila?
24 BOARD MEMBER KUEHL: Mr. Gage, thank you.
25 Although, I think, in a way what you've presented to

1 us is kind of a little duplicative of saying This is
2 what you should be thinking about, when I can assure
3 you, we're already thinking about these issues. I
4 appreciate your framework. I have a question about
5 your slide No. 4, however. And the last bullet point
6 in which you indicate that the framework you
7 recommend, I think, is to -- is that what framework
8 means? Is that recommended by your thinking --
9 MR. GAGE: Correct, yes.
10 BOARD MEMBER KUEHL: -- to address
11 reasonably foreseeable postclosure maintenance and
12 corrective action costs by modifying financial
13 assurance requirements?
14 So how do we modify financial assurance
15 requirements to include corrective action costs?
16 MR. GAGE: We haven't spent enough time
17 since we were brought into this project relatively
18 late in the process. And, certainly, I apologize to
19 both the Board and the Staff for that in one sense
20 because we don't want to just come in and kind of
21 crash the party. And in some sense, you make a good
22 point that we've been duplicative in our comments.
23 We haven't had enough time to really dig
24 into the details of exactly how we would do that if we
25 were king, in effect. But the way to think about it,

1 in my view, would simply be that you want to identify
2 those costs that are predictable. And, in effect, the
3 language of the regulations talk about reasonably
4 foreseeable costs, those things that are predictable
5 that in all likelihood each and every operator is
6 going to face at some point in the life of that
7 landfill. Those are costs that they ought to be
8 prepared to address in the way of financial assurance.
9 The costs that are not predictable that are
10 episodic in nature and are extreme in terms of their
11 size are ones that are more well suited to some kind
12 of an insurance based approach, and that's because you
13 wouldn't expect every operator to experience those
14 costs. So as a consequence, it's inefficient to ask
15 each and every operator to act as though at some point
16 in the life of that landfill they're going to
17 experience that cost. Instead what you would ask them
18 to do is, in effect, shoulder some proportionate share
19 of the responsibility for those costs that can be
20 addressed.
21 BOARD MEMBER KUEHL: Thank you.
22 CHAIRPERSON BROWN: Thank you very much.
23 MR. GAGE: Thank you.
24 CHAIRPERSON BROWN: Our next speaker is Bill
25 Magavern.

1 MR. MAGAVERN: Good morning, Madam Chair and
2 Board Members. Bill Magavern with Sierra Club
3 California.
4 I think that we all recognize that this
5 issue is critically important. It's highly
6 contentious, and it's also very complicated, so,
7 certainly a difficult task for you and for all of us.
8 And I also think that we recognize that we are anxious
9 to get moving on a solution, but at the same time we
10 don't think that we have all the pieces in place yet.
11 So with that in mind, I want to propose a
12 way forward, and I think that the best thing for the
13 Board to do now is to use the first recommendation or
14 the first option that the staff has laid before you to
15 establish a minimum postclosure maintenance annual
16 cost multiplier of 30 X throughout the postclosure
17 maintenance period, the so-called rolling 30 X, I
18 think, to do that now while we continue to work on
19 some of the other issues. And I think that could be
20 done within the 15-day comment period, could satisfy
21 the obligation under AB 2296 of promulgating the
22 Phase II regulations. And why is that the best?
23 Well, as the staff says, this is the level that all
24 active solid waste landfills and the majority of
25 closed solid waste landfills are currently

1 demonstrating for postclosure maintenance, so it's
2 hardly anything new or radical or something that we're
3 not familiar with.
4 And then most importantly, 30 X provides the
5 least financial exposure to the State in the absence
6 of a pooled fund, and 30 X is a potent deterrent to
7 divestiture default. So this really gets at the core
8 of the issue: What provides the least risk to the
9 State and the taxpayers of the state. And I think
10 that's really the bottom line for what this Board
11 needs to be looking at.
12 However, as we look further into that, we
13 believe that we have not yet fully defined what "X"
14 is, so we think that after putting it in place there's
15 still a lot of work to be done and to grapple with
16 what are the costs. And Mr. Gage was addressing this,
17 what are going to be the cost, both the reasonably
18 foreseeable and those that are less foreseeable.
19 We have suggested -- and I will bring up
20 again -- that one way to start to get a handle on that
21 would be to look at two or three landfills and do a
22 real probabilistic risk assessment.
23 What I had said last month was to look at
24 two or three large landfills. One of the landfill
25 company representatives pointed out to me, "Well, you

1 know, it might not just be the large ones that have
2 the problems, you could have worse problems at small
3 ones."
4 Well, I think that may be a point. Maybe it
5 should be two large and one small. But let's take a
6 look at a small number of representative landfills and
7 do something that would benchmark the ICF analysis
8 with more real-world data. And I do recall -- and
9 it's in my notes from last month's meeting -- that the
10 Chair actually explicitly referenced agreeing with me
11 on that. So I thought that was something that we
12 could move forward on, and we still feel very strongly
13 that that's the case.
14 And then we also need to look at what are
15 the proper mechanisms for making sure that that money
16 is available, and we do think that the financial means
17 test is not adequate and that the events that have
18 happened in the corporate world and the financial
19 world in the last year have really driven home that
20 point that, "Too big to fail," it does not pass muster
21 anymore. And there is a legal argument that, Well,
22 the State needs to make available all the mechanisms
23 that are made available under federal law, but it is
24 entirely within your authority to put conditions on
25 the use of those mechanisms.

1 So, for example, you could say anybody using
2 the financial means test would have to have "X"
3 percentage of the potential costs put aside in a trust
4 fund or some sort of a third party actual certified
5 instrument so that we would not just be relying on the
6 future health of that corporation.
7 So those are suggestions we have at this
8 point for moving forward. Thank you.
9 CHAIRPERSON BROWN: Thank you, Bill.
10 We have a question. Sheila?
11 BOARD MEMBER KUEHL: The Staff sent us a
12 memo in answer to your three major points, and I
13 wanted to ask a question about the use of the
14 site-specific risk assessment. I don't really
15 understand how it helps us. Looking at three specific
16 sites, it might even be worst case or not. So then
17 we've got information about potential corrective
18 action. And how does that help us in establishing our
19 requirements for all the rest?
20 MR. MAGAVERN: Well, and I don't think we
21 need to look at every site in the state, which think I
22 is one of the things that the staff has alluded to.
23 BOARD MEMBER KUEHL: Right.
24 MR. MAGAVERN: It's basically a matter of
25 getting some real-world data. Not that we can say for

each landfill these will be the costs but so that we have actual data on California landfills that's not just based on modeling from ICF but that says -- that gathers information on what's the condition of the cap at each place, what's the condition of the leachate lines, what are the --

BOARD MEMBER KUEHL: I understand the approach, though, but I honestly, personally, don't understand how we then apply it to the requirements overall for landfills in terms of what kinds of assurance we want related specifically to potential corrective actions.

MR. MAGAVERN: Well, I think it's a matter of trying to figure out what the costs are and having some actual data from our own landfills that we would hope would be somewhat representative. It wouldn't be the only data point, but instead of just having modeling of what might happen, saying, Well, we actually looked at some places on the ground.

BOARD MEMBER KUEHL: No, I really understand your point, but I don't get an answer to my question.

MR. MAGAVERN: I'm sorry, I guess I'm not understanding the question.

BOARD MEMBER KUEHL: Now I'm on the ground, I've assessed these three landfills. Now, what do I

1 do with that information vis-à-vis the other landfills
2 that I haven't assessed? Because we do want some
3 financial assurance related to corrective action from
4 all of them, don't we?
5 MR. MAGAVERN: Right, I think it's a matter
6 of extrapolating that information across the other
7 landfills.
8 CHAIRPERSON BROWN: So what's the
9 difference -- let me follow up on that. What's the
10 difference, then, in your mind between extrapolating
11 from three randomly selected or use a modeling
12 technique that was in the report that the Board
13 adopted? Because, in my mind, Bill, actually, you're
14 looking at almost the same kind -- you're just
15 supposing how one set of information is going to
16 extrapolate information and give you one set of
17 numbers versus extrapolating information from
18 something else that's going to give you another.
19 What's the difference?
20 MR. MAGAVERN: The difference is in using an
21 actual probabilistic risk assessment, doing the kind
22 of analysis that an insurer would use if they were
23 actually going to insure against this risk.
24 CHAIRPERSON BROWN: But that's what the ICF
25 report did to get the model. If you disagree with the

1 modeling, then that may be an answer to the question,
2 but that's what the ICF report did.
3 MR. MAGAVERN: We don't think they used
4 probabilistic risk assessment of any California
5 landfills in doing that.
6 CHAIRPERSON BROWN: Okay.
7 BOARD MEMBER KUEHL: There was also an
8 answer about your third point in the staff -- which I
9 wonder if you might respond to, and I'm not certain
10 whether you saw their answers, whether those were
11 shared with you. I never know who sees what.
12 MR. MAGAVERN: I haven't seen that.
13 BOARD MEMBER KUEHL: Okay. Well, then just
14 tell you very briefly said about part of your third
15 point. They said "Staff believes that precluding the
16 financial means test for postclosure maintenance would
17 cross the line under state law because it would leave
18 no federal financial assurance requirements where the
19 financial means test could be used."
20 MR. MAGAVERN: Right, and the financial
21 means test could be used under certain conditions is
22 my proposal. And one of those conditions would be,
23 Well, you're going to have to set some money aside in
24 a trust fund.
25 And the Board, in fact, used something

1 similar in the '90s in dealing with captive insurance,
2 which really is, roughly, the same thing as the
3 financial means test.
4 CHAIRPERSON BROWN: John, did you have
5 questions of Bill?
6 BOARD MEMBER LAIRD: I did. I have one
7 follow-up, and I was going to try and -- the trouble
8 is, is with the 9,000 pieces of papers that are not
9 indexed, I cannot find what I'm trying to find, but
10 let me just try here.
11 And I was trying to reconcile what the Chair
12 was doing with Bill, and I was trying to go to the
13 report on the probability and look at what the
14 probability was based on in the report to find out the
15 level of assessment to which they got to the
16 probability and the difference you're proposing in
17 doing three for how more deeply into it you're
18 proposing going to the assessment, and I think that's
19 what didn't get clarified in the exchange. And I was
20 trying to look for the definition in this report to at
21 least ask about it. But is that what you're
22 suggesting is, even though there's an issue about
23 extrapolation -- because what I think happened is, is
24 in their report they extrapolated with no individual
25 analysis of each landfill but with sort of a

1 collective estimate, and you're trying to look at just
2 the actual details of three specific landfills to see
3 what you learn to see if that should raise some
4 questions that weren't addressed in the extrapolation
5 of what our report did?
6 MR. MAGAVERN: That's right, to look very in
7 depth and great detail at those landfills and
8 extrapolate from that.
9 CHAIRPERSON BROWN: Can I ask Bill, then, to
10 chime in on the ICF report for clarification from
11 Staff's perspective?
12 MR. ORR: Yes. As far as the model, it
13 looked at the -- the ICF looked at a variety of
14 sources of information. It looked at the compliance
15 study, the Geosyntec report that we've referred to
16 before. As part of that, there was actually a
17 detailed assessment of 53 landfills, including 13
18 presubtitled D landfills and 40 modern landfills.
19 It also looked at various siting conditions
20 at specific landfills; that data was all put into the
21 model. It also looked at the size of the landfills,
22 small, medium, and large.
23 BOARD MEMBER MIGDEN: Pardon me, but those
24 are throughout the country?
25 MR. ORR: Excuse me?

1 BOARD MEMBER MIGDEN: Those California?
2 MR. ORR: Those are California landfills.
3 BOARD MEMBER MIGDEN: Okay. Then since the
4 points being making (verbatim) that it isn't, would
5 you just amplify where it's California or where they
6 be the nation, because that's the subject of, I think,
7 the dissent being expressed by the individual.
8 MR. ORR: So the 53 landfills were all
9 California landfills. All of the data put into the
10 model was based on site-specific data for those 282
11 landfills in California. In addition to that, ICF,
12 working with stakeholders, develop a screening
13 methodology that included 13 risk factors that we've
14 talked about before. That was also folded into the
15 model.
16 In terms of the frequencies, the projected
17 frequencies were utilized in the model. And then in
18 addition to that, Staff went out and did a survey of
19 corrective actions in California at California
20 landfills over the last 15 years, and we found that
21 the frequencies for the different corrective actions
22 were consistent between what had been used in the
23 model and the 15 years' worth of corrective action
24 data that we had. So that would be a summary, that it
25 looked at 53 landfills that had been previously

1 analyzed, developed a screening methodology included
2 site-specific criteria, and then the frequencies were
3 validated by our own corrective action survey.
4 BOARD MEMBER LAIRD: You know, I'm having a
5 tough time because when there's these sort of form
6 percentages, methodology, all this stuff. These are
7 real situations, and I'm trying to understand how they
8 go.
9 And I had these local government experiences
10 where, for example, we had an item coming to us on an
11 agenda where we were going to cite 45 houses and
12 approve them and set them away from one stream based
13 on a 100-year storm, and they did modeling. Then, lo
14 and behold, in the two weeks before it was filed with
15 the agenda item and we considered it, we had the
16 100-year storm. And, lo and behold, 13 of the houses
17 through the model were going to be dry and away from
18 the flood were flooded in the 100-year storm.
19 And so what I'm trying to get at in this
20 exchange is, when you look at this chart -- and even
21 after I self-teach myself everything here -- and
22 you've got a thing that goes permitted capacity,
23 below .5 MCY; probability number; combo subtitle D;
24 129 LX; below 50 feet; 50 to 100; above 50/100. And
25 then you get to a probability of a major corrective

1 action that's high cost is basically three-quarters of
2 1 percent, but less than 50 percent, it's half of
3 1 percent and below.
4 It's hard for me to attach credibility to
5 all that even though that might have been the most
6 credible methodology that you could use in anything of
7 the universe. And I'm trying to understand in English
8 how is there -- just the bottom line, is there a
9 realistic look at this that assures us that we're
10 providing for high-cost corrective actions without
11 what Mr. Magavern is asking for?
12 And I appreciate you explaining how the
13 methodology works, but we're sitting here stuck with
14 the bottom line of assessing risk and protecting
15 against it.
16 And is what you were saying a clear
17 statement, that you believe that this best protects
18 against the risk with every single thing we can know
19 and we don't need to know more as per this? That's
20 what I'm trying to understand.
21 MR. ORR: Well, that's a challenging
22 question to answer.
23 BOARD MEMBER LAIRD: It's the one that just
24 happens to be on our laps right now.
25 MR. ORR: Well, I guess what would I say is

1 I think in part based on the additional input by
2 stakeholders, I think we've gone above and beyond what
3 the model originally looked at, which was what we've
4 called the base corrective action. And I think we've
5 gone beyond that to say, Well, let's think beyond
6 that, what other types of corrective action might
7 there be.
8 And some stakeholders have brought to us the
9 notion of major maintenance, and we've put that into
10 our overall framework. That's above and beyond what
11 the contractor looked at or what was validated. In
12 addition to that, we've had discussions about
13 extraordinary corrective action which is more what I
14 would describe what you suggested, when you've got the
15 model, you've got the design standard and something
16 still happens. When it's above that, when the
17 earthquake you didn't think was going to happen for
18 1,000 years happens tomorrow, that would be an
19 extraordinary corrective action. So I think we've
20 gone above and beyond that.
21 I think the weak point is not actually the
22 risk assessment or the potential types of corrective
23 action, quite honestly, that the challenging piece are
24 the costs. We don't get cost information very often.
25 It's not required -- when regulatory agencies require

1 corrective action, they don't have to tell you how
2 much it cost, they just have to tell you that they
3 fixed it. And so I think that on the risk side I feel
4 comfortable.
5 I think on the cost side, there's always
6 going to be more that can be done to improve our cost
7 data, but it's been a very hard situation to get that
8 kind of cost data, as the Board has found in many of
9 the efforts to develop cost information over the last
10 couple of years. So from a technical standpoint, I
11 feel good. From a cost standpoint, I think we could
12 always use more data.
13 MR. ORR: So if I could just follow up, we
14 did offer a detailed critique of the ICF study, and
15 I'd be happy to resubmit that. That study,
16 essentially, ignored major maintenance, and that's the
17 kind of thing we're looking for when we're talking
18 about these site-specific assessments. And as Mr. Orr
19 said, it's difficult to get this cost data, so we'd
20 like to see that developed.
21 CHAIRPERSON BROWN: Thank you. Carol has a
22 question.
23 BOARD MEMBER MIGDEN: Just briefly.
24 Firstly, so we had a private report Sierra Club and
25 others never felt good about, it's been around for a

1 few years. We appreciate that.
2 And if the contention is it wasn't using a
3 California model -- we're having Staff testimony say,
4 Yeah, it has been. But you might say, Well, jeez,
5 it's diluted in terms of what its conclusions are; so
6 that's one.
7 And, secondly, you know, it's so hard here
8 to try to quantify things. Is it off 10 percent? Is
9 it off 5 percent? I mean, what's your conclusion,
10 because realistically, Bill, I don't think we're
11 prepared to go out to bid on the issue again.
12 So if that is the report and there's
13 something about it, if you said take that conclusion
14 and add 10 percent into what it cost because we're not
15 anticipating natural disasters that occur or
16 unforeseen terrible circumstances.
17 Can you help me with that a little bit,
18 because to say it's all wet and then walk away, we are
19 trying to fit some pieces here with perhaps not being
20 as resource laden as we'd like to be or -- you know,
21 just these times. So can you give me just a little
22 sense of that? You know, you bring up a good point.
23 Staff says, No, no, we did do that, blah, blah, blah.
24 MR. ORR: Sure. First of all, let me
25 clarify, we're not objecting on the basis of

1 geography. I don't think it's a matter of somebody is
2 using California numbers and somebody not. It's a
3 matter of how the numbers were arrived at.
4 And, certainly, we agree -- what we're
5 trying to do is come up with some more data to fill in
6 some of the gaps here. And I don't think we're at a
7 point where we can say, Well, what they said, plus
8 10 percent. It would be irresponsible for me to quote
9 a number like that, and that's why we're asking for
10 more information. I know it's difficult, there aren't
11 a lot of resources. That's why we're trying to keep
12 it as confined as possible.
13 BOARD MEMBER MIGDEN: All right. Thank you.
14 MR. ORR: Thanks.
15 CHAIRPERSON BROWN: Thank you, Bill.
16 Our next speaker is Mike Mohajer.
17 MR. MOHAJER: Good morning, Madam Chair. My
18 name is Mike Mohajer, and I'm representing Los Angeles
19 County Integrated Waste Management Task Force, and I'm
20 a commissioner on that task force, and Senator Kuehl
21 mentioned, I want to toot my horn a little bit.
22 I used to work for the Los Angeles County,
23 running the program as one of my activities under me
24 for about 30 years. I retired six years ago. I'm
25 just a civil engineer, not a lobbyist, and I

volunteer, and nobody is paying me, so coming over here. So my only interest is to protect public health and safety and the local government because that's who I worked for and that's where I get my retirement from.

So having said that and being so interested in the interest of the local government, some of my comments may sound funny, the repeated comments that is being not responded to. And I would like to reemphasize again. The first one was -- by the way, I worked with Assemblywoman Montanez when she came up with the legislation; I worked with her staff to put the legislation together.

And in reference to potential exposure of state to the financial -- for the financial assurance, I have always asked Staff, I want to find out the specific section of state law that gives potential exposure to state versus the local government. As of date, I have not received any responses to that issue, and that is very critical, considering that all the proposals that are on the table will -- really going to be harmful to the local government. And, basically, as I'm going to probably mention in the next item, you're becoming a bailout for the private sector as far as the whole financial assurance are

1 concerned.
2 So that is very critical, that whatever
3 decision at the end of the day your Board is going to
4 be making, it would be really helpful to clearly
5 understand the potential exposure of a State versus
6 local government. And notice I'm using the word
7 "State," I'm not using the word "Waste Board," "Water
8 Board," "DTSC." These are very critical, and I went
9 over this stuff with Mr. Bill Orr.
10 In the past, that from local government
11 perspective, I look at it as State. I don't look at a
12 different agency and say, Well, that's DTSC, so I have
13 nothing to do with it. I look at it from the State
14 perspective and it's going to cost local government a
15 lot of money. So, again, I would really appreciate if
16 this Board look at the differences between the State
17 and a local government as far as exposures are
18 concerned.
19 Going back, we have submitted comments back
20 on April 9 of 2009, which all the Board Members have a
21 copy. One of the items that we had mentioned was that
22 if the staff proposal is to provide for a step down,
23 five years or a one-year step down, that we also want
24 to see that the staff come up with a proposal for a
25 step up if the operator fails to comply with what

1 they're supposed to be doing.
2 The response that it is mentioned in that 40
3 pages of Attachment 6 is said that that would be one
4 of the item that may be considered by the Board, so I
5 would greatly appreciate that, should you adopt any
6 policy that provides for the step down, so you want it
7 also to provide it for the step up.
8 Another items that we had concern with
9 that -- as proposed in the current legislative
10 language for the Phase II, for the corrective action,
11 the financial assurance provide for use of the
12 financial assurance that is available to the Water
13 Board for doing non-water related issues. And one of
14 the comments that the task force had was that the
15 regulation provides for the money to be replenished in
16 five years and also provides for alternative schedule
17 between the Water Board and the Waste Board to
18 establish the fund back to the -- before they took the
19 money out.
20 So our comments was that if they're going to
21 go with the alternative schedule, the alternative
22 schedule should not be less than five years. In other
23 words, we don't want to put the money back in the
24 financial assurance during a period of ten years, we
25 wanted to limit it to five years or less. The staff

1 response in that Attachment 5 or 6, it says that the
2 comment is outside the scope of this rulemaking, no
3 amendment.
4 And it's really difficult for a person like
5 me to understand that, if you are revising what the
6 financial assurance that it is for the water issues,
7 you're adding non-water issue to it, you providing to
8 come up with an alternative schedule. And when the
9 task force asks, Well, do not go more than five years,
10 you say it is outside the rulemaking process. And I
11 would really like to see on what basis the staff has
12 come up with this decision, and maybe we can discuss
13 it.
14 And so then one another comments that we
15 have in our April 9th was to define the items that
16 falls under the postclosure major maintenance and
17 corrective action.
18 And I want you to recognize the comments
19 that I'm saying -- I have been with the landfill
20 since -- for the past 37 years. I been out in the
21 field, down in the trenches when they were dumping the
22 garbage. So I'm not just talking over -- just for the
23 sake of it, but it is looking at the proposal. The
24 stuff that we discussed at the consultant group
25 is really -- it's not a clear understanding what is

1 postclosure maintenance item, what are the majors, and
2 what are the corrective action. And the staff
3 response is that it all depends when they submit the
4 postclosure plans what is listed in there. And I
5 think it should be a uniform, set up requirement for
6 postclosure maintenance and the corrective action so
7 it's not going to be for this landfill, it's going to
8 be this; for the other landfill, it's going to be
9 something else.
10 So with that said, that's all I have to say
11 again, and thank you for your time.
12 CHAIRPERSON BROWN: Thank you, Mike.
13 Does anybody have any specific questions?
14 Next speaker, Scott Smithline.
15 MR. SMITHLINE: Madam Chair, Board Members,
16 I'm Scott Smithline with the environmental group
17 Californians Against Waste. This may come as no
18 surprise to you, but Mr. Magavern and I have been
19 working on this policy issue together, and he covered
20 most of the points that are of issue to Californians
21 Against Waste as well, so I'd like to associate myself
22 with his comments across the board. There are a
23 couple key points that I would like to follow up on.
24 The first is that, as I've said before, this
25 issue is really -- has three parts: What are the

1 costs that we're talking about, what are the
2 likelihood that the State will be left holding the bag
3 to pay those costs at the end of the day, and how do
4 we allocate the risk, what is the policy we develop to
5 handle that.
6 And I'm really stuck at number one -- which
7 is, I think, many of us are -- which is what are the
8 costs that we are talking about. And the "X" number,
9 whether it's 15 or 30, is only relevant once we have a
10 really good handle on what the costs are. And so I
11 would like to just reassert that we think for now the
12 only prudent approach, frankly, is for this Board to
13 adopt a rolling 30 X until such time there is more
14 clarity amongst staff and stakeholders about what the
15 actual costs are for postclosure maintenance, major
16 maintenance, and corrective action, because regardless
17 of how much time and energy we've spent on it, I just
18 don't believe that we're there with that level of
19 clarity yet.
20 I'd like to just submit that I do think
21 site-specific assessments can be of value. I think
22 there's two points that I would like to add on that:
23 One which is the ICF model really looked backwards 15
24 years of data and then extrapolated what that would
25 look like, moving forward.

1 And I think one of the things a
2 site-specific analysis can do is look at a specific
3 landfill and not just look at what the costs were for
4 the last 15 years but do a deeper level of analysis,
5 what does the gas collection system look like here,
6 what does the cover look like here, what does the
7 leachate collection system look like here, what is it
8 going to look like in 100 years at this landfill, and
9 what are the costs going to be associated with that.
10 And so I think that's slightly different thing than
11 the ICF approach.
12 And the second part is having an independent
13 third party market validated number, I think, is
14 relevant here, not just having a third party that is
15 doing an objective approach but one that would be
16 putting its own dollars at stake, one that would be
17 saying, This is how much we would charge to cover this
18 landfill, the risks associated with this landfill, I
19 think, is an important number because, after all, this
20 is a market mechanism that we're talking about at the
21 end of the day. And so those are just a couple of
22 points I wanted to make on that.
23 And with respect to whether or not we need
24 more data, clearly already I've said we do. And I
25 think to say it goes above and beyond to look at major

1 maintenance, that's just not our perspective. Our
2 perspective is that major maintenance should have been
3 included from the very beginning. We always said it
4 should have been included. The fact that it wasn't
5 included, from our perspective, was a major
6 deficiency. And the fact that it's just now being
7 contemplated is a good step, but I don't think that
8 we've done the level of analysis on it that we need;
9 we have been asking for this data for some time.
10 The staff, for instance, has finally
11 included a cost associated with cover replacement.
12 But the episode or the period with which it needs to
13 be replaced, I think, has not been fully vetted.
14 We've asked for that assessment; we've asked for the
15 analysis about why the time frame they've chosen,
16 they've chosen. And we still haven't seen them, and I
17 still think that there needs to be a lot more --
18 THE REPORTER: Could you slow down, please.
19 MR. SMITHLINE: I'm sorry, I have a lot to
20 say. We've asked for that analysis, we've asked for
21 them to tell us why they've chosen that period. We
22 haven't seen that analysis, and we think that's an
23 important discussion that all the stakeholders need to
24 be involved in.
25 The last comment I'd like to make is with

1 respect to the corrective action options. You were
2 given three options. I don't think any of the options
3 we would support.
4 Again, back to the cap -- well, originally,
5 we had said that it didn't make sense to cover
6 non-water quality related corrective actions with
7 water quality related funds because we don't think
8 that it's reasonable to ensure two different types of
9 corrective actions with the same pot of money. You're
10 adding to the list of potential things you're going to
11 pay for, but you're not increasing the amount of money
12 that you're going to use to pay for it. Again, we
13 don't think that's a viable strategy.
14 Now you're basically saying, We'll take
15 whichever is greater -- potentially, if you choose
16 this option -- whichever is greater, the amount for
17 the most expensive water quality related corrective
18 action or the amount to replace the cap, and you'll
19 just make them provide that much assurance. But,
20 again, those are two totally separate things. I think
21 we can be assured that these caps will need to be
22 replaced at some time. So this is a maintenance
23 requirement, as far as we're concerned, not a
24 corrective action. And so it doesn't make sense to
25 say we're going to cover all these different types of

activities with the same pot of money.

So, again, sorry I'm all over the map, but just for the record's sake, associated myself with the comments of Mr. Magavern from Sierra Club. Thanks.

CHAIRPERSON BROWN: Thank you, Scott.

Our next speaker, Kent Stoddard.

MR. STODDARD: Madam Chair and Members, Kent Stoddard representing Waste Management today. While we're not here to recommend that these regulations be -- move forward today, I do want to say that I think a really good job has been done over the last few years in working out some pretty complicated issues. And I think there's still a few ahead of us.

Preserving the use of trust funds, I think, is a really key issue, and I'm not sure we really got that one figured out. And the system under which we allow an operator to step down and the performance standards, I think, still needs some work. But, basically, I think there's a pretty good foundation that's been laid.

I think the point I want to make today is that, as good as these regulations can be, they're going to be a partial solution to this problem because there is so much uncertainty about what we're facing over the next hundred years.

1 Twenty-two years ago, I worked with Delaine
2 Easton and staffed her bill that created this 30-year
3 requirement for postclosure maintenance. We pulled
4 that number right out of the air because there was no
5 data; we really didn't know. And we knew that over
6 time that would be have to be refined, we were going
7 to learn a lot of additional information, and we would
8 be in a better position to figure out how to adapt to
9 changing technologies and better management practices.
10 I think we're still there; I think there's still a
11 tremendous amount of uncertainty.
12 Our suggestion is that we really do need a
13 more comprehensive approach if the goal is to protect
14 public agencies, whether they be state agency or local
15 agencies, from getting stuck with cleanup projects
16 because an operator defaulted. We need a pooled fund;
17 we need to deal with divestiture. I think you can't
18 look at these regulations in isolation of some
19 legislative work that really needs to be done to make
20 the package whole.
21 And I will say those of us who worked with
22 Assemblyman Montanez on 2296, we totally goofed. The
23 deadline that had the recommendations to the
24 legislature be the same date that the Board was
25 supposed to adopt Phase II regulations did not make

1 sense. That's not the process that we should have
2 been pursuing. Now, perhaps we've got a little
3 bailout with both the policy chairs of Assembly
4 Skinner and Senator Simitian and both requesting that
5 we delay these; that might be extremely helpful at
6 this point so that we could really focus on what are
7 the insurance backup mechanisms that we need to know
8 that these regulations within that broader context are
9 going to fulfill the legislative obligation, which is
10 to fully protect public agencies from an enormous of
11 uncertain costs.
12 So good work's been done. I think we're
13 close, but we would really urge the Board -- and I
14 think this relates to the next item -- is to provide
15 as much direction as possible to Staff as soon as
16 possible to get that over to the legislature with some
17 recommendation for the legislation that we need to
18 round out this package.
19 CHAIRPERSON BROWN: Thank you, Kent.
20 We do need to take a quick break for our
21 court reporter.
22 (Whereupon a recess was taken from 12:06 p.m. to
23 12:30 p.m.)
24 CHAIRPERSON BROWN: For the record, I'll
25 just report that all members are present at the dais.

1 We've taken a brief break for some lunch. And our
2 next speaker, Larry. I just want to make sure you're
3 here.
4 MR. SWEETSER: Larry Sweetser on behalf of
5 the Rural Counties Environmental Services Joint Powers
6 Authority, and I would like to think of myself as
7 always being here.
8 So as one who was involved in the issue from
9 the very beginning, it feels like we've been going to
10 these meetings forever, but I think in some sense we
11 have, but we're trying to get to a good resolution. I
12 don't, for one, care how long it takes to do that. I
13 think we really need to hash out some of these issues.
14 And, as I've stated before, I don't think the Board's
15 ever faced any decision that has the magnitude of
16 financial impact throughout the state, millions of
17 dollars per site; billions of dollars throughout the
18 state, so we've got to make sure we do the best
19 decision we can even with the information that we do
20 have.
21 And although landfills haven't closed long
22 enough to really get a lot of good data, there is some
23 data out there that we think can be used and has been
24 used in this process. We'd like to see a little more
25 analysis of that.

1 I'm going to focus just on one major
2 thought, and that is that this whole level of risk
3 that we're trying to determine is based upon a
4 contractor's model developed some time ago. And many
5 of us, nearly all the stakeholders, had questions
6 about that model, the assumptions and especially the
7 risk factors used; some things are too high, and some
8 things are too low. But we had a few questions at the
9 very beginning, and I don't think many of us feel that
10 they've really been adequately addressed so that we
11 understand what those assumptions are.
12 We understand the need to be conservative,
13 given the lack of clarity, but how much we need to do,
14 that is the question. How many more than zero risk
15 are we going to assume. There's going to have to be
16 some because there's no way to absolutely make sure
17 that there's enough funding out there for 100 percent
18 coverage, so we need to have some level. And that's
19 where that model comes into play. It's very important
20 to do that, given the amount of risk that's at stake
21 both from an environmental standpoint and also a
22 fiscal impact to jurisdictions. I think that's where
23 we may need to have more discussion on that.
24 And I think from our standpoint we're not
25 opposed to raising the cost. We have to do that when

1 we need to. It's a question of doing it based on
2 something that we understand and can justify,
3 especially to our ratepayers, and we, for one, don't
4 feel we're there yet. There's a lot of work still to
5 be done, I think. But in terms of where we're at, I
6 think, for one, we would request that we have more of
7 a time-out to look at some of that a little bit more.
8 The fiscal impact is very important. You're
9 going to hear about the trust fund impact, and most of
10 our groups that we don't use trust funds. But even on
11 the pledge of revenue, the significant impact by
12 having a higher number of 30 X or even higher,
13 jurisdictions when they do a pledge of revenue have to
14 set aside an obligation out there that's taken into
15 account when they do finances. I believe we'll be up
16 here shortly to give you a little bit more detail.
17 But in a sense, when jurisdictions are
18 looking at funding public works projects of all sorts,
19 they have to look at all those obligations they have
20 out there. That higher number will be one of those
21 obligations. So when -- they have to total up all the
22 obligations we have and disclose those when they go to
23 seek bond funding or other types of funding for public
24 works projects. And are we really at the point that
25 we can justify that higher level, given that impact.

1 And I'm not a financial analyst, but from people that
2 I've talked to, that's one of the consequences of a
3 higher number.
4 So we would hope that there could be a rater
5 look at that. And we would also request that this
6 might be a time -- like we did last Tuesday. We had a
7 very good dialogue, a focused dialogue like that on
8 this model, on the assumption so we can get better
9 comfort level on what that number should be or what
10 level of risk should be assumed.
11 So, as I said, I'm not sure what our hurry
12 is to actually come up with a number per se for our
13 level of risk, but we do want to make sure that we do
14 the best we can in getting that number out there, and
15 look forward to the discussion. Thank you.
16 CHAIRPERSON BROWN: Thank you, Larry.
17 Our next speaker, Evan Edgar.
18 And we do have several speakers still, so I
19 will mention in the interest of time and for the
20 allowance of discussion afterwards, a lot of you have
21 been gracious enough to provide letters for the
22 record, and we do have all of those. So if you want
23 to keep your comments to highlighting the issues of
24 importance and then any added information is helpful.
25 Thank you.

1 MR. EDGAR: Evan Edgar, engineer for the
2 California Refuse Recycling Council. We supported
3 Phase I, and we generally support Phase II. A lot of
4 good staff work went in there. If you guys want to
5 stay within statutory authority of July 1, '09 and if
6 you want to stay within your statutory authority as
7 what we can do in regulations, Phase II is the answer.
8 We can always come back with Phase III later because
9 what will happen -- and if you don't adopt the
10 regulation as is today, which we would support a
11 drawdown of 30 with a 15-year rolling, then you would
12 have to move statutory deadline. So after the report
13 is done to the legislature, who knows when Phase III
14 rates could come. But I think you have a good package
15 today, and I think a lot of people agree in some
16 terms. We oppose the concept of a 30-year rolling.
17 I'm a civil engineer. And what I would have
18 to do in order to make a statement that the landfills
19 no longer pose a threat to the environmental, every
20 five years we do a solid permit review, and the
21 five-year permit review is a good process. We support
22 that; it was our idea. And as an engineer, at year
23 15, if I can't make that decision -- which would be
24 tough to do -- then you have a rolling 15 years, so
25 you always have that money there. It won't draw down

1 until such time you can make that finding it no longer
2 poses a threat to the environment.
3 The current regulation, Phase II has that in
4 there. You have a rolling 15 years, and you can step
5 down further. That's great. So I like what you have
6 here. We support that. Thank you.
7 CHAIRPERSON BROWN: Thank you, Evan.
8 Our next speaker, Grace Chan.
9 MS. CHAN: Good afternoon. My name is Grace
10 Chan. I'm with Los Angeles County Sanitation
11 District, and I'll keep my remarks brief. I do
12 appreciate the time and effort of the Board and their
13 staff. This has been a long, challenging process.
14 It's a complex issue.
15 Unfortunately, we still have concerns that
16 the risk has not been appropriately characterized, and
17 so the subsequent evaluation of the mechanisms was not
18 done within the proper context. For us with trust
19 funds, that means that under the staff's proposals,
20 some amount of money that was selected for actual
21 maintenance activities would be frozen at some level
22 in perpetuity.
23 So even though the staff has said that at
24 the level of funding we currently have in the trust
25 fund, we could comply with some of their options,

1 there's no real compelling reason for us to do so. So
2 we'll be moving our money back from the Waste Board
3 controlled trust fund to the sanitation district so
4 that we can optimize our financial programs, including
5 meeting financial assurance obligations, however they
6 turn out.
7 We do agree in part with Mr. Magavern and
8 Mr. Smithline in that the dollar amount needing
9 further analysis although we clearly come from two
10 different perspectives on that issue. Where we
11 disagree is that you can divorce the dollar amount
12 from the likelihood of these events happening and the
13 need for incurring some corrective action because, in
14 our minds, the dollar amounts and the likelihood
15 really equals the risk that you're faced with.
16 So while we appreciate the position you're
17 in and the schedule that you're faced with, we hope to
18 be able to continue to work with you to further iron
19 out these issues, including discussions about the
20 pooled fund and the role that will play to, one,
21 protect the state but to do so at levels commensurate
22 with realistic and actual risk. Thank you.
23 CHAIRPERSON BROWN: Thank you, Grace.
24 Our next speaker is Rachel Oster.
25 MS. OSTER: Good afternoon, Madam Chair,

1 members of the Board. My name is Rachel Oster with
2 Recology, formerly NorCal Waste Systems. Thank you
3 for the opportunity to comment on this agenda item
4 today.
5 At this time Recology cannot support any of
6 the options that Staff has provided to the Board on a
7 number of reasons. But the No. 1 reason being that
8 this proposed regulations still has a disproportionate
9 effect on landfill owners and operators and their
10 communities that are funding postclosure care with
11 their cash demonstration.
12 I know that we've spent a lot of time
13 talking about how this regulation disproportionately
14 affects landfill owners and operators funding with a
15 cash demonstration, but I'd like to sort of zero in on
16 the effect that it has on closed sites and their
17 communities.
18 And Recology's -- specifically, with
19 Recology, we have two closed sites: One in Yuba
20 County that's been closed for 11 years and another one
21 in Santa Clara County that is no longer receiving
22 waste. So in both of these instances, we cannot cover
23 the cost of complying with these regulations just by
24 increasing the tipping fee. We would have to go back
25 to the communities where we have existing hauling

1 contracts to absorb those costs.
2 To give you a specific number, just in Yuba
3 County, we've estimated the cost of compliance to be
4 about $5 million, and that would result in a
5 20 percent increase to that community. And Yuba
6 County certainly can't absorb any rate increase at
7 this point, let alone a 20 percent rate increase.
8 So that being said, I do think there is a
9 solution for closed sites, and that is possibly
10 grandfathering them in to this regulation based on the
11 fact that there is no incoming revenue to pay for the
12 cost of compliance. But, certainly, we're going to
13 need some more time to work on that with Staff. And I
14 think that more time would also be helpful in passing
15 some pooled fund legislation that can't -- and Grace
16 talked about before -- that would alleviate a large
17 portion of the risk to the State.
18 And I just want to end on one last point,
19 and that's that earlier this morning we heard a
20 contract approved for a -- $250,000 contract approved
21 for a statewide programatic EIR for anaerobic
22 digestion facilities. And as we move toward zero
23 waste, Recology is in a great position to invest in
24 these technologies to help us get these gas-generating
25 organics out of landfills and to a higher and better

1 use.

2 And if Recology is spending an -- what we've

3 estimated to be about 12.5 million in complying with

4 this regulation, that's 12.5 million that is not being

5 spent on reaching our goal of zero waste. Thank you

6 very much.

7 CHAIRPERSON BROWN: Thank you.

8 Our next speaker is Chuck Helget.

9 MR. HELGET: Madam Chair, Members of the

10 Board, Chuck Helget representing Republic Services,

11 Inc. I'll try to be very concise because some of my

12 testimony is going to be based on -- or redundant or

13 tied to earlier testimony.

14 Three basic points that I think the Board

15 should consider today, and the first two I'll go very

16 quickly through. We believe that the structure for

17 these regulations and the framework for these

18 regulations really resides in resolving two important

19 issue. And those two issues are about $900 million in

20 risk if you accept the ICF model's calculation, and

21 that is the issue of divestiture and the issue of

22 default.

23 And the way to resolve those issues and the

24 solution to those issues is to pursue legislation to

25 support -- pursue -- for the Board to pursue and

1 support legislation that will help resolve those
2 problems before we move forward aggressively on these
3 regulations.
4 And we have supported AB 274, the Portantino
5 Bill. We think that's a great vehicle for resolving
6 divestiture and in dealing with that issue. And I
7 don't think you're hearing a lot of opposition to
8 trying to resolve divestiture. I think that's one of
9 the common points that are coming out at everyone's
10 testimony, that that's something that needs to be
11 resolved. And that takes a good chunk of money off
12 the table, one, we try to calculate risk, and the next
13 part of these regulations which is how much "X" should
14 we apply to the formula.
15 The other issue, then, is a pooled fund, and
16 we support a pooled fund. We think the Board should
17 be supporting a pooled fund, and we think we can
18 honestly get a pooled fund and get people to agree on
19 the elements of a pooled fund if we all put our heads
20 together to accomplish that.
21 My last point is that, while Republic has
22 consistently supported the framework in these
23 regulations and we supported the concepts of these
24 regulations, the drawdown to 15 years, a potential
25 step down to 5, we also recognize that there are

1 elements that should be perhaps considered in this
2 regulatory package, a step up, for example, it should
3 be something we should be discussing.
4 But moving ahead right now on regulations
5 that would go forward to a 30 X makes me quite
6 nervous, and I know going down 15 X makes other
7 stakeholders nervous. So the suggestion that I would
8 make is that, take a small breather here, a small
9 delay, give the legislature time to act this year, put
10 the stakeholders back together, perhaps go over the
11 ICF model again, perhaps a workshop on that with Board
12 Members involved so they can understand the ICF model
13 and the assumptions that went into the ICF model, and
14 then move aggressively once we find out what this
15 legislature has done.
16 If we go ahead with the 30 X today, what
17 potentially could happen is that you have a number of
18 many -- we have half of our landfills in postclosure,
19 so changes of rules for those facilities. And to some
20 degree, it could change the rules in a way that would
21 cause some of these facilities to go under default, so
22 there is a risk there. There is no risk, at least in
23 my mind, for delaying for three or four or five months
24 to try to get this right and to make the regulations
25 work.

With that, I will close. Thank you for your consideration.

CHAIRPERSON BROWN: Thank you, Chuck.

And our last speaker, David Tieu.

MR. TIEU: Okay. For the record, David Tieu with Orange County Waste and Recycling.

CHAIRPERSON BROWN: Pull the microphone. There you go. Thank you.

MR. TIEU: Is that better?

Again, David Tieu, with OC Waste and Recycling, Orange County. I just want to thank you for this opportunity to talk about the Phase II regulations, and I do want to commend Bill's staff on working on this Phase II regulations for the last six years and then the last two years especially with the implementation of AB 2296.

THE REPORTER: Please slow down.

MR. TIEU: But, anyway, I know we talked a lot about these regs, and I just wanted to raise some issues I have. You know, before the Board, there's a whole menu of different options from 30 X to 43 X to 49 X. And on the surface, I know it looks like, Okay, why not choose the highest level of protection to the State, you know. And with the Phase II regulations, it was a 30 X to a drawdown to a 15 X.

1 And just one thing I want to kind of raise
2 about as you ponder and decide is that it will be a
3 financial impact to the operators, depending on the
4 option that you select. Obviously, if it's a higher
5 level of protection, that's going to be more impact to
6 operators. But at the same time also consider that it
7 will be a financial impact to the taxpayer, the
8 ratepayer. And I know that's what we're trying to
9 avoid. But, ultimately, whatever financial
10 requirements that you impose on to the operators,
11 that's going to be passed through to the ratepayers as
12 well. And, you know, just recognize the current
13 economic situation we're in right now, where people
14 are losing their jobs, they're losing their homes.
15 And so the last thing they need right now is a raise
16 in their trash bill, so do consider that as well.
17 The other thing that I also want to point
18 out is that whatever requirement that you impose on
19 the operators, it will have an affect on other waste
20 management programs. It will affect diversion
21 programs, recycling programs; it will affect how we
22 manage the houseware hazardous waste centers; it will
23 also affect public outreach. And I just want to say
24 that for Orange County we do have the pledge of
25 revenue, and Larry Sweetser kind of alluded to as

1 well. But even though we have the pledge of revenue,
2 once we have a new liability, we have to record those
3 liabilities, and that's in accordance with the
4 Government Accounting Standards Board, GASB 18, which
5 you guys may or may not be familiar with. And so that
6 will affect even for facilities -- I mean, operators
7 such as us, who have a pledge of revenue.
8 And so what I will submit to you is that we
9 do need to find a balance between the level of
10 protection that's needed and also the financial impact
11 to the operators and the taxpayers.
12 So that being said, we do support the
13 Phase II regulations. We think the existing regs
14 structure is sufficient. We do recognize that there
15 needs to be some improvements to it, but, you know,
16 the fact that there's a drawdown, there's a
17 multiplier, it's better than what we have. It's not
18 perfect, but at least for the time being we can work
19 with that.
20 And then the last thing is that, also, the
21 new regulations, it does provide some financial
22 assurance for non-water quality. So because of that,
23 we do support the Phase II regulations. So thank you
24 for your time.
25 CHAIRPERSON BROWN: Thank you very much.

1 We actually have one more speaker. Kyra
2 Ross.
3 MS. ROSS: Good afternoon. Kyra Ross with
4 the League of California Cities, and I'm going to,
5 hopefully, make this very quick because I think you
6 really have already heard the concerns in the interest
7 of local governments in California, but I just wanted
8 to reiterate one point on the financial conditions of
9 local governments and the potential impact that some
10 of these decisions may have. And I also wanted to
11 note that I really do appreciate the time and the
12 effort that the staff have already taken on this
13 issue.
14 But it is important to note that at a time
15 when many of California's local governments are
16 already in financially very precarious situations --
17 and we're potentially looking, depending on the
18 outcome of today's election, at the additional
19 borrowing of $2 billion of our revenue. And what when
20 we're also looking at the municipal credit bond
21 markets that have virtually just disappeared and dried
22 up in the last few months, and that is a major issue
23 that, when you look at this pledge of revenue or this
24 source of revenue's impacts of local government's
25 ability to finance capital projects and improvements

relating to bonds, we do think that that's important that you take that into consideration as we move forward on this. And we do think that a time delay would help to understand some of these concerns that we have. Thank you.

CHAIRPERSON BROWN: Thank you, Kyra.

Any questions of Staff?

Staff, any last comments before we sort of ask questions or come to conclusion?

Sheila?

BOARD MEMBER KUEHL: Well, let me dive in. I know where I want to go on this and on the next issue. This has been a short process for me compared to how long it's been for others, but it doesn't take me that long to really understand the various points of view.

First of all, I don't agree with any of the speakers who said we should take more time with this because I don't see the need and I don't see the reason. It's not, "Oh, you'll understand it better if we talk more at you for the next three months." I don't believe that's the case.

I don't believe sitting around a table saying that you don't agree with the study that was done again is going to help because I don't know that

1 there is real support for analyzing the real costs to
2 landfills that haven't closed yet except going to them
3 one at a time and doing what I would consider to be a
4 fairly expensive assessment.
5 From my own point of view, I would prefer,
6 Madam Chair -- and, you know, we don't really have
7 these roundtable discussions among the Board except
8 here, so please forgive me if I just dive in.
9 But looking at the proposals, the various
10 choices presented to us by the staff and the testimony
11 and the roundtable we had last week and the testimony
12 and the meetings and the letters and the testimony, my
13 preference to protect the State from the problem --
14 the eventual problem of a default or defaults is
15 Option 4 presented to us by the staff, which is
16 30-year rolling with an option for step-down under
17 certain conditions at the 5-year mark, which is fairly
18 soon, and potentially down five years to a 25 X,
19 et cetera, again, having met conditions until the best
20 operators would get perhaps to a 15 X guarantee, at
21 which point I believe it should stay at 15 X and
22 continue as a rolling 15 X into the future.
23 The reason is because although people have
24 asked us to consider the plight of ratepayers -- and I
25 believe that to be the case -- I have always thought

1 it was more appropriate to task ratepayers to some
2 extent with the maintenance of the landfills that
3 serve them rather than taxpayers across the state of
4 California as a whole, and that's what I see as the
5 two options because, if there's a default and the
6 State has to pick it up, don't think they won't be
7 raiding municipal governments anyway to pay for what
8 has to be done at a landfill from which somebody
9 walked away. So just in terms of maintenance costs, I
10 would prefer that option.
11 As to the next question that was presented,
12 in terms of -- excuse me, I just want to be sure I go
13 in order. In terms of corrective action, a number of
14 options were also presented to us by the staff, and
15 I'm assuming everybody's seen these descriptions of
16 options ad nauseam. My own personal preference is for
17 letter B, which requires the level -- and I did
18 appreciate Mr. Magavern's critique of this particular
19 approach, but -- and, also, I think -- I can't
20 remember who made all the points -- but that to
21 require a reasonably foreseeable corrective action
22 level and to set it -- and there may be some
23 disagreement about the level among the Board, I don't
24 know -- but the proposal was either the most expensive
25 water quality event or replacement of the final cover,

1 whichever is greater which, again, is a financial
2 burden, there is no question. But to cover -- so I
3 would propose that we ask the staff to put those
4 regulations out for comment and that we adopt that as
5 a direction.
6 Then there are four other areas that I would
7 propose that we need more information before we give
8 direction to the staff. One of them is closed
9 landfills. There has been a lot of talk about how we
10 shouldn't do this because of its impact on landfills
11 that have already closed, and I think I may agree that
12 we shouldn't do it to landfills that have already
13 closed but not that we shouldn't do it because some
14 landfills have already closed.
15 For the 252 that are still open, I believe
16 we have a responsibility to require financial
17 assurances and -- at the level that I indicated. But
18 I think we need to have a better set of options for
19 those landfills that have closed, especially those
20 that have been closed for a while, rather than saying,
21 We know you don't have any income, but suddenly you
22 have to come up with a bunch of money.
23 The second thing that I think we need to
24 have a little more thought in the Board about is
25 transfer of ownership, what everyone is calling

1 "divestiture," but to me it's just a transfer of
2 ownership from one operator to somebody, because I
3 think we have the authority without statutory changes
4 to say what we would want a new owner to have to show
5 in terms of financial assurance. We don't, probably,
6 have the authority to say, "You can't sell it," but I
7 don't know that we need that, so long as we have
8 permitting authority and we have the ability to say,
9 "You have to post financial assurances." And, if
10 Option 4 is adopted, it gives us the ability to step
11 up, not only step down, and therefore we could say to
12 a new owner, You haven't demonstrated any ability to
13 maintain anything, Mr. Golf Course, so we'd like to go
14 back up to 30 X rolling.
15 The third thing that I believe we have the
16 ability to do but not enough information for me to say
17 what direction I'd like to take has to do with what
18 kinds of financial demonstrations people would be able
19 to make. There's a bit -- more than a bit of
20 disagreement about what is an adequate demonstration
21 of financial assurance in terms of a financial
22 instrument. And I'd like us to decide that, but I
23 don't believe we're quite ready to give the staff
24 direction on an actual regulation about it.
25 And, finally, in terms of a pool, I believe,

1 in that all of these may be if, whatever we adopt,
2 should go into a report to the legislature to be made
3 on time.
4 We can give you more feedback, Mark, on the
5 draft that was put out. I believe Margo has an issue
6 about -- which she'll articulate about -- an executive
7 summary. And I can say as a former legislature, we
8 love executive summaries rather than reading
9 everything, but -- except for me, of course.
10 But I think we would want to seek statutory
11 authority about the establishment of a pool for major
12 or catastrophic or however we want to describe it. I
13 would, of course, love to have it be structured as an
14 untouchable pool because I'm tired of having our funds
15 raided too. Although I love children's health care
16 and third grade classes, I don't think that's what I
17 paid a dollar for each one of my new tires to do, but,
18 okay.
19 If we can't structure it that way or if the
20 legislature is not able to do it, which we know
21 occasionally does happen, so be it. But I think we
22 should express -- and that, from my point of view, is
23 the only statutory action I would ask for. The rest,
24 I think we have the ability to do. So that's my
25 report.

1 CHAIRPERSON BROWN: Thank you, Sheila.
2 Anybody else want to chime in or associate
3 themselves or contradict or --
4 Rosalie?
5 BOARD MEMBER MULÉ. Thank you, Madam Chair.
6 Thank you, Sheila, for organizing my
7 thoughts for me. Actually, the way you laid it out is
8 really very -- it's just very clear and concise.
9 I've gone through the document that Staff
10 had put together. And, again, I want to thank
11 everyone for their testimony, for all your
12 participation in this process over the last several
13 years. We all know this hasn't been an easy issue to
14 address, but I, for one, feel that we are ready to
15 move forward with a number of the changes in the
16 Phase II regulations as outlined in Attachment 10.
17 I will also support the Option 4, which is a
18 30 X and with the step down to a rolling 15 X based on
19 performance criteria. And so I think that that really
20 incentivizes the operators that are doing the right
21 thing in the right way. I'm still having trouble,
22 though, even with this option with how do we handle
23 those operators that have the trust funds, and then
24 their 15 X is tied up. And so that's something that I
25 would hope Staff could work with the operators on that

1 because I don't want to have one operator because they
2 have a different financial assurance mechanism to have
3 an advantage over another one. So we really want to
4 create a system that is as fair as possible.
5 On the corrective action, I do support
6 Option B, which, again, looks at either the most
7 expensive water quality event or replacement of the
8 final cover. I guess for me, though, is how -- you
9 know, would that -- that would be for whatever period
10 of time; correct? I mean, if the placement of the
11 final cover is $2 million --
12 MR. ORR: That's correct, it would be a
13 one-time replacement of the final cover.
14 BOARD MEMBER MULÉ: Okay. That's it. That
15 was my concern, that we don't want to replace the
16 final cover every ten years. Very good.
17 And then as far as the options for
18 additional statutory authority, I'm not sure whether
19 or not we do have the authority on the divestiture
20 issue, but I do feel that, number one, Staff should
21 pursue that to see what authority we do have and, if
22 we do not have the authority to change the divestiture
23 situation, then I think that we really should look at
24 that as a statutory recommendation to the legislature.
25 And then as far as the use of the financial

1 assurance mechanisms, the ICF report did examine and
2 look at all of those mechanisms. I'm still not sure
3 how much more work we need to do in that area.
4 But, again, it's something that perhaps,
5 Madam Chair, we can direct Staff to do some additional
6 work in that area as well. I just want to make sure
7 that I don't miss anything.
8 And I do support some sort of backup trust
9 fund/pooled fund, whatever we want to call it. I
10 think that no matter what we do, no matter how tight
11 we think these regulations are, what we're doing to
12 protect the public from some catastrophic event, there
13 is something that is going to occur, and we do have to
14 have some backup mechanism in place. And, again, I
15 think that some type of a trust fund or a pooled fund
16 is probably the fairest way to address this situation.
17 Again, the details are going to be -- are going to
18 tell the story, but I think, though, that Staff has
19 already started those discussions.
20 And, Madam Chair, I would like to direct
21 Staff to continue those discussions with our
22 stakeholders to the extent that they can. Thank you.
23 CHAIRPERSON BROWN: Thank you, Rosalie.
24 John?
25 BOARD MEMBER LAIRD: Thank you, Madam Chair.

1 And so many significant things have been said that,
2 despite the fact that we've been working on this so
3 long and there's a former elected officials impetus to
4 want to restate it all; I'm not going to do it. But I
5 think I'd like to make three or four points that rise
6 to the top that haven't quite been made or need the
7 reiteration.
8 I'm sorry to pick on the next to last
9 speaker, I think, David, when he was up here. But he
10 made a statement about the financial hit to the
11 ratepayers and how horrible it is right now in the
12 economy. And I think it is our obligation to think of
13 that moment that could be 18 years from now when
14 there's a major failure at some landfill and we have
15 to try to find the financial assurance to make sure
16 it's dealt with, and, if we fail in that because we
17 didn't sort of move to each individual landfill and
18 people responsible for it, having financial
19 responsibility, it just defaults to the taxpayer
20 statewide. And there would be people in 18 years
21 saying, "Well, who was thinking of this?" or "Why are
22 the taxpayers having to pick up the cost?"
23 And as Budget Chair, even though it's the
24 one that everybody says don't ever bring up, there was
25 a time when people asked us to drop 20 to 30 million

1 dollars into the budget to deal with one specific
2 landfill situation. And so that is what we're
3 weighing: Do you have the ratepayers that are the
4 people that put the trash in and caused the
5 expenditure have the obligation, or do you scrimp on
6 it to the point that it defaults to all the taxpayers
7 across the state.
8 So that's the choice we have, and so the
9 question is how to do it in the right way. And I feel
10 I need to repeat it because it's been said over and
11 over again, and then it's just like, Yeah, but the
12 ratepayers here, it's going to inconvenience them.
13 But they have to cover the cost that are their
14 responsibility for what comes.
15 Now, yes, we have to be reasonable and we
16 have to try to cushion it. We have to look at some
17 specific cases where however you apply this don't work
18 exactly right. And I am sympathetic to the one that,
19 you know, they have one year, maybe, left open and you
20 drop it on. It's a huge rate increase, it happens to
21 be at a time of refranchising. That's simply not fair
22 to the people that were involved in that. So that is
23 the underlying thing we have to do.
24 With regard to the deadlines, each Chair of
25 the legislative committee has said, the policy

1 committee, do it right and don't not do it right
2 because we have this deadline, and they have told us
3 that. That is probably sufficient cover, but I think
4 that at some point we may wish to actually seek budget
5 language or statutory cover to track with wherever
6 we're going on this, timewise, to make sure that we're
7 okay.
8 And we do have the problem, however the
9 Board finally decides it feels about both divestiture
10 and a pooled fund, of the legislative process not
11 matching our regulatory process or the deadline. And,
12 yet, if we were to wait for some reason that's
13 artificial on the deadlines, we would actually be
14 waiting all the time because we could always come up
15 with a reason to wait and do it. And so I think we
16 have to try to decide what's right, move ahead, make
17 the deadlines track to us, and so just do our best in
18 that.
19 And I know that no matter what we do there
20 are a few specific issues that will still dog us,
21 whether it's the one I mentioned about the ones going
22 right into closure, whether it's sort of trying to
23 deal with those pre-early 1990's ones that closed
24 before the federal regs changed, whether it's the
25 small privates. All those -- or the ones closed by

1 the Water Board before they were fully capitalized. I
2 know that we will have some issues like that that we
3 will have fit into the midst of everything that we're
4 trying to do, and so we're going to have to still
5 think about those. And I sort of subscribe to
6 Rosalie's comment on the legislative authority on the
7 divestiture. I agree with Sheila on the pooled fund.
8 And on that, let's just make sure that we know,
9 because I think when I read the pros and cons, which
10 in talking to some of the stakeholders, I'm sure, gave
11 different ones for different reasons heart attacks.
12 The notion that somebody could try to set up
13 a sham corporation to sell everything to and transfer
14 the liability and then not have many resources there
15 and not have us have some ability to approve and
16 investigate that sale to make sure that the taxpayers
17 are protected and how that is as an important thing to
18 do. And I was surprised at the thought that liability
19 could be spread to multiple people by the sale. I
20 would think that in some ways it doesn't devolve back
21 unless there's a lack of disclosure on the selling
22 party. But that would be for other courts to decide,
23 but that is a reason why it would be good to clarify,
24 as Sheila clarified, at the transfer process. So that
25 at least if we need statutory authority to get

1 involved in the approval, that we have it, and I'd go
2 either way. If it's thought we could do it without
3 legislation, great. But, if not, I think we need the
4 legislation because I really think we need to protect
5 the taxpayers in those kind of transfers.
6 And the other thing is, is it was said by
7 someone, "Jeez, don't go to the highest level of
8 protection." Well, actually, we're not. That is not
9 an option that anybody has said; nobody has advocated
10 for the 49 X. And there is this fine balance when you
11 look at it of -- I think the staff report and the bar
12 charts really showed that 30 X was the most
13 responsible place to go, it would cause the least
14 number of defaults and provide the largest number of
15 protection for the most reasonable amount of money in
16 there.
17 And while I'm skeptical in some ways of the
18 step-down process -- and I'm skeptical because I think
19 when we finally get down to looking at how the Board
20 will interact on the regular intervals and judging
21 that, the workload of that, the process for that,
22 there will be somebody at some point that says "How
23 did we get into this?" And we will have to decide how
24 to do that in the most efficient way, if we do it, and
25 one that's fairest and sort of protects the

1 prerogatives in granting a step-down without some kind
2 of new annual process that involves every landfill or
3 something. That is something that we will have to
4 protect against.
5 So while I'm skeptical, the step-down, it's
6 clear that's where we're heading from where people
7 are, and so I would go with the -- generally, sort of
8 the Option 4 and the B and just know that we have to
9 clarify some of those legislative things and clarify
10 how we implement some of the other ones in a way that
11 is good.
12 CHAIRPERSON BROWN: Thank you, John.
13 I am -- at this point, Carol, did you want
14 to add anything?
15 BOARD MEMBER MIGDEN: I concur with my
16 short-winded colleagues, and I am concerned about the
17 closed facilities and not driving them into brink.
18 I'm concerned about a risk pool and making sure their
19 moneys for this Board's internal operation and not --
20 to become a bank. You know, that's not our purpose.
21 And I am -- and for those that have advocated
22 legislative solutions, I think we're not convinced
23 that they may be forthcoming, and perhaps it's some of
24 our problems are remedied with vehicles now; that
25 would be helpful. But I think it would be

1 irresponsible to forestall a beginning of
2 decision-making and a rulemaking process that we don't
3 commence with at this time. And we can always, you
4 know, adjust it and work with it and be mindful of
5 intelligent comments and good suggestions that are
6 forthcoming.
7 So I would associate myself with the
8 proposals; I think most is either 4 and B, I think.
9 CHAIRPERSON BROWN: Thank you, Carol.
10 Well, I'll, then, associate myself with my
11 brief colleague Carol briefly in that portion to try
12 and bring to conclusion where we are because I think
13 that some of my issues have been addressed by my
14 colleagues, so I can associate myself with all of the
15 comments that have been given, or a majority of the
16 comments so far.
17 And I do appreciate everybody who has
18 participated in the lengthy process, whether it was
19 the six years of study and analysis and then the two
20 years of stakeholder input. I think it has been
21 valuable, it has informed the process and brought us
22 to where we are, and I think a few of the speakers
23 today said there still is work to be done, and that is
24 true, and I think that's reflective of where each of
25 the Board Members spoke to today.

1 So I do believe that the 30 X rolling with
2 the step down to rolling 15 is the most prudent choice
3 at this time. I think that that contemplates creating
4 in some way, whether it's efficient or in some manner
5 a performance based measurement system where operators
6 can come to the Board and apply for their step-down,
7 you know. And it could very well be something similar
8 to a revised solid waste facility permit application.
9 Who knows? I mean, I'm just -- something along those
10 lines.
11 But that is the devil in the details. And
12 so what I think at this point we are prepared to do is
13 direct Staff to develop regulations around Item 4,
14 send them out for a 45-day comment period because this
15 basically is new. We want feedback and input and
16 adequate time for the stakeholder community to
17 participate.
18 But I will tell you there are issues that we
19 would like to defer and request that the staff
20 continue to work with our stakeholders and develop
21 some alternatives and suggestions similar to what
22 we've been going through in this process, and those
23 issues are divestiture, what are our options, if we
24 don't have to seek legislative statutory authority or
25 whether that is required.

1 We certainly have an issue -- and it's been
2 expressed up here by several of us -- what to do with
3 closed landfills or landfills that are currently in
4 their closure process, what our options are for
5 grandfathering and how to fold them into the current
6 system.
7 The ICF report mentioned the means test, but
8 I think that we're not ready. We'd like to defer the
9 issue of any changes to the financial assurance
10 mechanisms.
11 And then, you know, I think the other thing
12 was, as we look forward to Item 7, we'll discuss some
13 of the issues in seeking statutory authority --
14 corrective action.
15 MR. RAUH: B.
16 CHAIRPERSON BROWN: B.
17 BOARD MEMBER KUEHL: Just for clarification,
18 three things quickly: One is you said rolling 30 X
19 even though the word "rolling" doesn't appear in
20 Option 4, but Bill said that was what was meant.
21 And from that, I don't know if we need to
22 clarify that the burden of proof for a step-down is on
23 the operator, that it's asking us for a step-down
24 showing the demonstrated whatever, that it's not our
25 duty to go out and inspect every landfill to see if

1 they've been maintaining and then grant a step-down.
2 So it's --
3 CHAIRPERSON BROWN: Right, and that would be
4 embodied in some sort of a regulatory --
5 BOARD MEMBER KUEHL: I would also suggest as
6 to divestiture -- even though you're doing more work
7 to bring back something about that, I would assert
8 that we do have the authority and let that be
9 challenged because we're not going to be necessarily,
10 at this moment, seeking statutory authority even
11 though I know there is a bill related to divestiture.
12 And, you know, the legislature will do what it wants
13 to do, as it always does. But I think we should --
14 just without making a big deal out of it, I think we
15 should, in our introduction to that section, indicate
16 that we do have statutory authority to deal with
17 divestiture through our permitting process and our
18 financial assurance process. And that's why we're not
19 necessarily seeking statutory authority, I think, will
20 help us in the long run. If they impose it on us,
21 there's nothing we can do.
22 CHAIRPERSON BROWN: Well, and I think that
23 the Board clearly has indicated support for the
24 creation of a pooled fund; that does need statutory
25 authority. So for those in the legislature that are

1 looking for an indication of the Board's support, I
2 think you have consensus on the dais that the Board
3 strongly supports the creation of a pooled fund, or,
4 two, to handle catastrophic events, the 100-year storm
5 that we've never seen before or, you know, whatever
6 the catastrophic event is that is beyond anything that
7 we could have imagined or modeled.
8 BOARD MEMBER LAIRD: And I think, Madam
9 Chair, if I might, just on some of that, the tough
10 thing is, is I totally agree with what you said in the
11 formulation. There's still a few devils in those
12 details as to the level of the pooled fund and other
13 things, and I don't think we're stipulating to
14 anything by supporting the concept.
15 CHAIRPERSON BROWN: Exactly. Thank you for
16 the clarification, because I think part of it is we
17 still need work on a pooled fund. You know, some more
18 information will be looked at to try and inform that
19 process in some way as it moves through the
20 legislature from our perspective. But I think we have
21 clear direction from the dais.
22 And do you have any questions?
23 MR. RAUH: We did have one question. One of
24 the slides that we presented showed some basic changes
25 to the regulations that the staff was proposing --

1 CHAIRPERSON BROWN: Right.
2 MR. RAUH: -- to respond to.
3 CHAIRPERSON BROWN: Does anybody have any
4 objections to those? Are you okay with those?
5 BOARD MEMBER LAIRD: No, I don't oppose
6 them, but I sure found it hard to understand them.
7 And it's, like, I just hope we're not heading in some
8 direction that's different than anything we've been
9 doing by doing that and -- you know, change one word
10 here or this number code and all this stuff. And so I
11 just feel obligated to say that because I couldn't
12 make head or tail of a couple of them.
13 CHAIRPERSON BROWN: Point of clarification,
14 though. Will that be included in the 45-day comment
15 period with the new regs?
16 MR. RAUH: Yes, they will.
17 CHAIRPERSON BROWN: So we'll have adequate
18 time to review it again?
19 MR. RAUH: That's correct.
20 CHAIRPERSON BROWN: Okay. Great.
21 BOARD MEMBER KUEHL: Is there a way to spell
22 those out in a different way so that we see it in
23 context when you change the word?
24 MR. RAUH: Yes, we can. It will be shown as
25 actual language change.

1 BOARD MEMBER LAIRD: It might have been, but
2 it just wasn't to us. That's the point. So you knew
3 what the difference of the word meant, and you knew
4 what five numbered code it went into, but it was not
5 helpful when that happened.
6 CHAIRPERSON BROWN: Great. Thank you.
7 We'll move next, then, to Item 7. Item 7 is
8 the report to the legislature. And I don't think we
9 need a presentation unless you're in dire need of one.
10 We don't need a presentation on this item. I think
11 that we're prepared to --
12 BOARD MEMBER LAIRD: What you meant to say
13 is we don't need a presentation if they don't have any
14 instinct for self-preservation.
15 MR. RAUH: We're about to turn it off right
16 now.
17 CHAIRPERSON BROWN: I think that we have one
18 speaker who would like to speak to the item, and then
19 I think we're prepared to give you direction. Okay.
20 Our speaker is Chuck Helget. Did you want
21 to speak to Item 7?
22 MR. HELGET: (No audible response.)
23 CHAIRPERSON BROWN: No? Okay. You get one
24 minute. I'm not timing you, but my fellow Board
25 Members may be, so --

1 MR. MOHAJER: For the record, my name is
2 Michael Mohajer. I'm with L.A. County Integrated
3 Waste Management Task Force. I'm looking at the three
4 options that the staff has proposed in their
5 recommendation, Group A, Group B, Group C. In
6 reference to the pooled fund, we are not totally
7 opposing to the pooled fund, but we want to -- if the
8 Board decides to go with a pooled fund, we want to
9 make a separation between the public agency and those
10 of the private sector.
11 CHAIRPERSON BROWN: Right, and Member Kuehl
12 mentioned that.
13 MR. MOHAJER: Right. And in Group B item,
14 that goes back to the issue that the State already has
15 authority to go after the generator to recover the
16 cost, and that's where the local government comes into
17 the pictures.
18 And one other editorial comments that
19 Mr. Laird says -- and I totally agree with you, and
20 this has been my philosophy for many, many years --
21 that, ultimately, the ratepayers will pay for it, so
22 might as well do it now rather than waiting ten years.
23 Three months ago, four months, I had to go
24 for one of our garbage disposal district, we had to
25 settle for $2.8 million, going back to '60s and '70s,

1 and it's really, really hard. So I appreciate your
2 comments. Thank you.
3 CHAIRPERSON BROWN: Thank you very much,
4 Mike.
5 We do have one other speaker, Glenn Acosta.
6 MR. ACOSTA: Good afternoon, Madam Chair and
7 Board Members. Real briefly, I just wanted to express
8 our opposition with the item in Group C, which is
9 adding the local air district and improving agency for
10 the closure and postclosure plans. It doesn't really
11 do anything, it adds complications, and it potentially
12 goes against some of the discussions that we had
13 between stakeholders and staff on the cost-estimating
14 dialogue and what goes into the cost estimate for
15 closure. So with all those things, I want to say we
16 oppose that. Thank you.
17 CHAIRPERSON BROWN: Now we got one more.
18 Kent Stoddard.
19 MR. STODDARD: Kent Stoddard on behalf of
20 Waste Management. I just have one observation, which
21 is many of us on the industry side have been big
22 proponents of a pooled fund and feel that that's an
23 appropriate mechanism. But by selecting Corrective
24 Action B, which collectively, in our view, includes a
25 very high-cost low-probability financial event, I

1 think it takes a lot of enthusiasm out of the
2 equation.
3 I think our view of the need for a pooled
4 fund was to deal with those high-cost low-probability
5 events, and I think this certainly undermines our
6 enthusiasm if we're already going to have a
7 postclosure financial mechanism that has, in fact, a
8 high-cost low-probability event.
9 CHAIRPERSON BROWN: Thank you, Kent.
10 Any questions?
11 (No response.)
12 CHAIRPERSON BROWN: I will say I think that
13 most of Group B and C we've taken off the table and
14 deferred for now, so that would not be included.
15 I think we indicated the Group A issues,
16 creation of a statewide pooled fund, we haven't
17 described exactly one, two, or any of the specifics on
18 a pooled fund. So I think that that needs to be
19 somewhat --
20 BOARD MEMBER KUEHL: It looks to me like we
21 didn't necessarily decide to adopt one of these
22 groups --
23 CHAIRPERSON BROWN: We did not.
24 BOARD MEMBER KUEHL: -- because the -- and
25 I'm -- the first groups, the Group A was indicated

1 these have previously been discussed with
2 stakeholders, which was for residual default exposure.
3 This was not major catastrophic or even corrective
4 action.
5 CHAIRPERSON BROWN: Right.
6 BOARD MEMBER KUEHL: I think that it was
7 somebody defaulted and there wasn't enough money in
8 their financial assurance, maybe a pool would have to
9 cover the rest -- the residual default. I think
10 that's what "residual default" means.
11 And I'm not certain -- and Group A is an
12 either/or, I guess. All the groups are either/or; is
13 that right?
14 MR. ORR: Those groupings really defined
15 what the status was in terms of whether or not the
16 Board had heard it, whether the stakeholders have
17 heard, or if it was -- it's really not a logical group
18 where you would just say "I want that group."
19 BOARD MEMBER KUEHL: Well, then I return to
20 my statement in the other item which is really, I
21 think, the only statutory authority that I think we
22 should even put in a report, would generally have to
23 do with pooled funds, but I do agree that in adopting
24 a higher responsibility level for corrective action,
25 that the pool would really just be for the most

1 extraordinary circumstances if there was a pool, I
2 guess.
3 But since the legislature wouldn't do what
4 we wanted anyway, once they start discussing it among
5 those nine committees that everything goes through, we
6 could probably just say in our report we would support
7 legislation creating a pooled fund for, you know,
8 catastrophic or extraordinary or whatever and leave it
9 at that to see what develops.
10 CHAIRPERSON BROWN: Right. Residual
11 default, the issues that are not covered under
12 something currently.
13 I think that the report that was put
14 together is very thorough and very well laid out and
15 very organized. And we appreciate the extraordinary
16 time and effort that was put into the creation of that
17 report, and I think that the most prudent course of
18 action at this time would be to develop an executive
19 summary that was somewhere in the lines of -- I don't
20 know, some of my legislative colleagues could direct
21 us -- two to five pages that summarize the key points
22 what we've actually done, the work we've undertaken,
23 just briefly describe it, and then recommendation --
24 one recommendation, and allow for a Web access to the
25 full report if they're so inclined to want to have

1 some reading, for the reading on the issue.
2 BOARD MEMBER LAIRD: Madam Chair?
3 CHAIRPERSON BROWN: You want the full
4 report?
5 BOARD MEMBER LAIRD: I do but that has
6 nothing to do with any disagreement with what you say.
7 And the funny thing is it sounded like you were
8 somebody testifying on a bill of mine where you were
9 going to say "Love the author, great subject, good
10 value; but I, of course, oppose the entire bill."
11 And the thing is that every year when you
12 landed bills on the governor's desk, a legislature
13 would write a letter to the governor, asking him to
14 sign a bill, and I would have 15 or so letters of each
15 session. And it took me the first two rounds to get
16 my staff to realize that the first paragraph had to
17 say, it passed with 80 votes, all opposition was moved
18 off, this fixes the problem you asked us to fix, just
19 jammed whatever it was in that first paragraph,
20 because I was fairly sure that, maybe with the
21 exception of Sheila Kuehl, if she was CC'd on the
22 letter, who would read the whole damn thing and
23 complain about a typo in the eighth paragraph, nobody
24 else would read it past the first paragraph, and
25 you've got to give somebody the ability to grasp

1 what's important in it off at the top.
2 And I would hesitate to say two to five
3 pages is too much. You've got to have something
4 upfront that just basically says, We had a bill, we
5 looked at it, we involved everybody, we sort of came
6 up with this direction, and details are attached. And
7 then it's a way for people to understand what's there
8 and how to analyze it. So I appreciate the
9 suggestion.
10 BOARD MEMBER MIGDEN: I don't know that that
11 helps get Mr. Laird's bill signed, however, but we're
12 very glad that he instructed himself properly about
13 the paragraph format.
14 BOARD MEMBER KUEHL: I use that approach,
15 and every one of my bills last year was vetoed, so --
16 including the ones that got 80 votes.
17 CHAIRPERSON BROWN: Okay. I'm not going to
18 comment on that, but I will request that Staff -- ask
19 if they had any further direction or request.
20 MR. RAUH: I think it's very clear, and
21 we'll take all of the input from Board Members on the
22 structure of this report directly to heart and try
23 to -- with our best, to comply.
24 CHAIRPERSON BROWN: Okay. Thank you. That
25 concludes Item 7.

1 BOARD MEMBER LAIRD: That was just a very
2 big staff shift because he took it to heart, and I
3 think that shows that the staff is really moving with
4 the Board.
5 CHAIRPERSON BROWN: So I think we're going
6 to move next to Item 8, but I can't find that cheat
7 sheet that says we'll move now next to Item 8,
8 which -- Elliot, you can just read. I'm delegating
9 the --
10 MR. BLOCK: Thank you, Madam Chair.
11 Item 8, which is Consideration of Hearing
12 Officer's Proposed Decision in the Matter of
13 Amandi/Eco-International Regarding Appeal of
14 Adjustments to E-Waste Payment Claim No. 00000522,
15 December 2006 --
16 CHAIRPERSON BROWN: Okay. I got it. Sorry.
17 Everybody's talking anyway; no one's paying attention
18 to us anymore.
19 Okay. Our last item for today is Agenda
20 Item 8, Consideration of Hearing Officer's Proposed
21 Decision in the Matter of Amandi/Eco-International
22 Regarding Appeal of Adjustment to Their E-waste
23 Payment Claim No. 00000522. We will hear a short
24 presentation from Board staff, and then
25 Amandi/Eco-International. And after questions from

1 Board Members, we will move into closed session to
2 deliberate on whether or not to adopt the proposed
3 decision.
4 So with that, I will move first to Staff.
5 Presentation?
6 MR. HUNTS: Sorry about that. I thought
7 Elliot was going to say some more.
8 Good afternoon, Madam Chair, Board Members.
9 My name is Jeff Hunts. And as the manager of the
10 Board's Electronic Waste Recycling Program, I'm here
11 to express the program's support for the Hearing
12 Officer's proposed decision on the Amandi Services
13 Eco-International Electronic Waste Recycling payment
14 appeal.
15 The program believes that the proposed
16 decision and the associated order are carefully
17 reasoned and are supported by both a proper
18 interpretation of the applicable law as well as
19 substantial evidence in the record.
20 Furthermore, the proposed decision comes
21 after exhaustive proceedings which lasted more than a
22 year that allowed both the petitioner and program
23 ample opportunity to present arguments and available
24 evidence.
25 At issue in this matter, first and foremost,

1 is whether the December 2006 payment claim submitted
2 by the petitioner contained complete and compliant
3 source documentation as required by regulation. A
4 related issue is whether the program staff acted
5 correctly in denying payment for covered electronic
6 waste deemed non-compliantly documented.
7 Source documentation is the vital evidence
8 necessary to demonstrate eligibility when the State of
9 California using public funds is paying collectors
10 and/or recyclers to recover and process covered
11 electronic waste derived from California sources as
12 intended by the Electronic Waste Recycling Act.
13 The importance of such evidence is the
14 reason source documentation is required by the
15 program's regulations. Absent compliant source
16 documentation, the State cannot be assured that public
17 funds are being expended properly and whether the
18 material claimed originated from California sources or
19 even existed at all.
20 The program strongly agrees with the Hearing
21 Officer's determination that the covered electronic
22 waste allegedly associated with the Circuit City
23 operations and services was not properly documented
24 and therefore could not be deemed with any confidence
25 to be from California sources as defined. The Hearing

1 Officer rightly upheld Program's denial of payment for
2 this claimed amount.
3 Program accepts the Hearing Officer's
4 determination that the payment denial, however well
5 intended, for covered electronic waste associated with
6 Best Buy operations and service were in error. In
7 that instance, the Hearing Officer determined that the
8 source documentation provided in the claim by the
9 petitioner adequately fulfilled regulatory parameters
10 and that the quantities and sources of the material in
11 question were separately and subsequently
12 corroborated.
13 With the amount of public funds at stake in
14 the operation of this program -- and I should note
15 that's nearly -- that nearly $100 million in
16 electronic waste recycling payment claims were
17 received by the Board last year. And the fact that
18 the Covered Electronic Waste Recycling Program
19 finances the management of a waste stream considered
20 hazardous in the state of California, it is imperative
21 that the program operate in a manner that demands
22 accountability from all participants.
23 Program extends its appreciation to the
24 Hearing Officer for his time and consideration in this
25 matter, and I should note that we received -- and I

1 believe that you may have received as well -- a letter
2 from the petitioner yesterday evening and maybe a
3 revision today. Program counsel is available to
4 address that. And with that, I thank you for your
5 attention.
6 CHAIRPERSON BROWN: Thank you, Jeff.
7 I think we'll move and let the petitioner
8 speak next so we can ask questions, and we'll defer
9 back to you if necessary. And I'll allow each of you
10 to speak in the order -- I don't know which of you is
11 which, but you're both here, so just introduce
12 yourself for the court reporter.
13 MR. ISRAELS: Thank you, Chair Brown. My
14 name is Sid Israels. My colleague here, Mr. Rob
15 Shantz, with Wendel, Rosen, Black & Dean, a law firm.
16 We represent Eco. We also would like to thank the
17 group and the staff and address the Board Members
18 today.
19 We have submitted a letter and also some
20 spell-check. We learned that a good spell-check is
21 not as good a 30-year assistant -- I guess a
22 30-year-old --
23 CHAIRPERSON BROWN: Thirty years of
24 experience.
25 MR. ISRAELS: -- that really knows how to

1 spell.
2 The other good news is I thought you were
3 thinking maybe we'd have longwinded attorneys
4 speaking, but we are going to limit this to the
5 submission of the documents, the evidence before you
6 today. As I also indicated to counsel, that we would
7 answer any questions and be available to do so, myself
8 and Mr. Shantz. Thank you, Chair Brown.
9 CHAIRPERSON BROWN: Thank you, Mr. Israels.
10 I appreciate that. We do have the material that you
11 provided.
12 Mr. Shantz, did you have any additional
13 comments?
14 MR. SHANTZ: No thank you.
15 CHAIRPERSON BROWN: Okay. Before we
16 deliberate and determine, is there anything essential
17 that we need to have as input in regards to what was
18 provided?
19 MR. HUNTS: I will defer to program counsel,
20 Harllee Branch.
21 MR. BRANCH: I would like to respond, and
22 I'll try to do it as quickly as I can.
23 The letter you got late yesterday, it's a
24 lengthy letter. There are fairly complex issues of
25 evidence in there. Counsel for Eco raised the magic

words of "substantial evidence," which indicates to me, you know, they're thinking towards a possible writ action on this. So I would like the opportunity to respond to the allegations they've made.

They refer to an e-mail from a Waste Board staff person regarding the sources of Circuit City material. I make a number of arguments in regards to that. This e-mail was available to Eco nearly two years ago, far before the beginning of this proceeding in 2008.

Eco has had every opportunity to litigate the contents of the e-mail. However, the arguments it makes at this point were not raised during the proceeding. And if it was a valid argument, we are unclear as to why Eco would wait until after the decision to raise it.

Eco claims that the communication in e-mail was hearsay and therefore cannot be substantial evidence. Eco, however, ignores the fact that hearsay is admissible in administrative decisions and fails to note that there's a stipulation in the record between Eco and Waste Board staff that covers these same issues as to the sources of material. So even if it is hearsay, it is supported by other evidence and can be considered substantial evidence in the record.

1 There were some notes regarding Jeff Hunts'
2 conversation with Circuit City, his inability to
3 recall certain facts. Granted this conversation with
4 Circuit City was a couple of years ago, certain
5 specifics as to dates, exact contents of the
6 conversation are understandably lost over time. He
7 did, however, remember the relevant information, which
8 was, A, that he had a conversation with Circuit City
9 and, B, that Circuit City told him what the sources of
10 the material were. We believe Jeff Hunts' testimony
11 on this issue is valid.
12 They raised some issues regarding Mack
13 Transportation. We'd like to note that the decision
14 can stand on its own and whether or not we deal with
15 the arguments regarding Mack Transportation. This is
16 because the Hearing Officer found that the E-waste
17 source logs prepared by Mack and submitted by Eco was
18 legally deficient and it did not list the individual
19 customer sources of CEW and instead listed stores.
20 The decision stands on that finding, and the
21 fact that the Waste Board had ample opportunity to
22 suspect the veracity of those collection logs served
23 only to bolster the Waste Board's justification in
24 demanding legally sufficient source documentation.
25 In regards to the estoppel arguments that

1 Eco makes, that essentially the Board should be
2 estopped from denying payment on this issue because of
3 prior actions and reliance on their part, we disagree
4 with this. This issue was covered during the hearing,
5 I believe, adequately.
6 The Waste Board staff only knew of the true
7 sources of the Circuit City material after the
8 conversation Jeff Hunts had with Circuit City. It did
9 not have that information prior to making decisions on
10 other claims that have come in prior to that.
11 Eco brings forth a number of considerations
12 in an attempt to disprove this finding, but the
13 evidence that Eco points to is irrelevant to the
14 discovery by the Waste Board. The material that Mack
15 and Eco were claiming were from Circuit City stores
16 were actually coming old units sourced to both stores
17 and customers, and this first came to light during
18 Mr. Hunts' conversation with Circuit City.
19 Finally, Eco raises a number of arguments
20 regarding the unfairness of this decision. However,
21 Echo's documentation was found to be legally deficient
22 based on the regulations, and as such, the material
23 was ineligible for payment.
24 Eco presents no argument as to why the
25 Hearing Officer's interpretation of the law is

1 incorrect. And, furthermore, Eco stipulated to the
2 sources of material. It is therefore unclear how a
3 fairness argument changes the key facts and how the
4 law applies to those.
5 The regulations make clear that a recycler
6 is responsible for the accuracy and legal sufficiency
7 of the documentation it submits to the Board even if
8 that documentation was prepared by a collector and
9 passed to a recycler. Recyclers certify under penalty
10 of perjury that they have reviewed all the contents of
11 their payment claims, including all of the supporting
12 documentation, and that they found it to be complete
13 and correct. And this is memorialized in the
14 program's regulations. These regulations are
15 available to all participants. In fact, every
16 participant certifies in their application to
17 participate in the system that they've reviewed and
18 understand those laws. It's therefore unfair for Eco
19 to demand payment based on non-compliance with the
20 regulations.
21 In conclusion, the Hearing Officer has made
22 findings supported by substantial evidence in the
23 record that Eco did not satisfy the requirements of
24 the regulations in regards to the Circuit City
25 material, and the Waste Board staff respectfully

1 request that you uphold this decision and prevent
2 further litigation of this matter when all of the
3 relevant evidence are already part of the record.
4 Thank you.
5 CHAIRPERSON BROWN: Thank you. Did you want
6 a minute or two to respond to staff counsel? And then
7 we will adjourn.
8 MR. ISRAELS: Thank you, Chair Brown. We
9 really will stand by our previous -- and I think the
10 record is clear, transcript is clear, the volumes are
11 clear, and we trust that the Board will read those
12 transcripts and supporting documents. And we once
13 again want to thank you for the opportunity to make
14 this record. Thank you very much.
15 BOARD MEMBER KUEHL: Counsel, may I ask you
16 a question -- I'm sorry, counsel for Eco.
17 CHAIRPERSON BROWN: Eco. Mr. Israels.
18 BOARD MEMBER KUEHL: Is the Hearing Officer
19 in this case, as far as you're concerned, the finder
20 of fact?
21 MR. ISRAELS: Yes. In some instances, yes,
22 that's correct.
23 BOARD MEMBER KUEHL: And in other instances,
24 not?
25 MR. ISRAELS: Interpreting the law in some

1 cases --
2 BOARD MEMBER KUEHL: No, fact.
3 MR. ISRAELS: Facts?
4 BOARD MEMBER KUEHL: Is he the fact finder?
5 MR. ISRAELS: He is interpreter of the facts
6 and a fact finder.
7 But that's a pretty lengthy question. I
8 used to teach law school, and we could go for hours on
9 that, but --
10 BOARD MEMBER KUEHL: Well, I used to teach
11 law school too, which is why I asked the question.
12 MR. ISRAELS: I know you did. It's a
13 question; it's an esoteric.
14 BOARD MEMBER KUEHL: It's not esoteric.
15 There is a finder of fact in every hearing.
16 MR. ISRAELS: Yes, absolutely.
17 BOARD MEMBER KUEHL: And was that the
18 Hearing Officer?
19 MR. ISRAELS: In this case, yes.
20 BOARD MEMBER KUEHL: The Board, then, really
21 is -- it seems to me, considering that, if those are
22 the facts, do we agree with the Hearing Officer.
23 Right?
24 MR. ISRAELS: Yes, you have the right to do
25 that, obviously.

1 BOARD MEMBER KUEHL: So do you disagree
2 that -- in terms of facts that were found about, for
3 instance, the Nevada and the Arizona CEWs, that they
4 were not about California recycling?
5 MR. ISRAELS: That's not the position that
6 we put forth in the letter.
7 BOARD MEMBER KUEHL: Right.
8 MR. ISRAELS: And we're not disputing --
9 there were not specific findings of fact on that.
10 There were hearings conducted. And once again refer
11 you back to our arguments on the letter and so forth,
12 but the Board does have the right to retake testimony.
13 BOARD MEMBER KUEHL: In the proposed
14 decision, the fact finder says that the Board properly
15 determined that the CEWs were not from California
16 sources and therefore are ineligible for recycling
17 payments.
18 MR. ISRAELS: The word "properly," that
19 statement in there, that's why we're making the record
20 and arguing certain inferences. But you have the
21 right, of course, to take new testimony and hear that
22 clarification. I'm not the interpreter of the facts.
23 BOARD MEMBER KUEHL: I understand. Thank
24 you, Counsel.
25 MR. ISRAELS: Thank you.

CHAIRPERSON BROWN: Any other questions?

(No audible response.)

CHAIRPERSON BROWN: Okay. Thank you all. The Board will go into closed session for deliberation at this time.

(The Board went into closed session from 1:49 p.m. to 2:03 p.m.)

REPORTER'S CERTIFICATE

I, HE SUK JONG, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, He Suk Jong, 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 hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of June, 2009, at Sacramento, California.

HE SUK JONG, CSR NO. 12918
Certified Shorthand Reporter