



APPEARANCES

MR. DANIEL G. PENNINGTON, CHAIRMAN
MR. ROBERT C. FRAZEE, VICE CHAIRMAN
MR. DAN EATON, MEMBER

STAFF PRESENT

MR. RALPH CHANDLER, CHIEF EXECUTIVE OFFICER
MS. KATHRYN TOBIAS, CHIEF LEGAL COUNSEL

PUBLIC SPEAKERS

MS. DELMATIER	3, 44, 49
MR. WHITNEY	13, 46
MR. GORDON	19
MR. MALAN	24, 42
MR. CALVERT	35, 46
MR. MILLER	50



1 SANTA ANA, CALIFORNIA; TUESDAY, JUNE 16, 1998

2 1:30 P.M.

3
4 MS. TOBIAS: IF I COULD HAVE YOUR ATTENTION,
5 WE ARE GOING TO START THE SECOND PART OF OUR WORKSHOP
6 TODAY. THIS IS THE OPPORTUNITY FOR PEOPLE TO OFFER
7 TESTIMONY IF THEY SO WISH. WE DON'T HAVE SPEAKER SLIPS
8 TODAY, SO I AM GOING TO ASK YOU, FOR THE BENEFIT OF THE
9 COURT REPORTER WE HAVE HERE TODAY, TO NOT ONLY STATE
10 YOUR NAME AND THE AFFILIATION FOR THE RECORD, BUT ALSO
11 REMEMBER THAT WE'RE SPEAKING WITHOUT MIKES TODAY. AND
12 IF YOU COULD KIND OF KEEP YOUR EYES ON HER AND MAKE
13 SURE THAT SHE CAN HEAR YOU AND THAT YOU ARE NOT GOING
14 TOO FAST. IF YOU HAVE PREPARED REMARKS, SHE WOULD
15 REALLY APPRECIATE IT.

16 I'M JUST GOING TO LET YOU KEEP YOUR
17 SEATS. THE BOARD MEMBERS ARE SITTING UP HERE, AND I AM
18 JUST GOING TO KIND OF SAY I'M READY AND START TAKING
19 PEOPLE, SO I DON'T HAVE ANY PARTICULAR ORDER. I WILL
20 ASK YOU TO TRY TO KEEP YOUR REMARKS SUCCINCT; AND IF
21 YOU HAVE WRITTEN REMARKS, THAT WILL HELP US A LOT.
22 GIVE THOSE TO ME OR TO KERRY, SUE PEDERSON, OR
23 WHOMEVER. SO I THINK -- IS THERE ANYTHING ELSE, SUE,
24 THAT YOU NEEDED TO SAY? ALL RIGHT. ANYBODY LIKE TO GO
25 FIRST? DENISE AND THEN CLINT WOULD LIKE TO GO NEXT.



1 MS. DELMATIER: YES. DENISE DELMATIER WITH
2 THE GUALCO GROUP ON BEHALF OF NORCAL WASTE SYSTEMS.
3 AND I JUST WANTED TO ADDRESS ONE QUICK ISSUE.
4 SHOULDN'T TAKE VERY LONG, BUT ONE THAT WE'VE DISCUSSED
5 SEVERAL TIMES BEFORE. I KNOW MR. EATON IN PARTICULAR
6 WAS NOT AROUND ON THE BOARD AT THE TIME THAT THIS ISSUE
7 CAME FORWARD, SO I'D LIKE TO REMIND FOLKS OF THIS ONE.

8 UNDER SECTION 44007 OF THE PUBLIC
9 RESOURCES CODE AN APPLICANT IS GIVEN A PERMIT 65 DAYS
10 IN ADVANCE OF THAT PERMIT GOING FORWARD TO THE BOARD.
11 AND I'VE PROVIDED THAT FIRST CODE SECTION FOR YOU. THE
12 SECOND SECTION IS THE REVISED VERSION OF THE ABILITY OF
13 A PERMIT APPLICANT TO GO TO A LOCAL HEARING PANEL ONCE
14 THE PERMIT HAS BEEN APPROVED BY THE BOARD. AND I
15 UNDERSCORE THAT BECAUSE THAT'S THE HUGE CHANGE THAT
16 TOOK PLACE IN AB 59.

17 PRIOR TO AB 59, IF YOU TURN THE PAGE,
18 GOVERNMENT CODE -- OLD GOVERNMENT CODE SECTION PROVIDED
19 FOR THAT IF THE APPLICANT DEEMED THE TERMS AND
20 CONDITIONS, THAT'S SECTION A, FIRST PARAGRAPH, IF THE
21 APPLICANT DEEMS THE TERMS AND CONDITIONS OF THE
22 PROPOSED PERMIT INAPPROPRIATE, THE APPLICANT MAY
23 REQUEST A HEARING. NOW, THAT WAS PRIOR TO BOARD
24 ACTION. OKAY.

25 IF YOU TURN THE PAGE THEN, SHOW THE JULY



1 10 AMENDED VERSION OF AB 59, SECTION 44307, AND YOU SEE
2 THE DELETION OF "AFTER DENYING, SUSPENDING, OR REVOKING
3 A PERMIT OR ISSUING" AND WE ADD IN "FROM THE DATE OF
4 ISSUANCE." THAT'S THE HUGE CHANGE THAT TOOK PLACE IN
5 59 THAT NOBODY KNEW ABOUT, AND NOW WE'VE REVERTED TO
6 ONLY AFTER THE BOARD HAS ISSUED THE PERMIT CAN YOU GO
7 TO A LOCAL HEARING PANEL.

8 THE NEXT PAGE SHOWS THE AB 59 AS
9 INTRODUCED. AND AGAIN, THE APPLICANT HAD THE ABILITY
10 TO GO TO A LOCAL HEARING PANEL ONCE THE LEA RECEIVED
11 THE PERMIT AND UP UNTIL THE TIME THAT THE BOARD ACTED
12 ON THE PERMIT. WHAT THAT DOES, IN EFFECT, IS IF AN
13 APPLICANT HAS A PERMIT THAT HAS GONE TO AN LEA AND THE
14 CLOCK IS TICKING, THE APPLICANT DOESN'T HAVE THE
15 ABILITY TO APPEAL TO A LOCAL HEARING PANEL ANY TERM OR
16 CONDITION THAT THAT APPLICANT DEEMS INAPPROPRIATE.

17 NOW, THAT CAUSED A SERIOUS PROBLEM WHEN
18 OUR CLIENT, NORCAL WASTE SYSTEMS, HAD A PERMIT PENDING
19 BEFORE THE BOARD AND, INDEED, THERE WAS A TERM OR
20 CONDITION THAT THE APPLICANT, NORCAL WASTE SYSTEMS,
21 DEEMED MOST INAPPROPRIATE, AND WHAT WE WERE LEFT WITH
22 THEN WAS WE WERE IN A POSITION TO ASK THE BOARD TO
23 INTERVENE ESSENTIALLY IN WHAT COULD HAVE BEEN AN ISSUE
24 RESOLVED THROUGH A LOCAL HEARING PANEL OR AT THE LOCAL
25 LEVEL MOST APPROPRIATELY, AND INSTEAD WE'RE ASKING, AND



1 CERTAIN BOARD MEMBERS WILL KEENLY REMEMBER THIS, WE
2 WERE ASKING THE BOARD TO DENY AND OBJECT TO OUR OWN
3 PERMIT.

4 SO WE HAVE CHATTED WITH LEA'S AND THE LEA
5 REPRESENTATIVE. WE'VE CHATTED WITH LOCAL GOVERNMENT,
6 THE ENVIRONMENTAL COMMUNITY, AND THERE SEEMS TO BE A
7 GREAT DEAL OF CONSENSUS THAT THAT DELETION OF THAT
8 PROVISION WAS INADVERTENT, AND THAT, INDEED, THAT
9 PROVISION OUGHT TO BE REINSTATED FOR THE APPLICANT AS
10 IT WAS PREVIOUS PRIOR TO THAT CHANGE IN AB 59.

11 THE DISCUSSION THAT WE HAD EARLIER TODAY,
12 HOWEVER, AND THE DISCUSSION THAT WILL CONTINUE IN THE
13 LEGISLATURE IS CONTROVERSIAL ON THIS SUBJECT. AND THAT
14 IS THAT THE QUESTION IS WHETHER OR NOT ANY PERSON
15 SHOULD BE ABLE TO CONVENE A LOCAL HEARING PANEL ON A
16 TERM OR CONDITION THAT IS IMPOSED BY AN LEA IN A
17 PERMIT. AND IF THAT DISCUSSION CONTINUES AT THE
18 LEGISLATIVE LEVEL PROPOSING THAT ANY PERSON CAN, IN
19 FACT, CONVENE A LOCAL HEARING PANEL AS OPPOSED TO THE
20 APPLICANT, AS IT HAS BEEN FOR YEARS AND YEARS, OF
21 COURSE, INDUSTRY WOULD HAVE GREAT CONCERN WITH THAT.
22 AND I'D BE HAPPY TO ANSWER ANY QUESTIONS. THANK YOU.

23 BOARD MEMBER FRAZEE: I HAVE A QUESTION,
24 DENISE. THE APPEAL PROCESS AT CURSORY READING DEALS
25 PRIMARILY WITH VIOLATIONS AND NOT WITH CONDITIONS. IF



1 YOU REVERT BACK TO THIS LANGUAGE, DOES IT ENCOMPASS
2 PERMIT CONDITIONS AS AN APPEALABLE ITEM ALSO?

3 MS. DELMATIER: CORRECT. THERE ARE TWO TRACKS
4 BY WHICH THERE IS ABILITY TO CONVENE A LOCAL HEARING
5 PANEL. ONE IS THE FIRST TRACK FOR ENFORCEMENT
6 ACTIVITY. THE SECOND TRACK IS FOR PERMIT ACTIVITY.
7 AND WHAT CHANGED IN 59, AB 59, WAS THE LIMITATION ON
8 PERMIT ACTIVITY ON THAT TRACK ONLY, NOT ON THE
9 ENFORCEMENT ACTIVITY, BUT ON THE PERMIT TRACK ONLY.
10 THE CHANGE WAS THE HEARING PANEL COULD ONLY BE CONVENE
11 AFTER THE BOARD ACTS AND NOT BEFORE, WHICH DOESN'T MAKE
12 A WHOLE LOT OF SENSE.

13 MR. WHITE: ALL DENISE IS SUGGESTING IS GOING
14 BACK TO THE WAY IT WAS WORDED BEFORE IN 59 AND
15 BASICALLY ALLOW IT TO -- IF YOU FEEL YOU'RE AGGRIEVED
16 BY A CONDITION, YOU WOULD BE ABLE TO PETITION THAT
17 LOCAL PANEL TO HEAR THIS CONDITION OR THE ISSUES AROUND
18 THAT CONDITION AND MAKE A DECISION WHETHER IT SHOULD BE
19 KEPT THE WAY IT IS OR PULLED OUT.

20 MS. DELMATIER: IN FACT, THROUGH DISCUSSIONS
21 WITH JUSTIN MALAN, I DON'T KNOW THAT IT MAKES A WHOLE
22 LOT OF SENSE FOR THE APPLICANT TO APPEAL AN ACTION THAT
23 THE BOARD HAS ACTED ON. IN OTHER WORDS, SHOULD WE, AS
24 JUSTIN HAS TERMED IT IN THE PAST, SHOULD WE GET THAT
25 NEXT BITE OF THE APPLE AS PRIVATE INDUSTRY? I DON'T



1 KNOW THAT WE NECESSARILY NEED TO HAVE THAT NEXT BITE AT
2 THE APPLE. WE GET THE ONE BITE DURING THE TIME THAT
3 THE PERMIT IS PENDING AT THE BOARD; BUT ONCE THE BOARD
4 HAS ACTED AND AFTER WE HAVE GONE THROUGH THAT LOCAL
5 HEARING PANEL, IF IT MAKES SENSE TO HAVE THE APPLICANT
6 TO GO BACK AGAIN AFTER THE BOARD'S ACTION AND SAY,
7 "HEY. WE WANT TO TRY IT AGAIN. WE LOST, BUT WE WANT
8 TO TRY IT AGAIN."

9 I DON'T THINK IT MAKES SENSE, AS IS
10 CURRENT LAW, TO ALLOW AN APPLICANT TO CONVENE A HEARING
11 PANEL AFTER WE'VE GONE THROUGH THE LEA PERMIT PROCESS
12 AND AFTER THE BOARD'S ACTED. SO THAT WOULD BE, I
13 THINK, IN TERMS OF COMPROMISE WOULD BE SOMETHING THAT
14 WE WOULD BE WILLING TO PROPOSE.

15 MR. WHITE: THE WAY THE CURRENT SYSTEM WORKS
16 IS IF WE HAVE A CONCERN WITH THE PERMIT CONDITION, THE
17 ONLY WAY WE CAN GET IT REMOVED IS AFTER YOU'VE ALREADY
18 AGREED, CONCURRED IN THAT IT'S AN APPROPRIATE PERMIT.
19 NOW WE'VE GOT TO COME BACK AND ASK YOU TO SAY, "WELL,
20 WE WERE WRONG. WE CONCURRED WITH THIS PERMIT. THERE'S
21 ONE PROVISION THAT NEEDS TO BE PULLED."

22 AND I GUESS THERE WAS A FEELING THAT THE
23 CURRENT PROCESS PREJUDICES US -- IS PREJUDICED AGAINST
24 US BEING ABLE TO HAVE A FAIR HEARING, I GUESS, ON THAT
25 PERMIT ISSUE BECAUSE THE BOARD HAS ALREADY AGREED TO



1 IT.

2 BOARD MEMBER EATON: IF I HEAR YOU CORRECTLY,
3 IT'S THE POSITION THAT IF YOU ARE ABLE TO CONTEST A
4 CONDITION THAT YOU FEEL IS INAPPROPRIATE, BY CONVENING
5 A LOCAL HEARING PANEL PRIOR TO THE ISSUANCE OF THE
6 PERMIT BY THE BOARD, THAT YOU WOULD BE AGREEABLE THAT
7 THE APPEAL PROCESS CURRENTLY AFFORDED SUBSEQUENT WOULD
8 NOT BE AVAILABLE TO YOU?

9 MS. DELMATIER: CORRECT.

10 *MR. AVERRA: DAN AVERRA OF SAN BERNARDINO
11 COUNTY. IF YOU DID NOT LIKE THE HEARING PANEL'S
12 DECISION ON A TERM AND CONDITION, WOULD YOU WANT THE
13 ABILITY TO APPEAL JUST THAT ELEMENT TO THE BOARD?

14 MS. DELMATIER: NO.

15 MR. AVERRA: SO IT'D STOP AT THE LOCAL HEARING
16 PANEL?

17 MS. DELMATIER: WE WANT ONE CHANCE AT THE
18 LOCAL HEARING PANEL DURING THE TIME ONCE THE LEA HAS
19 DEEMED THE PERMIT COMPLETE WITH ANY TERM OR CONDITION
20 AND NEW TERM OR CONDITION IMPOSED, AND WE'VE HAD THAT
21 65-DAY ABILITY TO REVIEW THE TERM AND CONDITION, WE GO
22 TO THE LOCAL HEARING PANEL, AND THAT'S OUR CHANCE.

23 MR. CUPPS: YOU ARE SAYING YOU WOULDN'T WANT
24 TO BE ABLE TO APPEAL THAT TO THE BOARD PRIOR TO THE
25 MATTER COMING TO THE --



1 MS. DELMATIER: WE DON'T THINK -- WE DON'T --
2 THIS IS SOMEWHAT CONTROVERSIAL. WE WOULD --

3 BOARD MEMBER EATON: IT SOMEWHAT GOES AGAINST
4 WHAT CHUCK HAD TALKED ABOUT, THE TRUST IN THE LOCAL
5 PANEL.

6 MR. WHITE: WHO ME?

7 BOARD MEMBER EATON: BUT --

8 MS. DELMATIER: WE AGREED WITH THE LEA'S THAT
9 THE LEA'S ARE THE PERMITTING AUTHORITY, AND THE LEA'S
10 HAVE THE RIGHT UNDER CURRENT STATUTE TO IMPOSE ANY TERM
11 OR CONDITION THAT THEY DEEM APPROPRIATE. BUT ON THE
12 OTHER HAND, IF IT IS A TERM OR CONDITION THAT WE DEEM
13 INAPPROPRIATE, THAT WE HAVE THE ONE CHANCE TO APPEAL.

14 MR. CUPPS: BUT YOU ARE SAYING -- I WANT TO BE
15 SURE I'M ABSOLUTELY CLEAR ON THIS. YOU ARE SAYING THAT
16 THERE IS --

17 MS. DELMATIER: MR. CUPPS, WHO YOU ARE
18 ADVOCATING ON?

19 MR. CUPPS: YOU'RE SAYING THAT YOU CAN ONLY
20 APPEAL IT TO THE LOCAL HEARING PANEL, BUT YOU CANNOT
21 THEN APPEAL THE DECISION OF THE LOCAL HEARING PANEL ON
22 THAT SPECIFIC TERM AND CONDITION PRIOR TO THE TIME THE
23 BOARD HAS ACTED. YOU CAN'T APPEAL THAT DECISION TO THE
24 BOARD PRIOR TO THE TIME THAT THE PERMIT IS ACTED ON?

25 MS. DELMATIER: ANY AGGRIEVED PARTY ALSO UNDER



1 EXISTING STATUTE MAY APPEAL AN ACTION OR INACTION OF
2 THE --

3 MR. CUPPS: SO WHAT YOU ARE SAYING THEN IS
4 THAT IN FACT YOU DO WANT TO KEEP THE APPEAL TO THE
5 BOARD LEVEL. YOUR POINT IS THAT THAT WOULD OCCUR PRIOR
6 TO THE BOARD ACTUALLY ACTING ON THE PERMIT, AND THAT
7 YOU WOULD FOREGO THE ABILITY TO APPEAL -- YOU WOULD
8 FOREGO THE ABILITY TO APPEAL MATTERS SUBSEQUENT TO
9 BOARD CONCURRENCE AND ISSUANCE OF THE PERMIT.

10 MS. DELMATIER: CORRECT. WE'RE NOT PROPOSING
11 TO DELETE THE EXISTING SECTION, ANY AGGRIEVED PERSON,
12 AND THAT DOES INCLUDE THE PUBLIC, TO APPEAL AN ACTION
13 OR INACTION BY AN LEA. NOW, THAT DOESN'T OFFER THE
14 ABILITY OF THE PUBLIC, ON THE OTHER HAND, TO CONVENE A
15 HEARING PANEL. AND THAT APPEAL ON THE INACTION OR
16 ACTION OF THE LEA GOES TO THE BOARD, BUT THAT DOESN'T
17 ALLOW THE PUBLIC UNDER EXISTING LAW OR PREVIOUS LAW TO
18 CONVENE A HEARING PANEL ON A PERMIT APPLICATION ONCE
19 THE LEA HAS DEEMED THE PERMIT COMPLETE.

20 MR. CUPPS: I UNDERSTAND ALL OF THAT.

21 BOARD MEMBER FRAZEE: THIS GOES BACK TO A
22 POINT I WAS MAKING EARLIER ABOUT THE NEED TO CLEARLY
23 DEFINE CONDITIONS AS MINIMUM STANDARDS SOLID WASTE
24 FACILITY CONDITIONS VERSUS CONDITIONS THAT MAY BE LOCAL
25 LAND USE OR SOME OTHER CONCERN. AND I SENSE THAT LEA'S



1 ARE STILL MIXING THOSE TWO.

2 AND SO ARE YOU SUGGESTING THAT YOU COULD
3 APPEAL A LAND USE CONDITION TO A HEARING PANEL?

4 MS. DELMATIER: YES.

5 BOARD MEMBER FRAZEE: OR JUST MINIMUM
6 STANDARD.

7 MR. WHITE: IF THERE WAS A LAND USE CONDITION
8 IMPOSED UPON YOUR SOLID WASTE PERMIT, YOU'D WANT TO BE
9 ABLE TO APPEAL THAT TO GET IT OFF. YOU'D BE ARGUING
10 THAT THE SOLID WASTE PERMIT IS THE INAPPROPRIATE PLACE
11 TO PUT THAT. EVERYBODY WAS SAYING THAT PRETTY MUCH.
12 OCCASIONALLY DOES STILL HAPPEN.

13 MS. DELMATIER: YES, AND THAT IS THE PURVIEW
14 OF THE LOCAL AGENCY OR THE LOCAL HEARING PANEL. AND AS
15 I THINK I HEARD YOU SAY EARLIER TODAY, NOT THE PURVIEW
16 OF THE BOARD.

17 MR. WHITE: BUT THE BOARD --

18 BOARD MEMBER FRAZEE: I QUESTION WHETHER A
19 LOCAL HEARING PANEL THAT'S CONSTITUTED FOR THE PURPOSE
20 OF HEARING SOLID WASTE FACILITY PERMITS HAS THE
21 AUTHORITY TO MAKE LAND USE DECISIONS.

22 MS. DELMATIER: CURRENTLY IT'S NOT DELINEATED.

23 MR. WHITNEY: LEA DOESN'T EITHER.

24 BOARD MEMBER FRAZEE: WHAT I'M SUGGESTING IS
25 THAT LEA'S DO ROUTINELY INCLUDE THOSE THINGS EITHER BY



1 REFERENCE OR INTENTIONALLY INCLUDE THINGS THAT ARE
2 PURELY LOCAL LAND USE DECISIONS INTO FACILITY PERMITS.

3 MS. DELMATIER: AS YOU MENTIONED EARLIER, MR.
4 FRAZEE, THAT IS A MUCH LARGER ISSUE THAN JUST THIS AB
5 59 HEARING PANEL. AND I'M, FOR PURPOSES OF TODAY, NOT
6 PROPOSING ANY RECATEGORIZATION OR REDEFINITION OF WHAT
7 IS AND WHAT IS NOT A PERMIT.

8 MS. TOBIAS: I'M GOING TO KIND OF SUGGEST THAT
9 MAYBE WE LET PEOPLE FINISH THEIR TESTIMONY. I KNOW
10 THAT DOING THE QUESTIONS BACK AND FORTH IS REAL HELPFUL
11 TODAY, AND I APOLOGIZE FOR CUTTING OFF, BUT IT'S VERY
12 DIFFICULT FOR THE COURT REPORTER TO GO BACK AND FORTH.
13 AND ALSO, SINCE WE HAVE TIME CONSTRAINTS, WHAT I'D LIKE
14 TO DO IS MAYBE GO THROUGH EVERYBODY WHO WOULD LIKE TO
15 TESTIFY TODAY; AND THEN IF THERE'S SOME TIME, WE CAN
16 CERTAINLY GO BACK THROUGH THAT AND HAVE PEOPLE DIRECT
17 QUESTIONS. SO IF YOU WOULDN'T MIND MAKING NOTES ON
18 YOUR QUESTIONS, I APOLOGIZE FOR DOING THIS BECAUSE I
19 THINK IT'S A REALLY GOOD DISCUSSION, BUT WE HAVE TWO
20 BOARD MEMBERS WHO HAVE TIME CONSTRAINTS AND WE ALL NEED
21 TO BE OUT OF HERE AT 3:30.

22 MR. WHITNEY: MY NAME IS CLINT WHITNEY. I'M A
23 PARTNER IN GBS ASSOCIATES, A CONSULTING FIRM IN
24 VENTURA. AND FIRST OF ALL, I'M VERY SUPPORTIVE OF THE
25 APPEALS PROCESS. I WAS SOMEWHAT GRATIFIED TODAY THAT I



1 DIDN'T HEAR ANYBODY SAYING THROW THE WHOLE THING OUT.
2 I WAS A LITTLE FEARFUL THAT THERE WOULD BE THAT OPINION
3 EXPRESSED. MAYBE WE HAVE IT PRIVATELY IN SOME CASES,
4 BUT IT DIDN'T GET OUT ON THE ISSUES ON THE FLOOR.

5 THE REASON I'M SO SUPPORTIVE OF IT, I
6 THINK IT HAS SOME BENEFITS THAT ARE WORTH MENTIONING
7 BRIEFLY. FIRST OF ALL, I THINK IT IMPROVES THE QUALITY
8 OF ENFORCEMENT DECISIONS BOTH ON THE LEA SIDE AND ON
9 THE OPERATOR SIDE. BECAUSE WE HAVE THIS THING HANGING
10 OVER US THAT WE'RE--GOING--TO BE ACCOUNTABLE, SO WE'RE
11 MUCH MORE CAREFUL IN MAKING THOSE DECISIONS.

12 I THINK IT GIVES THE STATE BOARD A
13 VALUABLE LEA EVALUATION TOOL. YOU GET SOME INSIGHT AS
14 TO WHAT'S GOING ON WHEN APPEALS COME UP TO YOU. TO THE
15 EXTENT THAT THEY DON'T, YOU DON'T GET THAT INSIGHT.
16 THOSE MATTERS GET RESOLVED LOCALLY; BUT TO THE EXTENT
17 THAT THEY DO, YOU LEARN SOMETHING ABOUT THE SYSTEM, YOU
18 LEARN SOMETHING ABOUT THE LEA, YOU LEARN SOMETHING
19 ABOUT THE ISSUES THAT THE LEA IS DEALING WITH.

20 IT ALSO GIVES THE STATE BOARD THE
21 OPPORTUNITY TO INTERPRET THE MEANING OF THE LAW. AND
22 THIS CAME UP ALMOST IN EVERY PANEL. AND THEN I LIKED
23 THE IDEA OF CODIFYING YOUR DECISIONS SO THAT THAT
24 BECOMES GUIDANCE TO US ALL OUT THERE IN THE FIELD AS
25 YOU MAKE YOUR DECISIONS. IT ALSO HAS THE DUE PROCESS



1 ELEMENT.

2 AND FINALLY, I ASSUME IT WOULD REDUCE
3 LITIGATION.

4 THERE ARE SOME RECOMMENDATIONS THAT I
5 WOULD MAKE, AND I HEARD SOME OTHER IDEAS TODAY THAT I
6 WOULD SUPPORT AS WELL, BUT HERE'S THE ONES THAT I WOULD
7 LIKE TO SEE ADDRESSED. FIRST OF ALL, I THINK THE STATE
8 BOARD SHOULD TAKE THE LEADERSHIP IN DELETING SUBSECTION
9 44308.1, WHICH IS WHERE THE BOARD OF SUPERVISORS OR THE
10 CITY COUNCIL CAN APPOINT ITSELF AS THE HEARING PANEL
11 OVER ITS OWN LEA'S DECISION. AND TO ME IT DOESN'T MAKE
12 ANY DIFFERENCE WHETHER THE APPEAL IS COMING FROM THE
13 PRIVATE SECTOR OR A PUBLIC OPERATOR. THE LEA WORKS FOR
14 THAT GOVERNING BODY AND, THEREFORE, THAT IS NOT AN
15 ARM'S LENGTH RELATIONSHIP. I THINK IT SHOULD BE. SO I
16 WOULD SUPPORT ELIMINATING THAT.

17 I LIKE ALL THE OTHER FEATURES OF THE
18 INDEPENDENT HEARING PANEL. THAT SEEMS TO WORK QUITE
19 WELL, AND I HAVEN'T HEARD ANY COMPLAINTS ABOUT IT.

20 SECOND, I WOULD PROPOSE A SIMPLE APPROACH
21 TO THIS. IS A NOTICE OF VIOLATION APPEALABLE OR NOT?
22 SIMPLY STRIKE THE TERM "NOTICE AND VIOLATION" FROM YOUR
23 VOCABULARY, MAYBE WITH AN LEA ADVISORY THAT SAYS WE NOW
24 HAVE ONLY ONE DISCUSSION OR INVITATION FOR DISCUSSION
25 THAT'S CALLED AN AREA OF CONCERN. IF AN AREA OF



1 CONCERN PERSISTS, THEN THE LEA CAN SAY, "HEY, WE'VE
2 GIVEN YOU YOUR WARNING, YOU'VE HAD THE DIALOGUE, YOU
3 ARE STILL NOT CORRECTING THE SITUATION, NOTICE AND
4 ORDER." THAT IS APPEALABLE AND THAT CLARIFIES IT.

5 THE TERM "NOTICE OF VIOLATION," THE WAY
6 THAT WE USE IT NOW, REALLY IS COUNTERINTUITIVE BECAUSE
7 VIOLATION MEANS YOU'RE IN VIOLATION OF SOMETHING. AND
8 THAT'S THE WAY THE PUBLIC IS GOING TO SEE IT. AND,
9 THEREFORE, THAT PUTS HEAT ON THE OPERATORS ON SOMETHING
10 THAT THE LEA MAY CONSIDER RATHER ROUTINE, BUT TO THE
11 PUBLIC IT'S NOT ROUTINE BECAUSE OF THAT WORD
12 "VIOLATION." SO I WOULD JUST SUGGEST ADMINISTRATIVELY
13 STRIKE IT. IT'S A TERM OF ART ANYWAY. IT'S NOT IN THE
14 LAW, BEST I COULD FIND IT ANYWAY.

15 THIRD, ON THE STAYS -- THE AUTOMATIC
16 STAY, I BELIEVE THAT THERE SHOULD BE SOME RESTRAINT ON
17 THE STAYS, AND I WOULD RECOMMEND ONE APPROACH. THERE
18 MAY BE OTHER APPROACHES THAT ARE BETTER. BUT ONE
19 APPROACH WOULD BE THAT THE VERY FIRST ORDER OF BUSINESS
20 OF A HEARING PANEL WHEN IT IS CONVENED IS TO MAKE A
21 JUDGMENT ON THE MERITS AS TO WHETHER A STAY OUGHT TO BE
22 ALLOWED.

23 IF THE STAY IS DENIED, THE OPERATOR MUST
24 CEASE THE OPERATION WHILE IT APPEALS THE STAY TO THE
25 STATE BOARD RATHER THAN TO CONTINUE OPERATING. WHAT



1 I'VE SEEN IN THE FIELD IS A LOT OF ABUSE OF THE SYSTEM
2 USING THE APPEALS PROCESS TO CONTINUE TAKING MATERIALS,
3 SOMETIMES MAKING HUNDREDS OF THOUSANDS OF DOLLARS IN
4 REVENUE WHILE YOU'RE TINKING AROUND WITH THE APPEALS
5 PROCESS. NOW, MAYBE THOSE AREN'T PUBLIC HEALTH ISSUES
6 NECESSARILY, BUT IT IS OPEN FOR ABUSE. SO THAT WOULD
7 BE ONE WAY, JUST HAVE THE HEARING PANEL BASED ON
8 WHATEVER MERITS THE APPLICANT OR THE APPELLANT PUTS
9 FORWARD, MAKE A DECISION, AND THAT'S APPEALABLE TO THE
10 STATE BOARD, BUT THEY HAVE TO CEASE OPERATION BECAUSE A
11 JUDGMENT HAS BEEN MADE.

12 I THINK THE APPEALS PROCESS BASICALLY IS
13 AN ADMINISTRATIVE APPEALS PROCESS OUTSIDE THE LEGAL
14 SYSTEM. I'VE HEARD LAWYERS -- I THINK BILL MORITZ --
15 HE'S NOT HERE, BUT HE'S FROM MY COUNTY COUNTY
16 COUNSEL -- HE COMPLAINS HIGHLY OF A LOT OF THE
17 LEGALISTIC NATURE OF THE APPEALS PROCESS IN GETTING
18 TESTIMONY, SUBPOENAS, RULES OF EVIDENCE, AND A VARIETY
19 OF OTHER LEGAL MATTERS THAT I'M NOT EXPERT TO JUDGE,
20 BUT IT SEEMS TO ME THAT WE SHOULD RID OURSELVES OF A
21 LOT OF THAT IN FAVOR OF A STRAIGHTFORWARD
22 ADMINISTRATIVE PROCESS OF MAKING OUR CASE BASED ON OUR
23 INTERPRETATION OF THE LAW OR THE REGULATIONS OR
24 WHATEVER WITHOUT THE BURDEN OF A LONG LEGAL PROCESS.
25 LEAVE THAT FOR THE COURTS.



1 I ALSO, THE IDEA, IT ISN'T IN MY
2 TESTIMONY, BUT I LIKED THE IDEA THIS MORNING THAT WE
3 SHOULD ADOPT AND MAKE THIS AS AN AREA FOR LEGISLATION,
4 THAT UNLESS -- UNTIL THE ADMINISTRATIVE APPEAL PROCESS
5 IS COMPLETED HERE, YOU DON'T HAVE STANDING IN COURT.
6 THAT'S THE WAY THE WATER BOARD DOES IT. THAT SEEMS TO
7 ME TO BE A FAIR AND REASONABLE IDEA. IF YOU ARE IN THE
8 APPEALS BUSINESS, YOU ARE. IF YOU ARE NOT, YOU ARE
9 NOT.

10 AS ONE OF THE MEMBERS OF OUR GROUP
11 POINTED OUT, YOU CAN AVOID THE WHOLE ADMINISTRATIVE
12 APPEALS PROCESS WITH THE INTEGRATED WASTE MANAGEMENT
13 BOARD SIMPLY BY FILING A LAWSUIT IN THE FIRST PLACE.
14 SO WHAT'S THE POINT WOULD BE THE QUESTION.

15 AT THE RISK OF BEING THROWN OUT OF THE
16 OFFICE OF BOARD MEMBERS THE NEXT TIME I COME UP AND
17 VISIT, I ALSO WOULD RECOMMEND THAT WE -- THE BOARD
18 EITHER BY POLICY OR A STATUTE BE ADOPTED TO MAKE THIS A
19 QUASI JUDICIAL PROCEEDING WITH NO EX PARTE
20 COMMUNICATIONS. I BELIEVE THAT THESE ARGUMENTS OUGHT
21 TO BE MADE ON THEIR MERITS BEFORE THE HEARING PANEL AND
22 BEFORE THE STATE BOARD. AND NOTWITHSTANDING THE FACT
23 THAT I'M A CONSULTANT AND I'VE NEVER ENGAGED IN EX
24 PARTE COMMUNICATIONS, BUT SOME OF MY COLLEAGUES DO, I
25 DON'T -- IT WORKS TO OUR ADVANTAGE, I MUST ADMIT.



1 DOESN'T MAKE IT RIGHT. I BELIEVE THAT THE PUBLIC IS
2 DISADVANTAGED. I BELIEVE EVERYBODY IN THE PROCESS IS
3 DISADVANTAGED.

4 SO I WOULD RECOMMEND THAT THE BOARD ADOPT
5 A POLICY THAT THIS IS A QUASI JUDICIAL, DIFFERENT FROM
6 YOUR QUASI LEGISLATIVE. EX PARTE THERE, FINE. THAT'S
7 A LEGISLATIVE PROCESS. THIS IS MORE A JUDICIAL
8 PROCESS. IT OUGHT TO BE JUDGED ON THE MERITS AND THE
9 CASE THAT THE PARTICIPANTS BRING TO YOU RATHER THAN WHO
10 HAS THE CLOUT POLITICALLY.

11 AND FINALLY, IF YOU ADOPT SOME OF MY
12 OTHER SUGGESTIONS ABOUT STRIKING THE NOTICE OF
13 VIOLATION AND SOME OF THE OTHER PROCEDURAL ASPECTS, I
14 DON'T BELIEVE THERE ARE ANY FRIVOLOUS APPEALS. IF YOU
15 CAN SORT OUT THE REAL NOTICE AND ORDER ISSUES FROM THE
16 AREAS OF CONCERN ISSUES, THEN ALL OF THESE APPEALS
17 BRING FURTHER MEANING AND CLARITY TO THE LAW AS WE'RE
18 TRYING TO APPLY IT OUT IN THE FIELD. SO I WOULD
19 SUPPORT A PRETTY OPEN SYSTEM OF THE APPEALS PROCESS
20 BECAUSE THAT'S THE WAY WE'RE ALL LEARNING ABOUT THE
21 SYSTEM. THANK YOU.

22 MS. TOBIAS: THANK YOU, CLINT. SCOTT.

23 MR. GORDON: I HAVE SOME TESTIMONY. IF YOU
24 DON'T MIND, I'LL STAY SEATED BECAUSE I'M GOING TO TRY
25 TO SHORTEN IT AND READ THE NOTICE THAT I PUT ON THE



1 POST-ITS FROM THIS MORNING. AND FOR THE RECORD, MY
2 NAME IS SCOTT GORDON, AND MY FIRM IS BRUIN AND GORDON.
3 AND I'M NOT HERE ON BEHALF OF ANY CLIENT TODAY. MY
4 COMMENTS ARE GENERAL AND REPRESENT BOTH PUBLIC AGENCIES
5 AND PRIVATE PARTIES IN THE WASTE INDUSTRY. SO MY
6 COMMENTS ARE GENERIC AND NOT SPECIFIC TO A CLIENT
7 TODAY.

8 I WANT TO TALK ABOUT FIVE MATTERS. I
9 ACTUALLY ADDED A FIFTH AFTER MR. WHITNEY SPOKE, WHICH
10 IS ON THE HEARING PROCESS AT THE LOCAL PANEL LEVEL.
11 BUT THE OTHER FOUR ARE I WANT TO TALK ABOUT 44307, THAT
12 SECTION, AND PARTICULARLY THE LAST SENTENCE OF IT.
13 SECONDLY, THE LOCAL PANEL ISSUE; THAT IS, THE QUESTION
14 OF WHETHER A BOARD OF SUPERVISORS OR A CITY COUNCIL
15 SHOULD SIT AS A HEARING PANEL. THREE, THE STANDARDS BY
16 WHICH YOU DETERMINE AS A BOARD TO DO THE TYPE OF REVIEW
17 WHEN THE MATTER COMES UP BEFORE YOU. THAT IS, WHETHER
18 YOU HEAR IT ON THE RECORD WHEN YOU DECIDE TO TAKE
19 ADDITIONAL TESTIMONY, ASK FOR BRIEFS, AND SO ON. FOUR,
20 JUST TO TALK BRIEFLY ABOUT THE BODY OF DECISIONAL LAW
21 THAT YOU'RE GOING TO END UP CREATING FROM YOUR
22 APPELLATE PROCESS. AND THEN FIVE, AGAIN, THE
23 SAFEGUARDS IN THE APA HEARING PROCESS.

24 FIRST, SECTION 44307, I STARTED OFF
25 WANTING TO ADVOCATE THAT IF THERE WAS A WAY THAT THE



1 LEGISLATURE COULD FIND IT IN ITS HEART TO TAKE OUT THE
2 LAST SENTENCE, I WOULD BE SO HAPPY BECAUSE IT'S REALLY
3 AN AREA THAT'S SUBJECT TO GREAT -- GREAT ABUSE. AND
4 I'M GOING TO READ IT QUICKLY. IT SAYS THE ENFORCEMENT
5 AGENCY SHALL ALSO HOLD A HEARING UPON A PETITION TO THE
6 ENFORCEMENT AGENCY REQUESTING THE AGENCY TO REVIEW AN
7 ALLEGED FAILURE OF THE AGENCY TO ACT AS REQUIRED BY LAW
8 OR REGULATION.

9 THERE ARE NO, AT LEAST, AREAS THAT I
10 COULD FIND IN LOOKING AT THE LEGISLATIVE HISTORY TO
11 TELL ME WHAT THAT PARTICULAR SENTENCE WAS ABOUT, WHY
12 IT'S THERE, WHY IT READS THE WAY IT DOES, BUT I CAME
13 AWAY WITH THE FOLLOWING CONCLUSIONS READING THE
14 SECTION. ONE, IT APPEARS TO ME TO CREATE A THIRD BASIS
15 BY WHICH TO HAVE AN APPEAL TO A LOCAL HEARING PANEL.
16 THAT IS, YOU'VE GOT PERMITTEES WHO CAN GRIEVE, YOU'VE
17 GOT PERSONS WHO ARE SUBJECT TO AN ENFORCEMENT ACTION
18 WHO CAN GRIEVE, AND THEN THERE'S THIS LATTER CATEGORY
19 THAT IS THERE WITHOUT ANY EXPLANATION.

20 AND I GUESS IF I HAD MY DRUTHERS TO
21 PREVENT ABUSE BY COMPETITORS, PEOPLE UNHAPPY WITH THE
22 LOCATION OF A FACILITY, PEOPLE JUST WITH AN AXE TO
23 GRIND, I'D TAKE IT OUT. I REALIZE THAT'S PROBABLY NOT
24 REALISTIC, SO WHAT I WOULD SUGGEST YOU DO IS CONSIDER
25 PUTTING STANDARDS FOR THAT KIND OF REVIEW THAT LIMIT



1 THE ABILITY TO BRING AN ACTION. AND MAYBE LIMIT'S THE
2 WRONG WORD. AT LEAST SPECIFY WHEN YOU CAN BRING AN
3 ACTION. AND I'M TALKING ABOUT BASIC THINGS LIKE BEING
4 AN AGGRIEVED PERSON WHO'S BENEFICIALLY INTERESTED,
5 WHOSE INTEREST IN THE SUBJECT MATTER IS KNOWN, AND THEY
6 HAVE TO DEMONSTRATE WHY THEY HAVE STANDING TO BRING
7 THAT ACTION. I THINK THE COMMUNITY THE -- CERTAINLY
8 THE REGULATED COMMUNITY IS ENTITLED TO KNOW THAT, YOU
9 ARE ENTITLED TO KNOW THAT, AND THE LEA SHOULD KNOW
10 THAT. SO I WOULD URGE YOU TO ADOPT WHAT WOULD AMOUNT
11 TO A WRIT OF MANDATE-TYPE STANDARD FOR THOSE TYPES OF
12 PETITIONS THAT AREN'T PERMIT ISSUES AND THAT AREN'T
13 ENFORCEMENT ACTIONS, BUT THAT ARE THESE GENERIC
14 PETITIONS THAT COME TO AN LEA. YOU NEED TO CONSIDER,
15 IN MY JUDGMENT, STANDARDS TO PREVENT ABUSE.

16 SECONDLY, I AGREE WITH MR. WHITNEY. WE
17 TALKED ABOUT IT IN OUR GROUP TODAY ON THE LOCAL PANEL
18 ISSUE. I CAN'T THINK OF A REAL COMPELLING OR GOOD
19 REASON WHY A LOCAL ELECTED BODY SHOULD SIT AS THREE OF
20 ITS MEMBERS AS A HEARING PANEL OVER AN LEA. I MEAN THE
21 LOCAL GOVERNMENT ISN'T DEALING WITH STATE LAWS AND
22 REGULATIONS. IT ISN'T DEALING WITH SOLID WASTE
23 MATTERS. AND I DON'T UNDERSTAND THE CONNECTION. I
24 THINK THE INDEPENDENT HEARING PANEL PROVIDES A
25 SAFEGUARD TO THE PROCESS.



1 THIRD, I WOULD URGE YOU TO ADOPT
2 STANDARDS FOR WHEN YOU ARE GOING TO DECIDE TO HEAR A
3 MATTER ON THE WRITTEN RECORD FROM THE LOCAL HEARING
4 PANEL, WHEN YOU ARE GOING TO ASK FOR ADDITIONAL
5 BRIEFING, AND WHETHER THERE ARE CATEGORIES OF ACTIONS
6 THAT MIGHT COMPEL YOU TO DO IT ONE WAY OR THE OTHER. I
7 DON'T HAVE A SPECIFIC SET OF STANDARDS TO RECOMMEND. I
8 JUST THINK THAT YOU OUGHT TO CONSIDER SOME GUIDELINES
9 AS TO WHAT TYPE OF CASES ARE GOING TO FALL IN WHAT
10 CATEGORY.

11 FOUR, THE QUESTION CAME UP, I BELIEVE,
12 WHEN WE WERE DOING THE PANEL RECAP ABOUT WHAT BECOMES
13 OF THE LAW THAT YOU HAND DOWN. AND I THINK WHAT YOU
14 ARE GOING TO FIND IS EVERYTHING YOU DO IS PRECEDENT
15 WHETHER IT BE BY SECOND OR THIRDHAND OR WRITTEN
16 DECISION. I WOULD ENCOURAGE YOU TO MAKE A BODY OF LAW
17 THAT PEOPLE CAN LOOK TO. IT WILL BECOME PRECEDENT.
18 PEOPLE LIKE ME WILL CONTACT YOUR GENERAL COUNSEL AND
19 SAY SUCH AND SUCH A DATE THE BOARD DID THIS AND THAT'S
20 GOING TO BE THE RULE. SO I WOULD ENCOURAGE YOU TO DO
21 IT IN A UNIFORM WAY SO THAT IT'S CITABLE, THAT YOU CAN
22 RELY IT ON, THAT OTHERS CAN RELY IT. I KNOW THAT'S AN
23 ADMINISTRATIVE BURDEN. PROBABLY GOING TO BE ANOTHER
24 STAFF REQUEST, BUT I CERTAINLY THINK THAT IT'S
25 SOMETHING YOU OUGHT TO CONSIDER.



1 FINALLY, I HADN'T PLANNED ON MENTIONING
2 THIS, BUT I DID DISAGREE WITH MR. WHITNEY'S TESTIMONY
3 TO THE SAFEGUARDS THAT I THINK ARE PRESENT IN THE APA
4 HEARING PROCESS. IT IS A LITTLE MORE FORMAL THAN A
5 HUNDRED PEOPLE JAMMING A ROOM AND HANDING IN SPEAKER
6 CARDS AND TESTIFYING, BUT IT ISN'T AS ONEROUS AS A
7 COURT OF LAW. IT KIND OF SPLITS THE DIFFERENCE. IT
8 REQUIRES WITNESSES TO BE SWORN. IT DOES REQUIRE THAT
9 THERE BE SOME FORMALITY, TESTIMONY UNDER OATH, PROVIDES
10 RIGHTS OF CROSS EXAMINATION, BUT IT ALSO REMAINS
11 SOMEWHAT INFORMAL. STRICT RULES OF EVIDENCE DO NOT
12 APPLY, SO IT BRIDGES THAT GAP, AND I WOULD URGE YOU TO
13 KEEP THAT INTACT OR CERTAINLY TO ADOPT RULES OR HAVE
14 THE LEGISLATURE DO SO THAT ARE CONSISTENT WITH THAT
15 BECAUSE I THINK IT PROVIDES A NECESSARY SAFEGUARD.

16 THOSE ARE MY THOUGHTS AND SUGGESTIONS.
17 I'D BE HAPPY TO ANSWER ANY QUESTIONS.

18 MS. TOBIAS: ANY QUESTIONS FROM THE BOARD?
19 OKAY. JUSTIN MALAN. COULD I JUST SEE WHO ELSE WOULD
20 LIKE TO? I DON'T HAVE A SENSE. I TALKED TO A FEW
21 PEOPLE.

22 MR. MALAN: GOOD AFTERNOON. THANK YOU.
23 JUSTIN MALAN WITH THE LOCAL ENFORCEMENT AGENCIES
24 THROUGH THE ENVIRONMENTAL HEALTH DIRECTORS. LIKE TO
25 PARTICULARLY THANK THE BOARD MEMBERS FOR BEING HERE



1 TODAY OR FOR BRINGING THIS ALL TOGETHER. I THINK IT'S
2 BEEN VERY, VERY HELPFUL FOR ALL OF US TO HAVE THIS SORT
3 OF DIALOGUE. AND SOME OF THESE ISSUES ARE PARTICULARLY
4 DIFFICULT TO GRAPPLE WITH IN A MORE FORMALIZED SETTING.
5 SO CERTAINLY FOR US, AND THERE'S BEEN A GREAT TURNOUT
6 OF LEA'S, AND WE'RE APPRECIATIVE THAT YOU HAVE GIVEN US
7 THE OPPORTUNITY.

8 I REALLY WANTED TO SPEAK ABOUT
9 LEGISLATION BECAUSE MANY OF THESE ISSUES, CCDEH THROUGH
10 THE LEA'S HAVE IDENTIFIED THESE ISSUES. WE ACTUALLY
11 TRIED TO RUN A BILL LAST YEAR, AND FOR A NUMBER OF
12 REASONS WE COULDN'T GET IT GOING. WE COULDN'T GET
13 RESOLUTION AMONGST OURSELVES AS TO HOW TO TACKLE THESE
14 PROBLEMS. BUT THIS YEAR WE DID INTRODUCE 2521 BY
15 ASSEMBLYMEMBER WAYNE. AND THANKS TO THE COOPERATION
16 AND THE ASSISTANCE OF EVERYBODY, THE LEA'S, THE
17 INDUSTRY, THE BOARD STAFF, I THINK THAT WE'VE GRAPPLED
18 WITH SOME OF THE PROBLEMS THAT WE DISCUSSED HERE TODAY.

19 I WANTED TO HIGHLIGHT VERY QUICKLY THE
20 ISSUES THAT WE SAW AND ARE ON THE BOARD, SO I'M NOT
21 GOING TO SPEND TOO MUCH TIME ON THEM. BUT CENTRAL, THE
22 BIG KEY ISSUES, AS I MENTIONED EARLIER, IS THE SCOPE OF
23 AUTHORITY. WHAT IS AN APPEALABLE ACTION AND THE
24 DISTINCTION BETWEEN STATE MINIMUM STANDARDS AND LOCAL
25 PERMIT CONDITIONS? THOSE ARE SORT OF THREE OF THE BIG



1 ISSUES.

2 THE OTHER IS THE FACT THAT THERE IS
3 ACTUALLY A DUAL PROCESS. THERE'S A DUAL PROCESS, ONE
4 FOR ENFORCEMENT AND ONE FOR PERMIT ACTIONS. AND WE
5 WANTED TO LOOK AT THAT AND SEE HOW WE CAN MAKE IT A
6 SINGLE PROCESS TO MAKE IT LESS CONFUSING.

7 THIRDLY, THE LEA'S FELT THAT THEIR
8 ADMINISTRATIVE CIVIL PENALTIES WHICH WAS AFFORDED THE
9 LEA'S FOR THE FIRST TIME IN '95 THROUGH THE AB 59
10 PROCESS ACTUALLY WAS MORE OF A HINDRANCE THAN A HELP.
11 IT KIND OF TIED OUR HANDS BEHIND OUR BACK. IT GAVE US
12 THE ADMINISTRATIVE CIVIL PENALTY, BUT IT MADE US JUMP
13 THROUGH SO MANY HOOPS THAT IT WASN'T REALLY AN
14 EFFECTIVE TOOL. AMONGST THEM IS VERY LIMITED \$15,000 A
15 YEAR MAXIMUM, PLUS THE FACT THAT WE HAD TO NOTIFY OUR
16 BOARD. AND IF YOU THINK IN THE COUNTY OF L.A., IT'S
17 MORE DIFFICULT TO GET A BOARD HEARING THERE THAN A
18 HEARING IN THE LEGISLATURE, THAT'S A SIGNIFICANT
19 BURDEN, PLUS THERE WERE CONSIDERABLE HOOPS THAT WE HAD
20 TO JUMP THROUGH. AND I DON'T MEAN THAT IN A PEJORATIVE
21 SENSE. I'M NOT SUGGESTING THERE SHOULDN'T BE HOOPS
22 THAT WE HAVE TO GO THROUGH, BUT EFFECTIVELY I THINK
23 ADMINISTRATIVE CIVIL PENALTIES UNDER AB 59 HAVE NOT
24 REALLY BEEN CONSIDERED AS WORTHWHILE TOOLS BY THE
25 LEA'S.



1 SO THAT LED US TO THE NEXT QUESTION: HOW
2 DO WE EFFECT ENFORCEMENT IF WE DON'T HAVE
3 ADMINISTRATIVE CIVIL PENALTY TOOLS THAT ARE REALLY
4 WORKING? WE LOOKED AT CEASE AND DESIST; AND AS YOU
5 HEARD TODAY, UNDER CURRENT LAW, AB 59, THE CEASE AND
6 DESIST ORDERS CAN BE STAYED EXCEPT FOR VERY HIGH
7 STANDARD, AND THAT'S PROVING AN IMMINENT THREAT TO THE
8 HEALTH AND THE PUBLIC, ENVIRONMENT AND THE PUBLIC.
9 THAT'S A FAIRLY HIGH STANDARD TO PROVE IN ORDER TO HAVE
10 YOUR CEASE AND DESIST ORDER STICK.

11 THE LEA'S WERE CONCERNED ABOUT THE
12 RECOVERY OF COST, BOTH IN TERMS OF THE COST OF THE
13 WHOLE PROCEEDINGS AND LOOKING AT COST AS A WAY OF
14 CONTROLLING FRIVOLOUS CASES. THE TERM AND THE
15 COMPOSITION OF THE BOARD OF THE INDEPENDENT HEARING
16 PANEL ARE ALSO BIG ISSUES FOR US. IT'S HARD FOR LEA'S
17 THAT ARE AGENTS OR THEY'RE EMPLOYEES OF THE BOARD OF
18 SUPERVISORS TO DICTATE OR EVEN RECOMMEND WHAT THE BOARD
19 OF SUPERVISORS SHOULD DO. SO WE STAYED WELL CLEAR OF
20 THAT ISSUE. IN FACT, WE DID ACTUALLY SUGGEST IN
21 LEGISLATION THAT THE TERM OF THESE MEMBERS BE EXPANDED
22 SO THAT WE DIDN'T HAVE THE TURNOVER AND WE COULD
23 ACTUALLY REDUCE ADMINISTRATIVE COSTS.

24 WE DEALT BRIEFLY WITH CEASE AND DESIST.
25 ALSO, IF YOU LOOK CAREFULLY IN THE LAW, OUR



1 UNDERSTANDING IS THAT FOR PERMIT CONDITIONS, THE ACTUAL
2 PERMIT ACTION BY THE LEA, IF A PERMIT WAS DENIED, IT
3 WAS AUTOMATICALLY APPEALED, AUTOMATICALLY APPEALED TO
4 THE INDEPENDENT HEARING PANEL. THIS SEEMED TO BE
5 UNNECESSARY BECAUSE IN SOME CASES THE OPERATOR EVEN
6 AGREES WITH THAT DENIAL; OR IF THERE WASN'T A REQUEST
7 BY THE OPERATOR, UNDER CURRENT LAW YOU HAD TO HAVE AN
8 INDEPENDENT HEARING PANEL REVIEW THAT DENIAL.

9 AND THEN SECONDLY OR FINALLY, THE WHOLE
10 PROCEDURE WAS RATHER COSTLY AND COMPLEX. WE CAME TO
11 THE MEMBER EATON'S COMMITTEE A FEW WEEKS AGO, AND WE
12 DIDN'T HAVE OUR LANGUAGE SORTED OUT, BUT YESTERDAY THE
13 BILL THAT'S CARRIED BY ASSEMBLYMAN WAYNE PASSED. AND
14 I'LL JUST HIGHLIGHT THE FOUR CONDITIONS THAT WERE IN
15 THE BILL BECAUSE I THINK THEY ADDRESS FOUR OF THE MAIN
16 CONCERNS.

17 UNFORTUNATELY AFTER MUCH OF NEGOTIATION
18 AND WRANGLING AMONGST INDUSTRY AND LEGISLATIVE STAFFERS
19 AND SOME LEGISLATORS THEMSELVES, WE DROPPED A CORE
20 PROVISION THAT I THINK WOULD HAVE ADDRESSED BFI'S
21 CONCERN, AND THAT IS THE PERIOD AT WHICH AN
22 INDEPENDENT -- AN OPERATOR WILL APPEAL THE PERMIT
23 CONDITIONS. THAT CAUGHT UP IN SOME REALLY AWKWARD
24 WRANGLINGS IN THE LEGISLATURE, SO WE DROPPED THAT
25 CONDITION, BUT WE WENT AHEAD WITH FOUR OTHERS.



1 FIRSTLY, AB 2521 WILL LIFT THE CAP ON THE
2 TERM OF THE INDEPENDENT HEARING PANEL APPOINTEES. SO
3 THERE'S NO LONGER TWO-TERM, TWO-YEAR LIMIT.

4 SECONDLY, IN TERMS OF THE RECOVERY OF
5 COSTS, AFTER SOME NEGOTIATION WITH THE INDUSTRY, WHAT
6 THE BILL NOW PROPOSES IS THAT THE LEA MAY RECOVER ALL
7 REASONABLE AND NECESSARY COSTS ASSOCIATED WITH AN
8 APPEAL WHERE THE PANEL, THE INDEPENDENT HEARING PANEL,
9 DEEMS THE APPEAL FRIVOLOUS. NOW, THAT SEEMED TO BE A
10 REASONABLE COMPROMISE. RATHER THAN TRYING TO ESTABLISH
11 SOME ELABORATE STANDINGS FOR FEES TO GET INTO THE
12 PROCESS, WHICH ARGUABLY MAY NOT BE CONSTITUTIONAL, ALL
13 IT SAYS IS THAT IF THE PANEL FEELS THAT YOU BROUGHT A
14 FRIVOLOUS CASE BEFORE THEM, THE LEA'S CAN RECOVER FULL
15 COSTS.

16 THE THIRD PROVISION IS THAT THERE'S NOT
17 AN AUTOMATIC APPEAL IN THAT THE APPLICANT WOULD HAVE TO
18 REQUEST AN APPEAL TO THE INDEPENDENT HEARING PANEL IF
19 THERE'S A PERMIT DENIED.

20 AND PROBABLY THE MOST IMPORTANT PROVISION
21 THAT WE HAVE IN AB 2521, AND MANY, MANY PEOPLE RAISED
22 IT TODAY, WHICH IS THE STAY OF THE CEASE AND DESIST
23 AUTHORITY. THERE AGAIN WAS SOMEWHAT OF A COMPROMISE.
24 INSTEAD OF HAVING TO HOLD THE LEA'S TO THE VERY HIGH
25 STANDARD OF PROVING THAT IT WAS AN IMMINENT THREAT TO



1 THE PUBLIC HEALTH AND ENVIRONMENT, WE TOOK OUT OF
2 SECTIONS 45005, AND THERE ARE THREE -- IN CURRENT LAW
3 THERE ARE THREE REASONS WHY AN LEA CAN IMPOSE A CEASE
4 AND DESIST.

5 ONE IS WHERE THE OPERATOR DISREGARDS OR
6 VIOLATES ANY RULE, ANY REGULATION, ANYTHING, THE BOOK,
7 ANYTHING IN THE BOOK. THE OTHER ONE IS THAT IF
8 SOMEBODY OPERATES WITHOUT A PERMIT, AND THE THIRD
9 PROVISION IS IF SOMEONE OPERATES THAT CAUSES TO OR DOES
10 CAUSE A NUISANCE OR POLLUTION OR THREAT TO THE PUBLIC
11 HEALTH AND THE ENVIRONMENT.

12 WHAT -- THE AGREEMENT WE REACHED
13 YESTERDAY IN THE SENATE ENVIRONMENTAL QUALITY COMMITTEE
14 IS THAT IF THE FIRST -- SECOND TWO CONDITIONS APPLY, IF
15 THE LEA IMPOSES A CEASE AND DESIST IF SOMEONE IS
16 OPERATING WITHOUT A PERMIT OR ACTUALLY CAUSES POLLUTION
17 OR HARM OR THREATENS TO CAUSE POLLUTION AND HARM, THEN
18 THAT CEASE AND DESIST ORDER STICKS UNTIL YOU EITHER GO
19 TO HEARING PANEL AND THE HEARING PANEL OVERTURNS IT OR
20 YOU TAKE IT TO COURT. YOU EITHER GET INJUNCTION FOR
21 RELIEF OR THE COURT DECIDES ONE WAY OR THE OTHER.

22 BUT IN THIS WAY, WE FEEL, AT LEAST FOR
23 THOSE CASES WHERE THE LEA IMPOSES A CEASE AND DESIST,
24 MOST CASES THAT STICKS UNTIL IT'S OVERTURNED.

25 SO THAT'S WHERE WE ARE WITH THE BILL. WE



1 WANTED TO PRESENT IT FORMALLY TO THE BOARD, BUT
2 OBVIOUSLY IT'S A WORK IN PROCESS. WHAT WE'D LIKE AS
3 LEA'S IS TO LOOK AT THE OUTCOME OF THIS MEETING AND SEE
4 IF WE NEED TO TWEAK THE LANGUAGE, BUT WE'D ALSO LIKE TO
5 OFFER THE BOARD AN OPPORTUNITY TO WORK WITH US ON ANY
6 OTHER PROVISIONS THAT YOU SEE FIT.

7 MS. TOBIAS: QUESTIONS FROM THE BOARD
8 MEMBERS?

9 BOARD MEMBER EATON: I HAVE TWO QUESTIONS, ONE
10 VERY SPECIFIC. WITH REGARD TO THE RECOVERY OF COSTS,
11 IF AN APPEAL IS DEEMED FRIVOLOUS, YOU THEN UNDER YOUR
12 NEW MEASURE WOULD BE ALLOWED TO RECOVER COST, CORRECT?

13 MR. MALAN: CORRECT.

14 BOARD MEMBER EATON: IS THE DECISION WHETHER
15 OR NOT IT'S FRIVOLOUS APPEALABLE TO US? AND I'M SAYING
16 FROM A PRACTICAL STANDPOINT --

17 MR. MALAN: NO, WE'RE NOT MAKING A PROVISION
18 FOR THAT.

19 BOARD MEMBER EATON: BUT IS IT OR SHOULD IT
20 BE? AND I WOULD ASK THAT YOU THINK THAT BECAUSE ONE OF
21 THE THINGS AS BOARD MEMBERS WE'RE THINKING ABOUT IS
22 WHAT CONSTITUTES A SUBSTANTIVE ISSUE. IS THAT
23 ADMINISTRIAL? I MEAN IT'S WORKLOAD -- AND I'M NOT
24 CHALLENGING. I'M JUST -- AS WE THINK THROUGH SOME OF
25 THE THINGS WE GOT TODAY, HELP US THINK THROUGH.



1 MR. WHITE: I HAVE A QUESTION RELATED TO THAT,
2 IF YOU DON'T MIND. SO THE HEARING PANEL BASICALLY
3 DISMISSES THE APPEAL AND SAYS IT'S FRIVOLOUS, AND THEN
4 YOU CAN RECOVER COST. THE OPERATOR APPEALS THAT
5 DECISION TO THE BOARD, AND THE BOARD BASICALLY MAKES A
6 DECISION TO OVERTURN THE DECISION OF THE BOARD. BUT
7 THE LANGUAGE YOU HAVE HERE STILL SAYS IT'S STILL
8 FRIVOLOUS, SO IT'S STILL GOING TO COST THEM EVEN THOUGH
9 THE BOARD DECIDED ON ITS MERIT IT NEEDED TO BE
10 OVERTURNED, SO IT WASN'T FRIVOLOUS.

11 MR. MALAN: ONE MUST UNDERSTAND THAT
12 INDEPENDENT HEARING PANEL IS JUST THAT. IT'S AN
13 INDEPENDENT HEARING PANEL. ITS ACTION IS INDEPENDENT
14 OF THE BOARD. THE INDEPENDENT HEARING PANEL'S ACTION
15 IS NOT DRIVEN BY WHAT THE BOARD DEEMS LATER ON TO BE
16 FRIVOLOUS OR NOT FRIVOLOUS. SO INDEPENDENT LOCAL
17 PANEL, IF THEY DEEM THAT ACTION, THAT APPEAL, TO BE
18 FRIVOLOUS, FROM OUR PERSPECTIVE THE THING THAT THE LEA
19 WANTED IS TO ENSURE THAT THE APPEAL WASN'T USED TO STAY
20 ENFORCEMENT, TO IMPEDE ENFORCEMENT.

21 AND THERE WERE TWO OPTIONS. WE COULD
22 EITHER HAVE THE PREVAILING PARTY PAY, WHICH IS COMMON
23 LAW OR COMMON PRACTICE, OR WE COULD GO TO THE
24 FRIVOLOUS -- WHERE IT'S DEEMED TO BE A FRIVOLOUS
25 APPEAL. AND THE COLLECTIVE WISDOM FROM A NUMBER OF



1 LEGISLATORS OVER THE PAST COUPLE OF DAYS WAS TO LOOK
2 TOWARDS LIMITING TO A FRIVOLOUS APPEAL.

3 AND I THINK GENERALLY THAT MAY NOT BE
4 ENOUGH, BUT GENERALLY THE LEA'S WOULD BE COMFORTABLE
5 WITH THAT. ALL IT IS IS SOMEWHAT OF A SAFEGUARD THAT
6 THEY AREN'T HAVING THINGS THROWN AT THEM. THIS APPLIES
7 TO OPERATORS AND TO THE PUBLIC AS WELL, ANYONE THAT
8 APPEALS AN LEA ACTION.

9 BOARD MEMBER EATON: THE SECOND PART OF MY
10 QUESTION YOU TOUCHED ON A LITTLE BIT JUST BRIEFLY.
11 WHERE DO YOU SEE THE PROCESS BY WHICH YOU'RE PROCEEDING
12 ON LEGISLATIVELY, THE BOARD AND THE BOARD STAFF'S
13 PROCESS, OF TRYING TO SCOPE OUT SOME OF THESE ISSUES?
14 AND WHERE DO THEY INTERSECT BECAUSE ONE OF THE FEARS
15 THAT MANY HAVE EXPRESSED ON ALL SIDES, MAYBE NOT TODAY,
16 BUT AT LEAST IN OTHER CONTEXTS, ARE THAT WITH REGARD TO
17 THE AB 59 PROCESS, THE RUSH TO JUDGMENT AND TO SOLVE
18 THE PROBLEM WITH A MAJOR PIECE OF LEGISLATION THIS YEAR
19 WOULD ONLY BE CREATING MORE SAUSAGE, SO TO SPEAK. AND
20 WHERE DO YOU SEE WHAT WE'VE DONE TODAY, AS WELL AS WHAT
21 YOU ARE DOING, COMING TOGETHER AND HOW?

22 MR. MALAN: WELL, AS I PREFACED MY COMMENTS,
23 WE STARTED THIS PROCESS TWO YEARS AGO. SO IT'S -- I
24 DON'T THINK ONE CAN CONSTRUE IT AS A RUSH TO JUDGMENT.
25 WE INTRODUCED A BILL LAST -- IN FACT, THE YEAR BEFORE



1 LAST, AND WE WEREN'T READY BECAUSE THEY WERE STILL
2 HAVING THE EXPERIENCE WITH THE PROCESS. THERE WAS SOME
3 LEGISLATIVE RESISTANCE TO OPENING THIS UP BECAUSE THE
4 ISSUE WAS SOMEWHAT FRESH. AND THE INK WAS HARDLY DRY
5 ON THE STATUTES AND WE ALREADY, BECAUSE OF SOME
6 EXPERIENCE THAT WE HAD AND BECAUSE OF THE LIMITATIONS
7 WE FELT WE SHOULD ADDRESS AS LEA'S, WE DID HOLD BACK.
8 SO THIS YEAR WE INTRODUCED A BILL. IT'S ONE OF THOSE
9 THINGS THAT'S TAKEN US THREE YEARS. SO WE WOULDN'T
10 CONSIDER IT RUSHING TO JUDGMENT.

11 ALSO, IN RESPECT, WE HAD HOPED FOR THIS
12 HEARING TO BE EARLIER IN THE YEAR. WE HAD HOPED THAT
13 THE LEGISLATURE WOULD HAVE A HEARING, AND THEY DID
14 INDICATE A COUPLE OF MONTHS AGO THAT THEY'D LOOK AT
15 THIS ISSUE. THEY NEVER GOT AROUND TO DOING IT. SO OUR
16 CONCERN, WHILE WE DIDN'T WANT TO PREEMPT YOUR
17 PREROGATIVE OR THE OUTCOME OF THIS HEARING, WE FELT
18 THAT WE COULDN'T DELAY IT ANYMORE.. WE WANTED TO TAKE
19 SOME ACTION. WE'RE NOT LOOKING UPON IT AS INDEPENDENT
20 ACTION, BUT WE HAD TO KEEP OUR BILL ALIVE AND WE HAVE
21 TO KEEP IT IN THE PROCESS.

22 IF WE HELD IT UP YESTERDAY, IT WAS A
23 STRONG LIKELIHOOD WE COULD HAVE LOST OUR BILL BECAUSE
24 OF LEGISLATIVE DEADLINES. SO THAT'S THE REASON. WE IN
25 NO WAY INTENDED TO JAM INDUSTRY. INDUSTRY GOT



1 AMENDMENTS AT THE LAST MOMENT. IT WASN'T AN EFFORT TO
2 JAM ANYONE AS WE HAD OUR BACKS AGAINST THE WALL
3 LEGISLATIVELY IN TERMS OF DEADLINES. BUT, AS I SAY,
4 IT'S STILL A WORK IN PROGRESS. AND I THINK WE CAN
5 WORK -- CERTAINLY THE NONCONTROVERSIAL PROVISIONS, ANY
6 ISSUES THAT COME OUT OF THIS HEARING, WE COULD STILL
7 WORK IT INTO THE BILL THIS YEAR.

8 MS. TOBIAS: OKAY.

9 MR. CALVERT: KEN CALVERT WITH SAN DIEGO
10 COUNTY LEA. AGAIN, I'D LIKE TO THANK THE BOARD MEMBERS
11 FOR PARTICIPATING TODAY. ENJOYED THE PROCESS.

12 I GUESS I'D LIKE TO NARROW MY COMMENTS
13 JUST TO TWO MAJOR SECTIONS. MAIN THING I'M CONCERNED
14 ABOUT IS THE BROADENING OF SECTION 44307 OR BROADENING
15 THE INTERPRETATION. IN THAT RESPECT, MAYBE I SHARE A
16 LOT OF MR. GORDON'S COMMENTS. AND THERE'S TWO AREAS OF
17 CONCERN. ONE IS MAKE CERTAIN THAT UNDER THOSE ACTIONS
18 WHERE THE LEA HAS TAKEN ENFORCEMENT OR PERMIT ACTIONS,
19 THAT WE DON'T BROADEN THAT BEYOND APPEALS SUBJECT TO --
20 THE PERSON SUBJECT TO THE ACTION, THAT THAT DOESN'T
21 EXTEND TO ALL KIND OF OTHER PEOPLE.

22 AGAIN, IT'S MOSTLY BECAUSE WE ACKNOWLEDGE
23 THAT THIS IS A CONTENTIOUS ENVIRONMENT IN WHICH WE'RE
24 TRYING TO ISSUE A PERMIT. IF WE BROADEN THAT APPEAL
25 TOO MUCH, IT CERTAINLY WILL BE ABUSED.



1 THE OTHER PART IS THAT THAT LAST
2 SENTENCE, WHICH TALKS ABOUT THE FAILURE TO ACT AS
3 REQUIRED BY LAW, AND I'VE HEARD TODAY THE TERM ACTION
4 OR INACTION USED. I THINK I'D LIKE TO CAUTION EVERYONE
5 THAT IT'S NOT -- THINGS AREN'T APPEALABLE SIMPLY
6 BECAUSE OF AN LEA'S FAILURE TO TAKE ACTION OR INACTION.
7 ACTUALLY SAYS FAILURE TO TAKE ACTION AS REQUIRED BY
8 LAW.

9 I'M SORT OF WORRIED ABOUT THAT BROADENING
10 TO THE POINT OF LEA'S FAILING TO TAKE APPROPRIATE OR
11 CORRECT ACTION. WHAT I MEAN BY THAT IS WE'VE HAD
12 APPEALS IN SAN DIEGO SPECIFICALLY SAYING THAT THEY
13 DIDN'T LIKE THE TYPE OF ACTION OR THE TYPE OF
14 ENFORCEMENT ACTION THAT THE LEA WAS TAKING. WE DENIED
15 THOSE APPEALS ON THE GROUNDS THAT THEY FAILED TO SHOW
16 SUBSTANTIAL REASONS THAT THE LEA FAILED TO ACT AND SAID
17 THAT THAT PARTICULAR ACTION WAS ONLY APPEALABLE BY THE
18 OPERATOR.

19 AND SO WE'RE VERY CONCERNED ABOUT
20 BROADENING OF THAT INTERPRETATION SO THAT IT BECOMES
21 ANY ACTION OR INACTION THAT THE LEA MAY OR MAY NOT
22 TAKE. SO WE WANTED TO MAKE SURE THAT THAT
23 INTERPRETATION IS DEFINED NARROWLY OR WE THINK AS IT'S
24 WRITTEN IN THE PRC. WE THINK IT'S VERY CLEAR THE TYPES
25 OF ACTIONS WHICH ARE APPEALABLE BY THE OPERATOR, THOSE



1 THINGS WHICH ARE IN PART 5, SECTION 4500. AND IN THAT
2 RESPECT, WE WOULD WORRY ABOUT A BROADENING OF THAT
3 INTERPRETATION AS WELL.

4 WE BELIEVE THAT BOTH THE BOARD AND THE
5 LEA'S HAVE THEIR SEPARATE REGULATORY AND STATUTORY
6 AUTHORITY RESPONSIBILITIES, AND THAT LEA'S ARE, IN
7 FACT, EMPOWERED AT THE LOCAL LEVEL TO DETERMINE WHEN AN
8 OPERATOR IS IN VIOLATION OF THE LAW. AND WE ALSO FEEL
9 THAT THE PRC DOESN'T GIVE THE WASTE BOARD THE AUTHORITY
10 TO ARBITRATE THAT OR THE AUTHORITY TO SECOND-GUESS
11 THAT, AND THAT THAT IS THE LEA'S RESPONSIBILITY. SO WE
12 WOULD BE OPPOSED TO THOSE SORTS OF DECISIONS BEING
13 BROUGHT TO THE WASTE BOARD UNDER THE APPEAL PROCESS.
14 WE DON'T THINK THAT'S CURRENTLY APPROPRIATE.

15 AND WHEN THE BOARD MEMBERS WERE TALKING
16 ABOUT THE ISSUE OF MINISTERIAL VERSUS MAYBE
17 DISCRETIONARY IN SORT OF LAND USE CONTEXT, IT'S BEEN MY
18 VIEW THAT WHEN WE CHECK A BOX ON A FORM WHICH INDICATES
19 THAT A VIOLATION IS OCCURRING, WE BELIEVE THAT THAT'S
20 EXERCISING OUR JUDGMENT AS AN LEA AND THAT CAN BE
21 LIKENED TO A MINISTERIAL ACTION. WHEN AN LEA WRITES A
22 NOTICE AND ORDER OR SOME OTHER SORT OF ORDER AND VERY
23 SPECIFICALLY TELLS AN OPERATOR WHAT TO DO, WHEN TO DO
24 IT, AND WHAT'S GOING TO HAPPEN TO THEM IF THEY DON'T DO
25 IT, THAT IS EXERCISING MORE DISCRETIONARY



1 RESPONSIBILITY. AND WE'RE SAYING MORE EXACTLY WHAT
2 SHOULD BE DONE, AND WE THINK THAT'S THE APPROPRIATE
3 PLACE TO DETERMINE WHETHER OR NOT AN ACTION IS SUBJECT
4 TO APPEAL.

5 WE WOULD BELIEVE THAT SIMPLY CHECKING A
6 BOX ON A FORM IS NOT SUBJECT TO APPEAL. AND THAT AT
7 THAT POINT THE LEA IS SIMPLY EXERCISING ITS
8 RESPONSIBILITY UNDER THE LAW TO DETERMINE WHETHER OR
9 NOT A VIOLATION EXISTS.

10 WE WOULD -- PERSONALLY I WOULD BE IN
11 FAVOR OF PERHAPS A REGULATORY PROCESS IN REGULATION
12 WHICH GIVES AN OPERATOR THE ABILITY TO PROTEST OR
13 APPEAL THAT DECISION AT THE LOCAL LEVEL. AND WE THINK
14 THAT'S APPROPRIATE, THAT ANY LEA SHOULD HAVE AN
15 ADMINISTRATIVE PROCESS ALLOWING SOMEONE TO APPEAL A
16 VIOLATION. THAT'S -- THAT CONCLUDES MY COMMENTS.

17 MS. TOBIAS: BOARD MEMBERS HAVE ANY
18 QUESTIONS?

19 BOARD MEMBER FRAZEE: I JUST NEED A LITTLE
20 CLARIFICATION, LITTLE EXPANSION ON YOUR DEFINITION OF
21 WHAT SHOULD BE APPEALABLE AND WHAT SHOULDN'T BE. I GOT
22 THE CONCEPT OF ON THE FORM IF YOU CHECK THE BOX. ARE
23 YOU MAKING A SEPARATION THAT ANYTHING THAT'S AN ORDER
24 TO DO SOMETHING IS APPEALABLE?

25 MR. CALVERT: NO. ACTUALLY I'VE BEEN MAKING



1 THE ASSERTION THAT ONLY A FEW SPECIFIC THINGS ARE. ONE
2 IS WHEN THE LEA WRITES A TERM OR CONDITION ON A PERMIT,
3 THAT'S APPEALABLE, IF THE OPERATOR FEELS THAT'S
4 INAPPROPRIATE. BUT IT'S ONLY APPEALABLE BY THE
5 OPERATOR.

6 ALSO, AN ORDER THAT THE LEA ISSUES WITH
7 REFERENCE TO PART 5 OF THE PRC OR 45000 SECTION, AND
8 THAT BASICALLY IS TWO TYPES OF ORDERS. ONE IS WHEN WE
9 ORDER A CEASE AND DESIST OR REVOCATION OF A PERMIT OR
10 WE IMPOSE A FINE OR PENALTY. THOSE SORTS OF ORDERS ARE
11 APPEALABLE UNDER THE PRC BY THE OPERATOR OR THOSE
12 SUBJECT TO THE ACTION. THE OTHER TYPE OF APPEAL HAS TO
13 DO WHEN THE LEA HAS FAILED IN SOME WAY TO ACT AS
14 REQUIRED BY LAW OR REGULATION, AND THAT'S APPEALABLE BY
15 ANYONE. SO WE WOULD ACTUALLY SAY THAT IT'S LIMITED TO
16 THOSE THINGS, THAT NOWHERE IN THERE DOES IT SAY THAT AN
17 LEA'S DECISION TO NOTICE A VIOLATION OR TO INDICATE A
18 VIOLATION ON THE FORM IS APPEALABLE.

19 MR. WHITE: QUESTION, JUST A PURELY
20 HYPOTHETICAL SITUATION. IF YOU'VE GOT AN LEA THAT ON A
21 FORM, SAY, WRITES THIS IS A VIOLATION OF THE PUBLIC
22 RESOURCES CODE OR REGULATIONS, BUT THE OPERATOR THINKS
23 IT'S NOT, AND, IN FACT, WHEN THE OPERATOR GOES TO THE
24 BOARD AND SAYS WE DON'T THINK IT IS, AND THE BOARD
25 STAFF DON'T THINK IT IS, BUT THE LEA STILL PERSISTS IN



1 CALLING IT A VIOLATION, WHAT RECOURSE EXISTS FOR YOU TO
2 STRIKE THAT FROM THE RECORD OR EVEN HAVE A DISCUSSION
3 INDEPENDENT OF THE LEA WHO IS ALREADY ABSOLUTELY SAYING
4 NO WAY. THIS IS A VIOLATION. I'M NOT GOING TO BUDGE
5 ON THIS. WHAT RECOURSE DO WE HAVE?

6 MR. CALVERT: WELL --

7 MR. WHITE: TO GO TO COURT?

8 MR. CALVERT: YES, TO GO TO COURT. I THINK
9 THAT --

10 MR. WHITE: DOES IT MAKE SENSE THAT THE BOARD
11 WOULD BE ABLE TO ENTER INTO THAT DEBATE GIVEN THE FACT
12 THEY'RE CHARGED WITH BASICALLY WRITING THE REGULATIONS
13 IN THE FIRST PLACE AND TO AGREE IN INTERPRETING PUBLIC
14 RESOURCES CODE?

15 MR. CALVERT: I JUST DON'T THINK THAT THE
16 STATUTE ALLOWS THE BOARD TO ENTER THAT OR GIVES THE
17 BOARD THE AUTHORITY TO ENTER INTO THAT DISCUSSION. I
18 DO THINK THAT THAT'S SOMETHING THAT SHOULD BE
19 PETITIONED OR APPEALABLE TO THE LEA. WE HAVE THOSE
20 SORTS OF DISCUSSIONS ALL THE TIME. INDUSTRY OBJECTS TO
21 A VIOLATION; THEY BRING IT TO THE LEA. AS A DIRECTOR
22 OF A PROGRAM, I HAVE TO DECIDE WHETHER OR NOT I THINK
23 MY INSPECTOR IS BEHAVING APPROPRIATELY OR NOT.

24 MR. WHITE: AND 90 PERCENT OF THE TIME YOU'RE
25 RIGHT, 95 PERCENT OF THE TIME THOSE ISSUES ARE



1 RESOLVED, BUT THERE'S 5 PERCENT OR 10 PERCENT OF THE
2 TIME WHERE THEY'RE NOT RESOLVED. DO WE GO TO COURT
3 THEN ON SOMETHING THAT'S JUST, AS YOU SAY, JUST A MINOR
4 PIECE OF PAPER?

5 MR. CALVERT: I THINK IT DEPENDS ON TWO
6 THINGS. ONE IS HOW IMPORTANT IT IS TO YOU WHAT YOUR
7 ACTION IS. THAT'S CERTAINLY AN OPTION THAT YOU HAVE.
8 I THINK THAT THE BOARD CAN ENTER INTO THAT DISCUSSION
9 TO THE EXTENT THAT IT DEALS WITH LEA CERTIFICATION.
10 THE BOARD IS RESPONSIBLE TO DETERMINE ON A BIG SCOPE
11 WHETHER OR NOT THE LEA IS BEHAVING APPROPRIATELY. AND
12 THAT SHOULD ENTER INTO THAT, BUT THAT'S THE ONLY AREA
13 RIGHT NOW BESIDES THAT AND TRAINING THAT THE BOARD IS
14 EMPOWERED TO ACT.

15 BOARD MEMBER EATON: I JUST HAVE ONE QUICK
16 QUESTION. WITH REGARD TO 44307, WHICH STATES THAT THE
17 ENFORCEMENT AGENCY SHALL ALSO HOLD A HEARING UPON A
18 PETITION TO THE ENFORCEMENT AGENCY REQUESTING THE
19 ENFORCEMENT AGENCY TO REVIEW AN ALLEGED FAILURE OF THE
20 AGENCY TO ACT AS REQUIRED BY LAW OR REGULATION, I'M NOT
21 INTERESTED THE ACTION, INACTION DEBATE. DO YOU BELIEVE
22 THAT THAT SENTENCE IS AVAILABLE TO OPERATORS FOR AN
23 APPEAL PROCESS? IT IS OBVIOUSLY A -- THE FIRST
24 SENTENCE UP ABOVE OBVIOUSLY IS CLEAR. DO YOU THINK
25 THAT ONLY SPEAKS TO THIRD PARTIES OR DOES IT ALSO



1 INCLUDE OPERATORS?

2 MR. CALVERT: IT COULD INCLUDE OPERATORS TO
3 THE EXTENT THEY FELT THE LEA WAS FAILING TO TAKE AN
4 ENFORCEMENT ACTION. LIKE ANYONE ELSE, THEY SHOULD BE
5 REQUIRED TO SHOW SUBSTANTIAL REASON THAT THE LEA HAS
6 FAILED TO ACT ACCORDING TO LAW OR REGULATION.

7 BOARD MEMBER EATON: SO YOU DON'T BELIEVE IT'S
8 JUST EXCLUSIVE TO THIRD PARTIES OR INTERESTED PARTIES
9 IN THAT? THERE'S A DEBATE THAT GOES ON AS TO WHETHER
10 OR NOT OPERATORS CAN AVAIL THEMSELVES OF THAT LAST
11 SENTENCE.

12 MR. CALVERT: BUT I WOULDN'T SAY -- I GUESS I
13 WOULD INCLUDE THAT I BELIEVE IT'S UP TO THE OPERATOR TO
14 BE ABLE TO DEBATE ON WHETHER THE PARTICULAR ACTION WAS
15 THE APPROPRIATE ACTION. I WOULDN'T INTERPRET IT THAT
16 FAR.

17 MS. TOBIAS: ANYONE ELSE LIKE TO SPEAK TODAY?
18 HOW MANY HAVE QUESTIONS FOR ANY OF THE SPEAKERS? WE
19 HAVE A COUPLE OF MINUTES, SO IF THERE WERE QUESTIONS
20 THAT YOU HELD ONTO, IF YOU COULD NOW DIRECT YOUR
21 QUESTIONS UP HERE, WE CAN FEED THEM BACK. IS THERE
22 ANYONE HAS A QUESTION? JUSTIN.

23 MR. MALAN: DO YOU HAVE ANY SPECIFIC
24 LEGISLATIVE ISSUES THAT YOU FEEL WE SHOULD ADDRESS THIS
25 YEAR IN LEGISLATION OTHER THAN THE THINGS THAT WE'VE



1 BEEN KICKING AROUND TODAY? ARE THERE OTHER ISSUES THAT
2 WE HAVEN'T ADDRESSED THAT ARE RELATED TO LEA AUTHORITY
3 OR ANYTHING FROM THE BOARD THAT THEY WANTED TO
4 COMMUNICATE TO THE LEA'S?

5 BOARD MEMBER EATON: I THINK NOW THAT YOUR
6 BILL IS IN SOMEWHAT MORE FORM, SO TO SPEAK, I THINK WE
7 WILL PROBABLY ASK THAT WE HAVE THAT BILL HEARD IN
8 EITHER THE COMMITTEE AND THEN BEFORE THE FULL BOARD.
9 PERHAPS AT THAT TIME YOU WILL HAVE THE ABILITY TO KIND
10 OF GET BACK AND DO THAT. WE'LL DO THAT AS QUICKLY AS
11 WE CAN ACTUALLY CONVENE ONE OR EITHER OF THOSE
12 MECHANISMS SO WE CAN GET THAT INFORMATION BACK TO YOU.
13 YOU WILL BE AFFORDED OBVIOUSLY -- HOPEFULLY JULY WILL
14 GO FAST FOR THEM IN THE BUDGET PROCESS, AND WE'LL HAVE
15 TIME TO SIT DOWN AND DISCUSS SOME OF THOSE THINGS
16 AROUND THE HALLWAYS. HOPEFULLY THAT'S WHAT WE'LL TRY
17 AND DO AND GET BACK TO YOU WITH SOME OF THOSE THINGS.

18 I THINK OUR CONCERN, AT LEAST FROM MY
19 PERSONAL STANDPOINT, IT'S NOT THAT YOU WERE RUSHING TO
20 JUDGMENT, BUT THERE ARE A NUMBER OF THINGS THAT ARE
21 KIND OF SORT OF FILTERING UP TO THE BOARD THROUGH
22 APPEALS PROCESS AND DIFFERENT CASES, AND WE'RE NOT
23 QUITE SURE HOW THOSE ARE ACTUALLY GOING TO COME UP
24 PROCEDURALLY, AND WE WOULDN'T WANT TO MISS AN
25 OPPORTUNITY TO BE ABLE TO CORRECT THAT OR CORRECT PAST



1 KINDS OF PROBLEMS THAT YOU HAD IN ORDER TO GET ONE BITE
2 OF THE APPLE. WE JUST DON'T KNOW.

3 MS. DELMATIER: FOLLOW UP ON JUSTIN'S QUESTION
4 FOR THE BOARD. I'M ASSUMING, THEN, THAT THE BOARD IS
5 ANTICIPATING POSSIBLY SPONSORING LEGISLATION NEXT YEAR
6 TO ADDRESS SOME OF THE MORE COMPREHENSIVE ISSUES THAT
7 MIGHT DEVELOP THROUGH THE SECOND WORKSHOP POSSIBLY?

8 CHAIRMAN PENNINGTON: WELL, I THINK --

9 MS. DELMATIER: SPECIFICALLY I'M ENCOURAGED TO
10 HEAR, AT LEAST IT SEEMS TO BE UNANIMITY BETWEEN AT
11 LEAST INDUSTRY AND THE LEA'S AS FAR AS THE ISSUE THAT I
12 RAISED EARLIER AND THE SAN DIEGO REPRESENTATIVE AND
13 JUSTIN TOUCHED ON AS FAR AS THE ABILITY TO REINSTATE
14 THAT LOCAL HEARING PANEL FOR THE APPLICANT UP AND UNTIL
15 THE TIME THE BOARD ACTS. THERE DIDN'T SEEM TO BE ANY
16 OPPOSITION TO THAT, AT LEAST AT THIS JUNCTURE.

17 CHAIRMAN PENNINGTON: WELL, I THINK WE WANT TO
18 SYNTHESIZE THIS INFORMATION THAT WE GOT TODAY, THE
19 POSSIBILITY OF ANOTHER WORKSHOP. THERE IS AN ELECTION
20 IN NOVEMBER THAT MIGHT CHANGE THE DIRECTION OF THINGS A
21 LITTLE BIT TOO. SO I THINK IT'S A LITTLE TOO EARLY TO
22 SAY, YES, ABSOLUTELY WE'LL BE SEEKING SOMETHING NEXT
23 YEAR. HOWEVER, CERTAINLY WE'RE GOING TO TAKE A SERIOUS
24 LOOK AT IT AND MAKE THAT DECISION. WE WILL HAVE A NEW
25 GOVERNOR IN JANUARY, AND THAT MAY HAVE US GOING IN A



1 DIFFERENT DIRECTION.

2 BOARD MEMBER FRAZEE: I WANTED TO TOUCH A BIT
3 ON MR. WHITNEY AND PERHAPS SOME OF MR. GORDON'S
4 TESTIMONY DEALING WITH THE HEARINGS THEMSELVES. I WAS
5 PARTICULARLY INTERESTED IN MR. WHITNEY'S NO EX PARTE
6 COMMUNICATION.

7 MR. WHITE: HE'S THE GUY WE KICKED OUT OF OUR
8 GROUP.

9 MS. DELMATIER: INDUSTRY WAS NOT UNITED AT ALL
10 ON THAT.

11 BOARD MEMBER FRAZEE: THAT BRINGS THE BIGGER
12 QUESTION, DOES STATUTE SPECIFY THAT AN APPEAL HEARING
13 IS AN OPEN HEARING AND ANY EVIDENCE CAN BE INTRODUCED,
14 OR IS IT A HEARING ON THE EVIDENCE THAT'S BEEN GATHERED
15 OR THE CORRECTNESS OF THE APPEAL? IS IT CLEAR?

16 MR. WHITNEY: AS I UNDERSTAND IT, YOU CAN DO
17 EITHER. THAT'S YOUR CHOICE WHEN YOU MAKE THE THRESHOLD
18 DECISION AS TO WHETHER YOU ARE GOING TO HEAR IT. YOU
19 CAN DECIDE YOU ARE GOING TO HEAR IT BASED ONLY ON THE
20 RECORD ESTABLISHED AT THE HEARING PANEL, OR YOU ARE
21 GOING TO CONDUCT A FULL HEARING AND TAKE NEW TESTIMONY
22 IN ADDITION TO --

23 MR. GORDON: BUT 45032, SUBSECTION C SAYS
24 THAT WHETHER YOU TAKE ADDITIONAL EVIDENCE AT THE BOARD
25 OR DO IT ON THE RECORD OF THE LOCAL HEARING PANEL, THE



1 BOARD CAN ONLY OVERTURN A DECISION OF THE LEA IF
2 THERE'S SUBSTANTIAL EVIDENCE, QUOTE, IN THE RECORD.
3 AND IT ISN'T THE BOARD DETERMINING TO OVERTURN THE
4 DECISION OF THE HEARING PANEL. IT'S THE BOARD'S
5 DECISION ON THE ACTION OF THE LEA, AND THAT'S HOW THE
6 STATUTE READS.

7 MR. CALVERT: I THINK I HAVE A BIG CONCERN.
8 THIS ALMOST HAPPENED TO US. AND THAT'S THAT IF NEW
9 EVIDENCE OR NEW THINGS ARE BROUGHT UP AT THE BOARD
10 LEVEL WHICH HAVE NOT BEEN ARBITRATED OR DISCUSSED AT
11 THE LOCAL LEVEL, WE HAVE A BIG CONCERN WITH THAT, THAT
12 THAT'S CIRCUMVENTING THE PROCESS WHICH IS ESTABLISHED
13 IN LAW AND JUMPING -- BRINGING UP NEW ISSUES AT THE
14 BOARD LEVEL. SO WE WOULD SAY IT SHOULD BE RESTRICTED
15 TO THAT STATEMENT OF ISSUES THE INDUSTRY -- THAT THE
16 APPELLANT HAS PRODUCED.

17 MR. WHITNEY: MY COMMENTS ON THE EX PARTE WERE
18 NOT ON THE PUBLIC PROCESS OR THE PUBLIC RECORDS
19 ASPECTS. IT WAS THE IDEA THAT THIS IS A DISPUTE THAT
20 YOU ARE IN A PART OF THE PROCESS OF RESOLVING AND,
21 THEREFORE, SHOULDN'T HAVE PRIVATE CONVERSATION WITH THE
22 PARTIES TO THAT DISPUTE. YOU SHOULD ONLY HAVE PUBLIC,
23 WHETHER IT BE AT LOCAL PANEL LEVEL WHERE A RECORD IS
24 ESTABLISHED AND YOU REVIEW THAT OR WHETHER YOU TAKE
25 ADDITIONAL TESTIMONY, THAT SHOULD BE A PUBLIC PROCESS



1 BECAUSE IT'S DIFFERENT THAN THE LEGISLATIVE PROCESS
2 WHERE YOU MAKE IT SAUSAGE AND YOU NEED TO TALK TO
3 EVERYBODY WHENEVER YOU WANT. I HAVE NO OBJECTION TO
4 THAT.

5 BOARD MEMBER FRAZEE: I GUESS THAT'S THE
6 PROBLEM I HAVE BECAUSE I FIND GREAT VALUE IN GETTING
7 OUT AND SEEING THESE SITUATIONS FIRSTHAND. AND IT'S A
8 LITTLE LIKE TAKING A JURY OUT TO SEE A MURDER SCENE.
9 IT HELPS THE DECISION-MAKING PROCESS. I THINK IT LET'S
10 US MAKE BETTER DECISIONS, AND I CAN SEE THE POINT OF
11 THE INDIVIDUAL BOARD MEMBERS GATHERING EVIDENCE ON
12 THEIR OWN, AND I'M TROUBLED BY THAT, BUT I'M STILL
13 GOING TO CONTINUE TO DO IT.

14 MR. WHITNEY: THE DISTINCTION I WOULD MAKE IN
15 THAT CASE IS THAT THERE WOULD BE NOTHING WRONG WITH THE
16 BOARD MEMBER OR STAFF OR ANYONE ELSE GOING OUT AND
17 EXAMINING THE SITUATION. I KNOW OF ONE CASE THAT I WAS
18 INVOLVED IN WHERE THE BOARD DID THAT. IT WAS VERY
19 HELPFUL TO ALL PARTIES BECAUSE THEY HAD A VISION IN
20 THEIR MIND OF WHAT WE WERE TALKING ABOUT WHEN WE WERE
21 TALKING ABOUT IT BEFORE THE BOARD.

22 THE KEY, THOUGH, IS IS THAT THAT'S A
23 PUBLICLY NOTICED EVENT THAT THE PUBLIC KNOWS ABOUT AND
24 ALL THE PARTIES KNOW ABOUT, AND THAT THE DISPUTANTS ARE
25 WELCOME TO ATTEND THAT FACT-FINDING EXERCISE EQUALLY.



1 SO I THINK YOU CAN STILL DO THAT, BUT IT'S JUST SIMPLY
2 NOT TALKING TO ONE AT THE EXCLUSION OF THE OTHER WHO
3 WANTS TO HAVE ACCESS BECAUSE NOT EVERYBODY HAS EQUAL
4 ACCESS.

5 MR. WHITE: I WOULD DISAGREE AND I DON'T SEE
6 WHY ANYBODY WOULDN'T HAVE EQUAL ACCESS. ANY PARTY TO
7 ANY DISPUTE CAN TALK TO ANY BOARD MEMBER AT ANY POINT
8 IN TIME. AND I THINK THE ISSUE IS JUST TO MAKE SURE
9 THERE IS A CLEAR DISCLOSURE OF THAT CONTACT. IF THE
10 OTHER SIDE DOESN'T FEEL IT'S IMPORTANT TO THEIR TIME TO
11 GO IN AND TALK TO BOARD MEMBER, THAT'S THEIR OWN
12 PROBLEM.

13 MR. WHITNEY: LET ME GIVE YOU AN EXAMPLE OF
14 THOSE I DON'T BELIEVE HAVE EQUAL ACCESS IN THE
15 PRACTICAL SENSE AS THEY DO IN THE LEGAL SENSE, THE
16 LEA'S. THE LEA'S RARELY, IF EVER, WALK INTO A BOARD
17 MEMBER'S OFFICE AND LOBBY THEM ON A DISPUTE THAT'S
18 COMING BEFORE THEM. ON THE OTHER HAND, WE INDUSTRY
19 FOLKS DO IT ALL THE TIME. I'M JUST SAYING THAT THERE'S
20 A DISTINCTION BETWEEN THE QUASI LEGISLATIVE ACTS OF THE
21 BOARD AND THE FREE FOR ALL THAT HAPPENS IN THAT
22 PROCESS, WHICH IS APPROPRIATE, AS OPPOSED TO A DISPUTE
23 RESOLUTION PROCESS WHICH OUGHT TO GO BY SOME RULES,
24 SOME OF WHICH SCOTT FEELS MORE STRONGLY ABOUT THAN I DO
25 IN TERMS OF EVIDENCE AND TESTIMONY AND THAT KIND OF



1 THING. THERE'S A DIFFERENT STANDARD HERE ON THE
2 DISPUTE RESOLUTION.

3 MS. TOBIAS: LET ME REMIND YOU FOR A SECOND
4 THAT WE HAVE A COURT REPORTER HERE WHO'S DOING HER
5 LEVEL BEST TO TRY TO KEEP UP WITH THIS AND GET IT, AND
6 IT'S VERY DIFFICULT WHEN SHE'S LOOKING AT HER MACHINE
7 AND YOU GUYS ARE TALKING, SO YOU NEED TO SAY THIS IS
8 CHUCK WHITE AGAIN OR WHATEVER.

9 MR. WHITE: JUST ONE MORE COMMENT ON THIS IS
10 THAT THOSE AGENCIES THAT DO HAVE RESTRICTIVE EX PARTE
11 COMMUNICATIONS, MY EXPERIENCE, MY BELIEF, THAT THERE'S
12 A TENDENCY FOR THEM TO BE MORE DOMINATED BY STAFF-TYPE
13 ISSUES AND ISSUES ALWAYS -- NOT SAYING THAT THAT'S BAD
14 OR ANYTHING, BUT STAFF BASICALLY -- THOSE BOARDS
15 BASICALLY SEE THE PERSPECTIVE THAT THE STAFF PRESENTS
16 AND DON'T SEE A MORE OPEN PERSPECTIVE. SO I DON'T
17 DISAGREE THAT THE EX PARTE THING CAN BE ABUSED; BUT AS
18 LONG AS THERE'S DISCLOSURE OF WHAT THE EX PARTE
19 COMMUNICATION IS ALL ABOUT, I THINK THAT'S A FAIR AND
20 MORE OPEN PROCESS, PARTICULARLY IN AN OPEN AND FREE
21 GOVERNMENT WE HAVE. I THINK THAT'S APPROPRIATE.

22 MS. DELMATIER: DENISE DELMATIER ON BEHALF OF
23 NORCAL. I WOULD CONCUR WITH MR. WHITE'S COMMENTS AND
24 RESPECTFULLY DISAGREE WITH MR. WHITNEY ON THIS ONE IN
25 THAT AS FAR AS ACCESS, EVERYONE HAS EQUAL ACCESS. AND



1 IF THE LEA'S WANT TO COME IN AND TALK TO ANY BOARD
2 MEMBER AT ANY TIME, THEY'RE FREE TO DO SO. SO THEY ARE
3 NOT LIMITED IN ANY WAY WITH REGARD TO THE PROCESS BY
4 WHICH THEY CAN TALK TO BOARD MEMBERS OR ANY OTHER
5 MEMBER OF THE PUBLIC.

6 MR. WHITNEY: IN VIEW OF THE OPPOSITION OF THE
7 WASTE MANAGEMENT INC. AND NORCAL, I REST MY CASE.

8 MR. MILLER: CHRIS MILLER, COUNTY COUNSEL,
9 ORANGE COUNTY. FROM THE STANDPOINT OF ADVISING A
10 CLIENT WITH RESPECT TO EITHER CONDUCTING A PANEL
11 HEARING OR GOING TO AN APPEAL, I FEEL MORE COMFORTABLE
12 KNOWING THAT THERE'S NOT A LOT OF EX PARTE
13 COMMUNICATION GOING ON FOR THIS REASON. IF THE BOARD
14 IS GOING TO ESTABLISH STANDARDS, REGULATIONS, IF IT'S
15 GOING TO PROVIDE ITS DECISIONS AT SOME POINT PERHAPS TO
16 US TO REVIEW, WE WOULD LIKE TO HAVE SOME IDEA OF WHAT
17 MAY HAPPEN, SOME CERTAINTY AS TO HOW THE BOARD FEELS
18 ABOUT THINGS, WHICH CAN BE DONE IN A PRINTED MANNER, IN
19 DISCUSSION MANNER; BUT IF YOU BEGIN TO ALLOW INDIVIDUAL
20 BOARD MEMBERS OR IF THEY FEEL THEY HAVE THE RIGHT TO GO
21 OUT AND SEEK THEIR OWN EVIDENCE OR GO OUTSIDE THE
22 PARAMETERS THAT THE PARTIES HAVE SORT OF CONSTRUCTED
23 FOR THEM BY THE STATUTE, IT SEEMS TO ME THAT IT BEGINS
24 TO DISADVANTAGE A PARTY BECAUSE, NO. 1, THEY DON'T HAVE
25 PERHAPS AN ABILITY TO STRATEGIZE HOW THEY'RE GOING TO



1 APPROACH THE HEARING. THERE'S NO CERTAINTY WITH
2 RESPECT TO WHAT EVIDENCE MAY OR MAY NOT BE INCLUDED IN
3 THE RECORD OR ADDED TO THE RECORD, AND SO IT REALLY
4 DISADVANTAGES, I THINK, BOTH THE BOARD AND THE PARTIES
5 LITIGATING OR ADVOCATING BECAUSE YOU'VE GOT TO HAVE
6 SOME CERTAINTY AS TO WHAT'S THERE.

7 IF THE BOARD SEES A PROBLEM WITH THE
8 RECORD OR LACK OF RECORD, I THINK IT CAN INSTRUCT THE
9 PARTIES AND SAY, "WOULD YOU GO OBTAIN THIS? WE NEED TO
10 HAVE THIS OR WHATEVER." BUT TO COME TO A MEETING OR
11 BOARD HEARING AND BE CONFRONTED WITH EXTRA EVIDENCE OR
12 MATERIAL THAT YOU'VE NEVER HAD A CHANCE TO CONSIDER OR
13 REVIEW, I THINK IT'S DETRIMENTAL.

14 MS. TOBIAS: ANY MORE COMMENTS? MR.
15 PENNINGTON.

16 CHAIRMAN PENNINGTON: YEAH. I, ON BEHALF OF
17 MY TWO COLLEAGUES HERE, MR. FRAZEE AND MR. EATON, WANT
18 TO THANK YOU ALL FOR BEING HERE TODAY AND GIVING US
19 LOTS OF INPUT AND BEING SO CONCISE AND THAT SORT OF
20 THING. AND SO WE DO APPRECIATE IT. I THINK YOU CAN
21 TELL BY WHAT WE'VE DONE HERE THAT WE'RE SERIOUS ABOUT
22 THIS AND THAT WE HAVE A LOT OF GOOD INFORMATION TO GO
23 ON. I WANT TO THANK KATHRYN AND STAFF FOR THE
24 WONDERFUL JOB THEY'VE DONE IN KEEPING US ALL CORRALLED
25 AND MAKING US STAY ON POINT AND ON TRACK. SO I HOPE



1 YOU ALL FEEL AS GOOD ABOUT THIS AS I DO, AND I KNOW
2 THAT MR. FRAZEE AND MR. EATON DO. AND AGAIN, WE
3 APPRECIATE YOU TAKING THE TIME AND COMING DOWN FROM UP
4 NORTH TO BE HERE WITH US AND GET US ON THE TRACK.
5 THANK YOU.

6 (APPLAUSE.)

7 (THE MEETING WAS THEN CONCLUDED AT 2:45
8 P.M.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



Reporter's Certificate

* * * * *

I, Beth C. Drain hereby certify:

that on the 16th day of
 June , 1998, I did report in
shorthand the testimony of the foregoing
proceedings;

that on the conclusion of the above entitled
matter, I did transcribe my shorthand notes into
typewriting;

that the foregoing transcript is a true and correct
record of my shorthand notes thereof.

Beth C. Drain
Certified Shorthand Reporter
Certificate No. 7152

