

BEFORE THE  
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

IN THE MATTER OF THE:

***DUPLICATE***

CALIFORNIA INTEGRATED )  
WASTE MANAGEMENT )  
BOARD WORKSHOP )  
\_\_\_\_\_ )

DATE AND TIME: THURSDAY, OCTOBER 22, 1998  
9:38 A.M.

PLACE: BOARD HEARING ROOM  
8800 CAL CENTER DRIVE  
SACRAMENTO, CALIFORNIA 95826

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CSR NO. 11828

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MR. STEVEN R. JONES, MEMBER

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1 SACRAMENTO, CALIFORNIA,  
2 THURSDAY, OCTOBER 22, 1998, 9:38 A.M.  
3 OPENING REMARKS AND OVERVIEW

4 CHAIRMAN PENNINGTON: Good morning. And welcome  
5 to California Integrated Wasted Management Board's Workshop  
6 on the time extensions and alternate diversion  
7 requirements. This is the first of two workshops. The  
8 second one will be held October 28th in the City of Diamond  
9 Bar.

10 These workshops are being held to solicit  
11 input on all interested parties on the -- excuse me  
12 procedures for time extensions and alternate diversion  
13 requirements for qualifying jurisdictions under SB 1066.

14 I'd like to take a few minutes to give you  
15 an overview of today's workshop. Staff will begin with an  
16 overall perspective -- past, present, and future, followed  
17 by an overview of the requirements and discussion of  
18 procedures versus regulations.

19 Following the list portion of the  
20 presentation, staff will take questions from the Board.  
21 The next part of the presentation will focus on discussion  
22 of "good faith efforts" followed by questions by the Board.  
23 We will conclude with -- we'll conclude the meeting with  
24 public testimony.

25 As usual, there is a sign-in form on the

1 table in the back. Also, there are speaker-request forms.  
2 So if any of you want to address the Board, please fill one  
3 out and get it to me. And we will make sure you get heard  
4 from.

5 And so I'll start with asking if there's any  
6 comments of any of the Board members at this point?

7 Mr. Eaton? Okay.

8 If not, we'll start with staff presentation.

9 Judy Friedman.

10 HISTORICAL PERSPECTIVE, PROGRESS,  
11 AND THE FUTURE

12 JUDITH FRIEDMAN: I just want to test this mike  
13 to see if it's on.

14 CHAIRMAN PENNINGTON: Yes.

15 JUDITH FRIEDMAN: We have a new type of mike  
16 here.

17 Good morning Chairman Pennington, Board  
18 members, members of the audience. I would like to start  
19 with a little bit of historical background -- a little bit  
20 of information of what we're currently doing and just a  
21 little bit on what the future holds.

22 As you know, the California Integrated Waste  
23 Management Act was created in response to growing concerns  
24 regarding management and disposal of solid waste. The Act  
25 created the Integrated Waste Management Board and adopted

1 an Integrated Waste Management hierarchy, emphasizing  
2 source reduction or waste prevention, recycling, and  
3 composting in environmentally safe disposal. In 1995, each  
4 city, county, and regional agency was to have diverted 25  
5 percent of solid waste from disposal. And 50 percent  
6 diversion is required for the year 2000. In addition to  
7 the diversion mandate, each county is required to secure  
8 fifteen years' landfill capacity to insure adequate and  
9 environmental safe disposal.

10           To achieve these mandates, each city,  
11 county, and region agency was required to develop  
12 comprehensive plans which evaluate and describe needed  
13 diversion programs and other programs to meet the  
14 requirements of the Act.

15           With over 1,700 of these plans in place,  
16 local governments have begun to educate the public and  
17 build successful partnerships with business and industry to  
18 divert significant amounts of materials for reuse,  
19 recycling, and composting.

20           Beginning in 1996, cities, counties, and  
21 regional agencies were required to submit annual reports to  
22 the Board describing how well local programs were being  
23 carried out. And Board staff have reviewed over 600  
24 jurisdiction annual reports for 1995 and 1996.

25           So what is our current picture? Slide one

1 shows some interesting information. The top three out of  
2 four categories of programs implemented for both 1995 and  
3 1996 show recycling is the number one most frequently  
4 implemented program category with commercial on-site and  
5 residential curbside pickup leading this category. Source  
6 reduction is the second most implemented category with the  
7 top programs being backyard and on-site composting.

8           The public education category is the third  
9 most implemented which includes outreach activities,  
10 brochures, and news articles. And following closely in the  
11 4th rank is the special waste material category including  
12 recycling in reuse for such items as white goods, tires,  
13 concrete asphalt, and wood waste.

14           Together the top three program categories  
15 make up about 60 percent of the total diversion programs  
16 implemented by reporting jurisdictions for 1995 and 70  
17 percent of the total diversion programs implemented for  
18 1996.

19           Statewide diversion: As a result of local  
20 and state efforts, the statewide diversion rate has greatly  
21 increased from 14 percent in 1990 to 32 percent in 1997.  
22 California has diverted over 100 million tons of waste  
23 material from 1990 to '97 that would have gone to  
24 landfills. That's more than one ton diverted every three  
25 seconds from the start of 1990 to the end of 1997.

1           And to give you an idea of how much waste  
2 this is, it is enough waste to fill more than 2,000  
3 Titanics, of course, before the ship was full of water.  
4 That would be a line of Titanics 360 miles long that could  
5 stretch all the way from Sacramento to Los Angeles. It's a  
6 lot of waste.

7           Information on the biannual reviews: As  
8 you're aware, at least, every two years the Board is  
9 required to conduct it's own evaluation on a jurisdiction's  
10 reported progress. And this evaluation is called the  
11 biannual review.

12           These first biannual reviews have included  
13 an evaluation of 1995 and 1996 annual reports. And this  
14 forms the basis for the Board's analysis on how well a  
15 jurisdiction is implementing programs and its progress  
16 toward achieving diversion requirements.

17           This graph shows the number of the biannual  
18 reviews completed for each month and a projected number for  
19 subsequent months. To date, the Board has considered 173  
20 biannual reviews and found the jurisdictions have  
21 implemented their plan diversion programs and have met the  
22 first of the diversion goals.

23           So what evaluations will we do in the  
24 future? Looking at the time line here on the screen, we're  
25 anticipating completion of the 1995 biannual reviews in

1 March of next year. The measurement year for the 50  
2 percent diversion requirement is in the year 2,000. And  
3 this measurement year includes the entire year starting  
4 with January 1 and going to January 31st.

5           The biannual reviews for the year 2,000 are  
6 expected to begin August 31st, 2001. The reason for this  
7 is that the last quarterly disposal report for the year  
8 2,000 is due April 15th, 2001. This information is  
9 necessary to calculate the diversion rates. The annual  
10 reports for recording on progress through the year 2,000  
11 are due August 1st, 2001. And as you know, annual reports  
12 are due August 1st for each year. And they report progress  
13 in arrears.

14           So the biannual reviews could not begin any  
15 earlier than August 31 of the year 2001. And biannual  
16 reviews will continue every two years, as required by law.  
17 For our current and future work, Board staff will be  
18 continuing its existence to local governments with a  
19 special emphasis on those jurisdictions not on track to  
20 reach 50 percent.

21           In addition, the Board will continue to  
22 provide educational materials for public and private  
23 sectors on waste prevention opportunities, work on  
24 stimulating markets for recyclable materials, and provide  
25 technical assistance in funding for waste diversion

1 programs.

2           The Board will need to continue this effort  
3 if progress towards the 50 percent diversion requirement is  
4 to be achieved.

5           This concludes my overview. Dianne Range  
6 will now present an overview in discussion of requirements  
7 for time extensions and alternative diversion  
8 requirements.

9           REQUESTS FOR TIME EXTENSIONS: TIME  
10          EXTENSIONS ALLOWED PRE-SB 1066, AND TIME  
11          EXTENSIONS ALLOWED POST-SB 1066.  
12          REQUESTS FOR ALTERNATIVE DIVERSION  
13          REQUIREMENTS: REDUCED DIVERSION  
14          REQUIREMENTS ALLOWED PRE-SB 1066,  
15          AND ALTERNATIVE DIVERSION REQUIREMENTS (ADR)  
16          ALLOWED POST-SB 1066.

16          DIANNE RANGE: Thank you, Judy.

17           Today I will be presenting information, as  
18 Judy said, on the requirements for jurisdictions requesting  
19 time extensions and alternative diversion requirements  
20 allowed under Senate Bill 1066, which became effective  
21 January 1, 1998 this year.

22           The purposes of this workshop -- a time  
23 extension refers to an extension to meeting the 50 percent  
24 diversion goal. An alternative diversion requirement,  
25 which we call an ADR, refers to a reduction in the 50

1 percent diversion requirement for the time-extension  
2 period.

3           I will first go over the jurisdiction's  
4 rural and unrural which qualify for reductions and  
5 extensions pre-SB 1066 and then the jurisdictions which  
6 qualify under the Senate Bill 1066 provisions, both rural  
7 and non-rural. Then I will cover the general requirements  
8 for all the jurisdictions who qualify under Senate Bill  
9 1066 provisions for time extensions including the  
10 jurisdiction's initial and second request and for ADRs the  
11 initial and second request. And since they appear to be  
12 very similar but fall under two sections of the law, I will  
13 try to highlight the similarities between the time  
14 extensions and the ADRs, as well as, the differences  
15 between the two.

16           And finally, I will go over the review  
17 process for the jurisdiction's requests.

18           First Slide: Before Senate Bill 1066 was  
19 passed, jurisdictions if they qualified as rural could get  
20 permanent reductions in the planning and diversion  
21 requirements and a two-year extension in time, when  
22 approved by the Board.

23           This is still allowed for rural  
24 jurisdictions under the rural statute provisions. These  
25 measures once approved by the Board will be in place for as

1 long as the jurisdictions continue to meet the  
2 requirements.

3           Petitions submitted by jurisdictions had to  
4 include documentation on why it wasn't feasible to attain  
5 the requirements and to document and identify the planning  
6 and diversion requirements the -- excuse me, jurisdiction  
7 felt that it could achieve.

8           Next, the two-year extension for rural jurisdiction  
9 required the jurisdiction to justify its need for the  
10 extension by documenting that adverse market or economic  
11 conditions exist beyond the control of the rural  
12 jurisdiction and to submit a plan of correction that  
13 demonstrates how it will meet the diversion requirements  
14 before the end of the time extension and to document or  
15 verify that the jurisdiction is achieving the maximum  
16 feasible amount of diversion.

17           Rural jurisdictions can still get a  
18 permanent two-year time extension after the goal year under  
19 the rural of statute requirements and at the Board's  
20 approval. If approved, they would have to achieve 50  
21 percent diversion in or before the year 2002 under the  
22 rural of statute. Or they can request a time extension  
23 understand Senate Bill 1066 provisions.

24           This allows an extension of three years plus  
25 an additional two years if justified and approved by the

1 Board. If approved for a three-year time extension, the  
2 jurisdiction must be at 50 percent in 2003. If approved  
3 for an additional two-year time extension, the total  
4 extension then being five years, the jurisdiction must be  
5 at 50 percent in the year 2005.

6 All time extensions under Senate Bill 1066  
7 are invalid as of January 1, 19 -- excuse me, 2006.

8 Next, before Senate Bill 1066 was passed,  
9 those jurisdictions which do not qualify as rural could get  
10 a permanent one-year extension after the goal year. Now,  
11 under the provisions of 1066, a non-rural jurisdiction can  
12 request up to three years after the goal year. Then after  
13 Board approval, it can request an additional two years if  
14 justified and must be at 50 percent diversion at the end of  
15 Board-approved time extension.

16 So if the jurisdiction gets approval for the  
17 first three-year time extension, they must be at 50 percent  
18 in the year 2003. If they get an additional two years,  
19 they must be at 50 percent in the year 2005. Again, all  
20 time extensions under Senate Bill 1066 are invalid as of  
21 January 1, 2006.

22 Currently, a rural jurisdiction can either  
23 request a reduction in the 50 percent diversion requirement  
24 under the rural of statute provisions which would be  
25 permanent and last as long as the jurisdiction continues to

1 meet the criteria.

2           Now, a rural jurisdiction can request  
3 reduced diversion under 1066 for up to three years and an  
4 additional two years for a total of five years if approved  
5 by the Board. If approved for the three-year ADR, the  
6 jurisdiction must be at 50 percent diversion in 2003. If  
7 approved for the additional two years, the jurisdiction  
8 must be at 50 percent diversion at the end of 2005.

9           So, again, rural jurisdictions under rural  
10 statute are still allowed to get permanent diversion  
11 requirements -- excuse me, reductions. Under Senate Bill  
12 1066, they can request reduced diversion, but it would only  
13 last until the end of their approved time extension period.  
14 And all ADRs under 1066 are invalid as of January 1, 2006.

15           Before Senate Bill 1066, cities and counties  
16 were allowed to request permanent reductions in the 50  
17 percent diversion requirement, as long as they continued to  
18 meet the requirements. Under SB 1066 provisions, permanent  
19 reductions are no longer allowed for non-rural  
20 jurisdictions, and non-rural regional agencies are not  
21 allowed an ADR. Cities and counties under 1066 provisions  
22 are allowed up to three years and may be granted an  
23 additional two years if approved by the Board. The city or  
24 county must be at 50 percent diversion in 2005. And,  
25 again, ADRs are invalid as of January 1, 2006.

1           Going on to general requirements for all  
2 jurisdictions under 1066, a jurisdiction can request a time  
3 extension or an ADR anytime after January 1, 1995. But if  
4 the Board approves it, the time extension and ADR is only  
5 effective between January 1, 2000 and January 1, 2006.

6           A jurisdiction can request up to three years  
7 for the first request, if approved by the board, and must  
8 be of 50 percent diversion in 2003. If they are approved a  
9 second request for an additional two years for a total of  
10 five years, the jurisdiction must be at 50 percent in 2005.

11           So, again, by January 1, 2006, all time  
12 extensions and ADRs are invalid. And jurisdictions must be  
13 at 50 percent diversion.

14           For an ADR, jurisdiction must have its  
15 source reduction and recycling element, its household and  
16 hazardous waste element, and its nondisposal facility  
17 element filed with the Board by July 1, 1998. For a time  
18 extension, a jurisdiction must have its tree, weed, and  
19 mid-fee filed with the Board.

20           If a request is approved, the jurisdiction  
21 is required to continue implementing programs and to  
22 discuss their status in its annual report to the Board.

23           In requesting a time extension, the  
24 jurisdiction must specify the length of time requested for  
25 the extension, the reasons the time extension is needed.

1 And the reasons include but are not limited to change in  
2 waste stream disposal patterns, changes in types of  
3 residential and non-residential waste disposed by the  
4 jurisdictions, delays in facility construction, and lack of  
5 markets.

6           The jurisdiction "good faith effort" to  
7 implement its tree programs may include a description of  
8 why the programs are not successful to meeting the 50  
9 percent, the jurisdiction current diversion rate, and how  
10 programs contribute to the diversion rate.

11           To achieve the mandate, the criteria for  
12 determining "good faith" is established in PRC's  
13 enforcement part-two policy which is an attachment in this  
14 agenda packet number three.

15           The jurisdiction must submit a plan of  
16 correction. And in that plan of correction, the  
17 jurisdiction must show achievement of 50 percent by the end  
18 of the request and how it can be done by the programs that  
19 contribute to the achievement of the diversion requirement.

20           The jurisdiction must describe new or  
21 modified programs that they will be implementing on how the  
22 barriers that they have come upon will be overcome by the  
23 jurisdictions and to identify funding for these programs  
24 and to provide any additional information to justify the  
25 need for the time extension.

1           With regards to the second request for time  
2 extension, the jurisdiction must provide the same  
3 information as for the initial time extension request as it  
4 relates to the plan of correction. To do this, the  
5 jurisdiction in its request identifies and discusses why  
6 the plan of correction for the first request did not  
7 succeed, including the activities and the programs that  
8 were not implemented and why.

9           And the jurisdiction may identify barriers  
10 to achieving the 50 percent and how they plan to overcome  
11 those and to discuss the implementation status of the plan  
12 of correction, the jurisdiction's "good faith efforts" to  
13 achieve the 50 percent diversion, and the steps that will  
14 be taken to complete implementation.

15           This may be an implementation schedule  
16 showing achievement of the 50 percent diversion requirement  
17 at the end of the request.

18           Moving on to the ADR requirement for the  
19 initial request, jurisdictions must identify the specific  
20 ADR needed that represents the greatest diversion that can  
21 be reasonably and feasibly achieved each year of the  
22 request until reaching 50 percent diversion at the end of  
23 the request.

24           They must include reasons also the ADR is  
25 needed and it may be -- include but not limited to the

1 changes in the waste stream disposal patterns, changes in  
2 the type of residential and non-residential disposed waste  
3 by the jurisdictions, a description of its "good faith  
4 efforts" to implement its tree programs. A description may  
5 include demonstration of progress towards meeting the ADR  
6 and that it is unable to meet the 50 percent diversion  
7 requirement, despite its efforts.

8           The description may include a discussion on  
9 why programs have not been successful in meeting the  
10 requirements, the current diversion rate, and the  
11 implemented programs that contribute to it, and any  
12 additional information to demonstrate the need for the ADR.  
13 And if it's not requesting a time extension, it must  
14 explain why not.

15           And finally, the jurisdiction must provide  
16 information supporting that the ADR requested is the  
17 greatest amount that can reasonably and feasibly be  
18 achieved.

19           A jurisdiction's second request for an ADR,  
20 must provide the same information that supports the need  
21 for the first request and also information that  
22 demonstrates that the original circumstances that warranted  
23 the first ADR continue or that changes in the circumstances  
24 support another ADR, information that the second ADR is the  
25 greatest that can reasonably and feasibly be achieved. And

1 any additional information may include why the ADR did not  
2 succeed, and any barriers that need to be overcome and how  
3 the jurisdiction will accomplish this, a discussion of the  
4 implementation status of programs and the jurisdiction's  
5 "good faith efforts" to achieve the 50 percent diversion  
6 and steps that will be taken to complete implementation,  
7 and its progress towards the 50 percent diversion  
8 requirement, and that 50 percent will be achieved by the  
9 end of the request.

10           This line highlights the similarities  
11 between what's required for requests for a time extension  
12 and an ADR. A jurisdiction may request and be granted a  
13 time extension or ADR for up to three years initially and  
14 then, of course, if justified for an additional two years  
15 and approved by the Board.

16           With both time extensions and ADRs, the  
17 jurisdiction must be at 50 percent diversion by the end of  
18 the requested time period.

19           The jurisdiction must state the specific  
20 time extension or ADR requested, the reasons that request  
21 is needed, a jurisdiction's explanation of its "good faith  
22 efforts," and any additional information demonstrating its  
23 specific need.

24           Here are the differences between the two  
25 types of requests. The main differences are that non-rural

1 regional agencies are not allowed an ADR, and the time  
2 extension request requires a plan of correction. However,  
3 the same kind of information may be needed for also  
4 justifying an ADR.

5           So in answer to the question of which is  
6 better, since both are very similar, it would be hard for  
7 us to say. It really depends on the jurisdiction's  
8 circumstance.

9           And, again, if the jurisdiction is a  
10 non-rural regional agency, it can only request a time  
11 extension. And if the city or county is only requesting an  
12 ADR, they must state why they haven't requested a time  
13 extension. In short, both requirements are very similar.

14           This describes the general review process  
15 that will be followed in the review of the requests. It's  
16 similar to the process for reviewing rural jurisdictions  
17 for petitions for reduction.

18           Board staff reviews the request for  
19 completeness and adequacy. Once it's determined to be  
20 complete, it will be presented to the Board for approval.  
21 The two- to three-month minimum for Board staff to submit  
22 each request to the Board takes into account the need to  
23 work closely with the jurisdiction, to submit complete and  
24 adequate information.

25           This concludes the overview. And now I'd

1 like to turn it over to Elliot Block.

2           PROCEDURES FOR PREPARING A REQUEST AND  
3 MAJOR TYPES OF INFORMATION REQUIRED FOR A  
4 REQUEST FOR TIME EXTENSION AND ALTERNATIVE  
5 DIVERSION REQUEST.

6           ELLIOT BLOCK: The requirements that Dianne just  
7 went over are based on statutory provisions. Those  
8 statutes that were revised by SB 1066 and copies of those  
9 two statutes are in attachment one of the agenda item the  
10 PRC section 41785 and 41820. And those statutes contain  
11 specific standards of review and findings that must be made  
12 by the Board for granting time extensions and ADRs.

13           In additional to the presentation that  
14 Dianne made, Board staff have drafted some additional  
15 procedures which incorporate the statutory provisions and  
16 also try to flesh them out, fill in the blanks of how these  
17 requests will be reviewed.

18           They are contained in attachments two and  
19 three of the agenda item for those of you who want to look  
20 at those again in more detail.

21           Okay. At the direction of the Board, the  
22 staff at this point have drafted those additional  
23 procedures in a manner that doesn't constitute regulations.  
24 We're trying to avoid the need to go into that regulatory  
25 process, primarily to enable us to provide guidance to  
26 jurisdictions who may want to make these requests quickly

1 and also to provide some flexibility for reviewing these.

2 She's way ahead of me on the slides.

3 The additional procedures, because they're

4 not regulations, contain illustrative examples of

5 information that the staff is recommending would be

6 relevant types of things to look at in making a

7 case-by-case determination under the statute.

8 In order to continue to have these

9 procedures not have to go through the regulatory

10 requirements, they've been drafted so they don't contain

11 standards of general application. In other words, any

12 standards that are in the procedures that have been drafted

13 are those that already exist in the statute.

14 And the additions that are in the procedures

15 that staff have drafted are more procedural in nature. But

16 they all ultimately come back to a case-by-case

17 determination by the Board on each individual

18 jurisdiction.

19 The types of things that in order to avoid

20 becoming regulations we have kept out of those procedures

21 are rebuttal presumptions, any kind of formulas or

22 checklists, any kind of waiting or assignment of importance

23 to different criteria, disqualifying criteria, any kind of

24 limitation on the contents of what kind of information can

25 be included in a request, and any kind of completeness or

1 formal time line or format criterias.

2           And one of the purposes of the Workshop  
3 today and also next week is to get input from jurisdictions  
4 on whether or not we have provided enough fleshing out of  
5 those procedures that they feel like they would be --  
6 understand what requirements would be necessary for making  
7 these requests, whether we need to provide some  
8 clarification or some further detail.

9           And at this point, we wanted to stop the  
10 presentation and see if there were any questions on just  
11 the procedures what we've gone over so far, because there's  
12 obviously a lot of detail we've provided already.

13                           OPEN DISCUSSION

14           CHAIRMAN PENNINGTON: Mr. Frazee?

15           MEMBER FRAZEE: I hesitate to even get into the  
16 questions and know whether I'm asking the right ones or  
17 not. One of the thoughts that came to mind in regard to  
18 the statement that jurisdiction may apply for a time  
19 extension of up to three years and then an additional two,  
20 that "up to" brings about the question: Supposing they  
21 say, "Well, we can accomplish this in only one year." And  
22 they apply for one year. Then does that disqualify them  
23 for seeking the additional two years under the three-year  
24 extension?

25           JUDITH FRIEDMAN: No.

1 MEMBER FRAZEE: They can come back and apply?

2 JUDITH FRIEDMAN: Yes.

3 MEMBER FRAZEE: Okay. And so the time line for  
4 applying then for the additional two years, when would that  
5 have to occur? Say a jurisdiction applied and was granted  
6 a three-year extension, then when would they have to  
7 anticipate the need for the additional two years?

8 JUDITH FRIEDMAN: They would -- it's not explicit  
9 in statute as far as I know, but they would have to apply  
10 in the third year or prior to the end of the third year so  
11 that they could get the extension for the additional two  
12 years.

13 MEMBER FRAZEE: Okay. They couldn't wait and see  
14 if they fail to achieve it in three years and then apply,  
15 because the calculation time is going to be -- is going to  
16 run past the end of the year, I would think.

17 JUDITH FRIEDMAN: They might be able to ask. Did  
18 you want to --

19 ELLIOT BLOCK: Well, unfortunately -- and this is  
20 one of the problems that we're grappling with in dealing  
21 with the procedures. The statute is -- doesn't contain a  
22 lot of detail along those lines. The opening sentence is,  
23 "The Board may grant one or more, single- or multiple-year  
24 extensions."

25 MEMBER FRAZEE: Uh-huh.

1           ELLIOT BLOCK: It's fairly broad and wide open.

2           And it has that maximum for any one --

3 particular one being three years and --

4           MEMBER FRAZEE: Uh-huh.

5           ELLIOT BLOCK: -- for a total of up to five

6 years. So without putting regulations in place to

7 establish specific time requirements or the like, a

8 jurisdiction could do that if the Board wanted to grant

9 that.

10           In other words, in a particular situation if

11 it made sense when a jurisdiction was making that request

12 and the Board was inclined to grant it, they could. I

13 think that in drafting up just some guidance from starting

14 from where we are, where staff is set this out so you're

15 asking for those in advance, because what we found over

16 time with any of these types of issues is jurisdictions

17 tend to get a little nervous --

18           MEMBER FRAZEE: Uh-huh.

19           ELLIOT BLOCK: -- when time lines are going by.

20           And certainly this is something we might

21 want to address in some additional clarification. That

22 kind of situation might be something that should be put

23 into the initial extension.

24           MEMBER FRAZEE: Yeah. But it seems just like

25 they wouldn't know whether or not they achieved the goal

1 until after the goal year ended. And, therein, lies a  
2 problem.

3           The other thought that came to mind, would  
4 it be possible for a jurisdiction to get five, one-year  
5 extensions under this, just keep trying year after year?

6           ELLIOT BLOCK: There's nothing that would prevent  
7 it in this statute.

8           MEMBER FRAZEE: Okay.

9           ELLIOT BLOCK: But it doesn't matter. It's  
10 multiple years, maximum of three. Yeah. I mean, the way  
11 the statute's set up, yes. The short answer is yes. The  
12 maximum of any one is three years.

13           So in terms of just drafting up what we're  
14 anticipating would be the standard way it would work is  
15 there's a three-year extension --

16           MEMBER FRAZEE: Uh-huh.

17           ELLIOT BLOCK: -- and up to an additional two  
18 years, but certainly jurisdictions could do one year at a  
19 time.

20           There's some efficiency issues there about  
21 whether they were going to, but the statute wouldn't --

22           MEMBER FRAZEE: Well, there could be reasons that  
23 they would want to just get it over with. Supposing they  
24 achieved the goal in the first year and then would want to  
25 kind of draw to a conclusion.

1 I guess that brings up another thought.  
2 Supposing they're granted the three-year extension but  
3 achieved their -- the goal in one year, can they -- you  
4 know, can they cease and void the balance of the time?

5 That's academic. I don't know whether that  
6 proves anything or not. Can they rescind their additional  
7 two years which you know doesn't prove anything except,  
8 perhaps, it makes them look good?

9 ELLIOT BLOCK: Well, again there's nothing in the  
10 statute that addresses that. You -- but presumably there's  
11 no reason why that couldn't be done if they make 50 percent  
12 sooner and the only question is more of a public record, if  
13 you will, wanting to establish that, "Okay. We've made it  
14 sooner than we thought we would." And sort of end that  
15 compliance schedule at that point of the plan of --

16 MEMBER FRAZEE: One more thing that was not clear  
17 to me, under non-rural jurisdictions, they're all entitled  
18 to the time extension. But did I understand you to say  
19 that they're not entitled to the diversion reduction, the  
20 non-rural jurisdiction?

21 JUDITH FRIEDMAN: Yes. Only the non-rural  
22 regional.

23 MEMBER FRAZEE: Oh, okay.

24 JUDITH FRIEDMAN: Right.

25 MEMBER FRAZEE: Non-rural regional are not

1 entitled --

2 JUDITH FRIEDMAN: To the ADR.

3 MEMBER FRAZEE: But an individual jurisdiction  
4 could?

5 JUDITH FRIEDMAN: Correct.

6 MEMBER FRAZEE: Is that kind of cause of reverse  
7 situation where we find jurisdictions willing to back out  
8 of regional agencies in order to achieve a reduction?

9 JUDITH FRIEDMAN: Well, they can get the time  
10 extension. So they still have that option.

11 MEMBER FRAZEE: Uh-huh.

12 JUDITH FRIEDMAN: And since for all practical  
13 purposes, everybody has to be at 50 percent with the  
14 exception of the rural --

15 MEMBER FRAZEE: Yes.

16 JUDITH FRIEDMAN: -- jurisdiction by the end of  
17 2005. They could pretty much achieve the same objective, I  
18 would think.

19 MEMBER FRAZEE: Okay.

20 JUDITH FRIEDMAN: Because of the time extension.

21 ELLIOT BLOCK: Just to clarify, but just to add  
22 on to that so you know where that's coming from, basically,  
23 the statute the way it's drafted, section 41785 which is  
24 for the alternative reduction specifies that a city or  
25 county may request. And section 41280 which is for the

1 time extension specifies that the city, county, or regional  
2 agency may request.

3 MEMBER FRAZEE: I see.

4 MEMBER JONES: On the extensions, all of these  
5 extensions have to be supported with numbers that they are  
6 numbers in a plan that they are going forward, if they're  
7 at 30 percent and they want a three-year extension to try  
8 to get 50 percent. And at the end of three years, they're  
9 at 40 percent.

10 They've shown that in that three years  
11 they've increased, then their plan has to be for another  
12 extension. The programs that are going to get them from 40  
13 to 50, this is not automatic without programs.

14 JUDITH FRIEDMAN: That's correct.

15 MEMBER JONES: The other thing is, if a city or  
16 county has an SRRE that says they're going to do curbside  
17 recycling, they're going to do composting, and they are  
18 going to do procurement, they're going to do education --  
19 if that curbside recycling program is limited to two  
20 commodities as opposed to five or six commodities, is that  
21 "good faith effort?"

22 Is that not using the SRRE as a, you know, I  
23 mean, the SRRE just identified they do curbsides. They  
24 didn't identify they're going to pickup newspapers,  
25 plastic, aluminum, other paper goods. They never said

1 anything about growing that program.

2           And I'm wondering what we need to do or the  
3 discussion we need to have about some quick and easy way to  
4 quantify what those programs are and what they actually go  
5 after, and how many times a month or whatever they are on  
6 the route.

7           Because to have somebody come up and say  
8 we're making a "good faith effort," and all they're doing  
9 is picking up newspapers in another truck, and they're at  
10 ten percent, doesn't work very well for me. And I don't  
11 think it works well for the cities or counties that have  
12 implemented full-scale programs.

13           JUDITH FRIEDMAN: Mr. Jones, you've raised some  
14 interesting points. I just wanted to point out that we're  
15 going to have, as soon as we're done with the discussion on  
16 the procedures, we're going to have a discussion on "good  
17 faith effort."

18           And you may want to -- you may want to have  
19 a more detailed discussion at that point. And we can go  
20 over the "good-faith" provision and kind of, you know,  
21 provide the background.

22           MEMBER JONES: Because one of the criteria for  
23 the extension is "good faith effort."

24           JUDITH FRIEDMAN: Correct. That's why we're  
25 having the discussion here. Absolutely.

1 MEMBER JONES: Okay.

2 CHAIRMAN PENNINGTON: Mr. Eaton?

3 MEMBER EATON: Okay. I think first, it ought to  
4 be said at least some of our inquiries both to staff and  
5 others who may talk is really a situation where I believe  
6 you don't know the answers and that you should not, you  
7 know, feel that there's some sort of, you know,  
8 persecution, because it is a new area.

9 And as we've had in some of the other  
10 briefings, it's very difficult to go through. So when we  
11 raise the questions, all of us should -- including the  
12 audience -- that this is really points of inquiry, that  
13 hopefully might need further investigation or further  
14 clarification, before at least this particular Board  
15 member, I'm ready to make a decision on any procedures  
16 and/or policies that may take place.

17 Having said that, for point of information,  
18 can you give me an example of a non-rural regional agency  
19 that would be excluded from receiving the ADR currently?  
20 Or is there one?

21 DIANNE RANGE: Well, I can just -- off the top of  
22 my head think of Sonoma County is a non-rural regional  
23 agency and Marin as well.

24 CHAIRMAN PENNINGTON: Don't you have one in  
25 Contra Costa County, too?

1           DIANNE RANGE: Contra Costa was county agency --  
2 was Contra Costa County. And there are plenty of others.  
3 I'm sure we can take a look at what that long list would  
4 be -- would include.

5           MEMBER EATON: And the reason I ask the question  
6 is because I think if they are excluded from applying  
7 under, you know, one procedure, it would be helpful for us  
8 to know early on or at least to compile that inventory, I  
9 think just generally overall.

10           I guess the other thing that I'm sort of  
11 confused about is, I still don't understand the difference  
12 between an ADR and the regular time-extension procedure.  
13 And by that I mean what the advantages are versus the  
14 disadvantages. And I think, you know -- I think that's  
15 something that we would have to kind of look at. And I  
16 know that we've had discussions in our briefings.

17           Have you subsequently been able to  
18 distinguish what might be the advantage assuming that you  
19 can meet the qualifications to apply? Is there any one  
20 procedure that's more advantageous to a jurisdiction?

21           ELLIOT BLOCK: You know, we've been grappling  
22 with that.

23           MEMBER EATON: Because the obvious question is,  
24 if there isn't, then why have to? Help us with one.

25 That's the local extension. And I think we just need to

1 kind of sort of look at it. It might be helpful for the  
2 jurisdictions as well with their own individual situations  
3 that if we can assist them in, maybe, you know, doing the  
4 right procedure as well. And, maybe, you know, the  
5 counties and the cities have a better, you know, view of  
6 that.

7           ELLIOT BLOCK: And we've been grappling with  
8 trying to figure it out. And the difficulty in answering  
9 that question is, I think it can't be answered in the  
10 abstract for all jurisdictions. One is better or not  
11 better.

12           I think it will from what we can perceive,  
13 and it will be interesting to see if we get some input on  
14 that today. It's going to primarily relate to the  
15 particular jurisdiction situation.

16           The underlying substantive requirements are  
17 not very different. But for a time extension, you're  
18 submitting a plan of correction for the Board. So some  
19 jurisdictions may feel that there's some connotation that  
20 do or don't like about corrections, because that implies  
21 there's something that has to be fixed.

22           On the other hand, the alternative diversion  
23 requirement means you're saying we can't make 50 percent.  
24 We've got a lower requirement. And so that may have  
25 implications in other jurisdictions. Prior to SB 1066,

1 both procedures were in law. And my sense is -- this is  
2 purely speculation --

3 MEMBER EATON: Right.

4 ELLIOT BLOCK: -- that the idea was to maintain  
5 both, just allow that flexibility for jurisdiction in terms  
6 of what they could for their own local decision-making  
7 process do.

8 But as far as we can tell, primarily, the  
9 main substantive requirements, the underlying requirements  
10 of implementing the "good faith efforts" and the like are  
11 not significantly different, but --

12 MEMBER EATON: The plan of correction  
13 distinction, I think, is an important one, you know. That  
14 kind of response, I think, is responsive to the question  
15 others might have.

16 One other point, then I'll kind of put it on  
17 hold for a short time. My understanding is, is that each  
18 of these would become effective on January 1st, 2001,  
19 correct? That if we were to grant these -- at least,  
20 that's what it says in this packet -- if we're to grant an  
21 extension, the extension runs from the year 2001?

22 ELLIOT BLOCK: That is correct.

23 MEMBER EATON: If we grant it prior?

24 LORRAINE VAN KEKERIX: We can grant it prior, but  
25 it would start in 2000. However, if somebody wanted to

1 wait until --

2 MEMBER EATON: 2001, I think --

3 LORRAINE VAN KEKERIX: -- until after 2000, they  
4 could apply later. It doesn't preclude anybody from  
5 applying sometime after 2000 to get one. They might not be  
6 able to get the full five years. But if they wanted -- if  
7 they decided to wait, they could.

8 MEMBER EATON: Right. All I'm just saying is  
9 there's no -- at least, with an ADR, no alternative  
10 requirement should be effective -- let's see. Where is  
11 it -- prior to January 1, 2000?

12 LORRAINE VAN KEKERIX: 2000.

13 MEMBER EATON: The question I'm trying to lead  
14 at, what incentive is there for us as a policy-making board  
15 to grant -- let me start -- each year we get more and more  
16 accurate information about jurisdictions and what they are  
17 doing and how they are performing with regard to reaching  
18 the original mandates under 939, right? I mean, each year  
19 we get more and more information.

20 My concern is that if we grant extensions  
21 and we rush into this and we grant these extensions coming  
22 in, one, we wouldn't have full information, and, two, if we  
23 start granting them next year, aren't we in essence giving  
24 them a four-year extension and providing a disincentive in  
25 which they can ultimately do as much as they can prior to

1 meeting the original requirements under 939 that basically  
2 we've taken the pressure off of them?

3           And I'm just, you know, asking it not for  
4 necessarily a response but to look in and ponder that  
5 basically our action in granting of these early on almost  
6 provides a disincentive.

7           And we're actually providing, I think, a  
8 case whereby any jurisdiction, and rightly so, can come in  
9 and say, you know, things weren't there. But granting it  
10 early, we've actually provided a four-year extension, and,  
11 therefore, we've actually hurt some of the markets.

12           And some of the other things that perhaps  
13 industry folks and others who have to deal with the  
14 warehouse and material that we have is there. And I raise  
15 it more as a point. You don't necessarily have to respond  
16 to it.

17           But I think that the scheduling as we've  
18 talked about of how we go about and when we are willing as  
19 a Board, part of our process should be, I guess, is when  
20 does the window-open-for-the extensions to come in?

21           We know we can, may grant them prior  
22 thereto, but do we set a policy that we don't want to do  
23 them until such a date? And I just raised that issue from  
24 a timing standpoint.

25           CHAIRMAN PENNINGTON: Good point. There are no

1 provisions.

2 LORRAINE VAN KEKERIX: Can I respond to one  
3 thing?

4 CHAIRMAN PENNINGTON: Excuse me?

5 LORRAINE VAN KEKERIX: Can I respond?

6 CHAIRMAN PENNINGTON: Yes. Go ahead.

7 LORRAINE VAN KEKERIX: Mr. Eaton had -- you had  
8 asked about the alternative diversion requirements. Prior  
9 to SB 1066, Yvonne Hunter pointed out to me, that only  
10 cities or counties or city and county that's San Francisco  
11 could request an alternative to the 50 percent.

12 So what they did in 1066 was consistent with  
13 the group that the alternative reduced goal applied to.

14 So they were consistent in doing that. What  
15 they did add is, if you want one of these alternative  
16 diversion requirements, you have to justify why you didn't  
17 request a time extension first. But it's the same group of  
18 people that it applies to both pre-1066 and post.

19 MEMBER EATON: And one would involve why you  
20 didn't as well as the plan of correction? That's the kind  
21 of thing -- I'm just trying to get a menu, a laundry list  
22 kind of things. And that's an additional point. Thank  
23 you.

24 LORRAINE VAN KEKERIX: The time extension  
25 requires the plan of correction. The alternative diversion

1 requirement does specific that you have to justify. So  
2 that could be a plan as well.

3 CHAIRMAN PENNINGTON: Go ahead, Mr. Frazee.

4 MEMBER FRAZEE: There are no provisions for ADRs  
5 to be in -- for non-rural jurisdictions to be in effect  
6 beyond the year 2005; is that a fair statement?

7 DIANNE RANGE: Correct.

8 LORRAINE VAN KEKERIX: (Shakes head.)

9 MEMBER FRAZEE: So every non-rural jurisdiction  
10 regardless of all either a time extension or an ADR must be  
11 in compliance by the year 2005?

12 LORRAINE VAN KEKERIX: Correct.

13 MEMBER FRAZEE: Okay.

14 CHAIRMAN PENNINGTON: Mr. Rhoads, did you --

15 Okay. I think we can continue.

16 MEMBER RHOADS: I guess since you asked.

17 CHAIRMAN PENNINGTON: Mr. Rhoads?

18 MEMBER RHOADS: The --

19 MEMBER EATON: I'll second that, too.

20 MEMBER RHOADS: The -- you know, my impression of  
21 this is that what's key is the fact that everybody has to  
22 reach 50 percent. I too am curious about the incentives  
23 for doing an ADR versus a time extension. And I would  
24 welcome any comments that the public may have on that, as  
25 far as which way they see jurisdictions requesting that

1 information.

2 I'm particularly very interested in the  
3 definition of the "good-faith-effort" issue, which we'll be  
4 talking about and lots of questions and corrections about  
5 which way we should be going.

6 CHAIRMAN PENNINGTON: Very good. Thank you.

7 Go ahead, Judy.

8 JUDITH FRIEDMAN: I just wanted to show that we  
9 put up on the screen the time limit on the ADRs and that  
10 the citation from the statute, just for clarity there.

11 CHAIRMAN PENNINGTON: Okay. Think we're ready to  
12 move on to "good faith." Are we not?

13 GOOD FAITH EFFORT

14 ELLIOT BLOCK: Okay. There are a number of  
15 requirements in the statutes for ADRs and extensions. And  
16 the one -- the main ones -- and obviously it's been brought  
17 up already by a couple of members this morning is that the  
18 Board has to make a written finding of "good faith effort"  
19 for either an ADR or time extension if it's being  
20 requested. And it's up on the screen right now the actual  
21 language out of the statute.

22 Unfortunately, neither PRC 41785 or 41820  
23 defines "good faith effort." PRC section 41850 does define  
24 "good faith effort." And that's the statute that deals  
25 with the Boards doing biannual reviews of implementation.

1 So it's not specifically linked to the time extensions or  
2 the ADRs.

3           However, there -- the same issues are being  
4 dealt with, whether you're looking at implementation for  
5 purposes of biannual review or implementation for purposes  
6 of whether somebody's made "good faith efforts" and should  
7 be granted an extension or an ADR. They all involve  
8 program implementation.

9           The context is slightly different, but staff  
10 is basically recommending -- as I'll talk about in a  
11 moment -- that we use some of those same provisions in  
12 dealing with time extensions and ADRs. I didn't quote  
13 completely because it's a fairly long statute. But primary  
14 "good faith effort" is defined as all reasonable and  
15 feasible efforts to implement in section 41850.

16           And the statute goes on to list a number of  
17 specific items for the Board to consider in making that  
18 determination for its biannual reviews. And those are  
19 summarized in attachment three on page one of attachment  
20 three.

21           And one of the specific things that is  
22 listed in that statute is the Board's enforcement policy,  
23 which was adopted in 1995 -- I have to apologize because I  
24 can't see that well all away across the room to tell which  
25 slide is up on the screen.

1           In attachment three, we have excerpted parts  
2 of the enforcement policy. And on -- from pages three to  
3 six of attachment three, there's a list broken out into  
4 five major groups of barriers that may adversely affect the  
5 jurisdiction's ability to implement programs.

6           We haven't changed this from -- the  
7 substance of this from what was adopted in 1995. We just  
8 reformatted, because the actual policy itself is about 20  
9 pages long and contains a number of other issues.

10           On those pages, there are numerous examples  
11 of activities and/or conditions that a jurisdiction may  
12 wish to include in its discussion to substantiate "good  
13 faith effort."

14           And the staff is recommending that we use  
15 those examples that were developed over the course of  
16 probably about a year or so, a number of workshops back in  
17 '94, '95 as the starting point for the types of things that  
18 the Board would look at in making a "good faith"  
19 determination for ADRs and time extensions.

20           Once again, of course, because we're not  
21 doing this as regulations, we're limited in how we use  
22 these. They're basically examples to be used in a  
23 case-by-case determination on individual requests. They're  
24 illustrative criteria as opposed to being a checklist. In  
25 other words, they're not going to be reviewing whether a

1 jurisdiction has six out of thirty items that is in there  
2 situation.

3           These are just the types of things that  
4 we're suggesting to provide guides to jurisdictions in  
5 reviewing their own situation of how they may want to make  
6 their case of "good faith effort." And there's certainly  
7 no intent to mandate the particular examples we have done  
8 the case for any one particular jurisdiction.

9           And so just in closing, again, to reiterate,  
10 I think the same point I made early just about the  
11 procedures themselves, also for "good faith effort" one of  
12 the things we're hoping to get out of the workshops today,  
13 in Southern California is some input about those examples.

14           Do we need to modify any of them? You know,  
15 they were adopted almost three years -- well, three years  
16 ago, actually over three years ago, now. Have situations  
17 changed, so they're not quite accurate and revise them a  
18 little bit? Or do we need to add anything, or do we need  
19 to eliminate any?

20           And, finally, because again we're taking  
21 that discussion which was primarily developed as part of  
22 the biannual review process, do we need to reformat those,  
23 rephrase those? Make some adjustments for the different  
24 context? Because, again, there may be some differences.

25           The basic substance of what's going to

1 constitute "good faith efforts" for implementing programs  
2 probably doesn't change much, but one of the things we are  
3 acknowledging is we may need to rephrase or revise how  
4 those are phrased, because the situations are different.

5           For instance, as was just brought up this  
6 morning if we had a jurisdiction coming in advance and  
7 wanting to get a reduction, well, some of these examples  
8 are phrased in -- what's the opposite of advance?

9           JUDITH FRIEDMAN: Arrears.

10          ELLIOT BLOCK: Arrears. The word's not coming to  
11 mind -- because they were developed for the biannual  
12 review. They're phrased in terms of looking back on what's  
13 been done up until now. And if we had somebody wanting to  
14 ask for a reduction or ADR in advance, the context may  
15 change.

16          In theory, it shouldn't change the substance  
17 of that, but that's one of the things I think we wanted  
18 input on whether that's an issue or not. We're trying to  
19 be fairly open to comment and flexible as to what's going  
20 to make the most sense so that everybody is on the same  
21 wavelength in terms of understanding what types of  
22 expectations there will be. And with that, I'm open to any  
23 questions you may have.

24          I was not planning on going through all  
25 those examples in detail. There's some -- I didn't count

1 them, but it looks like approximately 50 examples. And  
2 certainly if anybody had a question about some of them, I  
3 suppose, we could go over that.

4 MEMBER RHOADS: Well, I do. I'm a little  
5 confused. Where are these fifty examples that's your --

6 ELLIOT BLOCK: Okay. It's pages three through  
7 six of attachment three which is pages 2118 I guess through  
8 21 of the packet. And they're excerpted from the Board's  
9 enforcement policy which was adopted in 1995.

10 We did not provide a full copy of that  
11 policy today. Although, we certainly could if you want.  
12 Again, it contains a number of other issues separate from  
13 the "good faith effort." So that's why we didn't include  
14 it in this particular agenda item. And that policy itself  
15 was incorporated into the biannual review statute by 1066.

16 CHAIRMAN PENNINGTON: Okay. Questions?

17 Mr. Jones?

18 MEMBER JONES: Mr. Chairman.

19 On one of your examples here -- I think it's  
20 on page four, we talk about -- it's about the 4th bullet  
21 down as waste -- have waste generation characteristics  
22 changed? And the example is a change could include  
23 military base closure, manufacturing, relocation or  
24 closure. Such selected programs would no longer be  
25 feasible or appropriate.

1 I've struggled with the idea that in 1990  
2 there were 44 biomast facilities, 48 biomast facilities in  
3 the state. Now, we have 22. That ash was going to  
4 landfills. It's been diverted. Those closures that no  
5 longer generate that ash but were in the base-year number  
6 create considerable diversion numbers.

7 If when we go to a disposal-based system,  
8 how do we deal with that? I mean, has anybody given any  
9 thought that the fact here it's obvious when we talk about  
10 closure, we talk about those type of things, the biomast  
11 industry having to be shutdown. And there are  
12 jurisdictions that have relied heavy on ash diversion.

13 And I don't have a problem with that. I  
14 came from one of those jurisdictions, but they still  
15 generate the ash. And I'm just wondering because if they  
16 abandon all of the programs because they were at 50 percent  
17 due to ash diversion now the ash isn't there anymore, is  
18 that an issue we need to deal with or be part of the "good  
19 faith effort" from a standpoint of waste generation?

20 LORRAINE VAN KEKERIX: That would definitely have  
21 a change in their -- in their waste generation  
22 characteristics. It could mean that a lot of the fuel  
23 ended up going to landfills. The biomast was supposed to  
24 be outside the measured waste stream.

25 We didn't -- we only measured the waste

1 stream at landfills and at Board permitted transformation  
2 facilities. But that could definitely be an example that  
3 could be added here that we would need to take a look at.

4 MEMBER JONES: I think the fuel, whether our  
5 markets -- you know that the actual fuel is either being  
6 used in composting programs, or something, you know. I  
7 hope. It's that ash that was generated from that facility  
8 that, you know, we have -- we have half of what was out  
9 there, and they generated incredible amounts of tonnages.

10 And where they're shut down, you know, if  
11 you generate 100,000 tons of waste in your community and  
12 50,000 of it was ash and now that facility is no longer in  
13 existence, have you met the 50 percent? And you don't have  
14 any programs. And is that fair to all the other cities and  
15 counties that do have programs? I don't know. It's  
16 something we're going to have to deal with, because it's  
17 going to be an issue. There's 22 of them shutdown.

18 CHAIRMAN PENNINGTON: Mr. Eaton?

19 MEMBER EATON: I'm going to take the unusual step  
20 to ask Mr. Jones to sort of expand on one of the other  
21 items that he thought might be a "good faith effort." And  
22 I -- in terms of procurement if he would, I think it's an  
23 excellent idea.

24 MEMBER JONES: What Mr. Eaton's referring to is  
25 cities and counties that come in have identified -- some of

1 them have identified in their SRRE or in their plans that  
2 they are going to do procurement programs within there  
3 governmental agencies, within schools, whatever they have  
4 jurisdiction over to buy recyclable to buy materials with  
5 recycled content.

6           And I -- we were going to use this as part  
7 of the discussions in the 21st Century. That if a  
8 jurisdiction has implemented its programs and they have a  
9 waste stream that cannot readily -- or really they have a  
10 hard -- there are really barriers in getting past 35, 40  
11 percent, whatever, is it a "good faith effort" that their  
12 procurement program expand to include re-refined motor oil  
13 in their city vehicles, a 20 percent post-consumer paper  
14 procurement program within all their city offices, that  
15 they are doing those city parks, golf courses that are  
16 under their control, are taking advantage of grass  
17 recycling, those types of things that don't have huge  
18 impacts on -- monetarily on a city or county but show a  
19 "good faith effort" show that they are trying to close the  
20 loop?

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21           And while it's not part -- I don't know that  
22 it's part of this discussion. It would seem to me that a  
23 cities and counties come up especially those jurisdictions  
24 that have not been successful in getting the numbers up for  
25 whatever reason were able to show evidence that they were

1 trying to close the loop and not just be on the collection  
2 side, should this Board look at that as "good faith  
3 effort?"

4 MEMBER RHOADS: Yeah. I think that's --

5 MEMBER JONES: Or do we fine them?

6 MEMBER RHOADS: I think that's an extremely  
7 important issue. You know my answer to that right now is  
8 that it should play a major role in the "good faith  
9 effort." And I'm having trouble seeing those types of  
10 things in the list that I see on page two and three. Used  
11 recycling, used oil is one example, you know, tires and  
12 concrete and the local streets.

13 What are you doing about local tires, things  
14 like that? Do we need a better list to guide local  
15 jurisdictions on what we mean by "good faith effort?" What  
16 are some of the other options that they -- and that is one  
17 of the options or one of the things I would hope to hear  
18 some discussion today from the public.

19 ELLIOT BLOCK: Those are all legitimate issues,  
20 which is what we were hoping to have some comment on from  
21 the public. As I mentioned, this list we didn't change the  
22 substance of it from -- the policy that was adopted in '95,  
23 which was developed in '94. So it's been three or four  
24 years. And a lot of things develop over the course of time  
25 and issues that have come to the floor as being much more

1 important now were not necessarily called out specifically  
2 like some of the examples you've given. They're alluded to  
3 in a very general way on the list.

4           And so one of the things we -- reasons we  
5 brought it forward was to find out whether we wanted to add  
6 some specific things like that. And, you know, that's  
7 what -- we're going to take that and put back and add to  
8 it.

9           The only other thing I want to reiterate --

10          MEMBER RHOADS: You don't want a checklist?

11          ELLIOT BLOCK: -- is in terms of issues about  
12 what should or shouldn't be "good faith effort" as the  
13 procedures that have -- are before you now are drafted,  
14 again, they're not done as regulations. So these are all  
15 things that can be considered in the mix when the Board  
16 makes an individual determination, when a request comes  
17 forward.

18           If the Board wanted to say "X,Y, and Z"  
19 programs definitely constitute a "good faith" or the lack  
20 of "X,Y, and Z" programs maybe were not acting in "good  
21 faith," we would have to do that in regulations.

22          MEMBER RHOADS: I understand.

23          ELLIOT BLOCK: So I just wanted to reiterate that  
24 point.

25          MEMBER RHOADS: And we may decide to go that way

1 or consider going that way. But I think on a minimum, a  
2 list of things that we take into consideration to give some  
3 guidance to people, I think would be very helpful.

4 JUDITH FRIEDMAN: One thing that if I can there  
5 are some -- the list that we currently have, the types of  
6 conditions or issues here were developed with broad  
7 language, and some of the things that Board members have  
8 raised could fall under some of these categories. They  
9 maybe need to be made more specific, more direct reference.

10 But, for example, if you look on page 2120  
11 and you look at the, kind of the major heading "what  
12 barriers exist that could be eliminated by the  
13 jurisdictions?" There are a few that might fall into the  
14 areas that were being discussed.

15 Have incentives for participation been used?  
16 What other program alternatives have been used to promote  
17 waste prevention and reduction programs? Has the  
18 jurisdiction investigated local and regional marketing  
19 options? Have they worked with the Board's market  
20 development program?

21 These are the kinds of general broad  
22 statements that would, I think, take into account some of  
23 the areas that you're talk about, some of the procurement  
24 areas, the policies that are developed, the working with  
25 our, you know, buy recyclable program, that kind of thing.

1           They may need to be made more specific, but  
2 those are the areas that we are envisioning.

3           MEMBER RHOADS: I agree with you. They -- the  
4 examples we gave would fit under there. But from a local  
5 jurisdiction standpoint, they -- I think, they would need  
6 more guidance as far as examples and what -- so I for one  
7 would like to see some examples and the list.

8           CHAIRMAN PENNINGTON: Very good.

9           MEMBER JONES: Mr. Chairman, I have another  
10 question. I think it kind of goes to the heart of this.  
11 On 21 dash 7, when we look at the public resource code  
12 41785, under one it says, "City and county has made a 'good  
13 faith effort' to effectively implement source reduction,  
14 recycling, composting measures described in their source  
15 reduction."

16           I think that effectively we don't have a  
17 real good -- we're struggling with what exactly is "good  
18 faith effort." And that's why we're having this forum.

19           And I think it -- it's incumbent on us to  
20 also come up with a definition of what -- or at least some  
21 reasonable expectation of what effectively implement means,  
22 because that goes back to my idea that if you -- if you  
23 list a curbside program which you decided to only pickup  
24 one or two materials, is that effective implementation of  
25 the program?

1 I don't want to judge whether or not they're  
2 routing it correctly, but is it effective in trying to get  
3 to the goal? And that's going to create another problem  
4 for this thing.

5 CHAIRMAN PENNINGTON: Okay. Mr. Frazee?

6 MEMBER FRAZEE: Yes. One of the issues that we  
7 hear regularly is the desire by jurisdictions to use  
8 rubberized asphalt as a diversion count. And I'm wondering  
9 what's the reason we're not doing that currently? And is  
10 that something that needs to be implemented to make this  
11 all work better?

12 Anyone have any thoughts on that?

13 MEMBER EATON: I think anytime you deal with the  
14 word "diversion," you're going to run into some sort of  
15 opposition or robots. I just believe that it's simply a  
16 situation -- based upon my experience with the seeing  
17 others is just as circumstances change and as problems and  
18 conditions come in, it's just never been added into the  
19 equation as to what could constitute it. And so there  
20 might be --

21 MEMBER FRAZEE: Used tires as ADC does count.

22 MEMBER JONES: That's right. It's diversion.

23 MEMBER EATON: No. I was just saying in terms --  
24 I was making a general statement in terms of just the  
25 opposition and the hurdles. I just think that probably

1 it's something that's never really been considered and  
2 brought to the forefront.

3 MEMBER FRAZEE: It's one of those things that  
4 comes up at workshops. Though why can't we count as  
5 diversion the tires that go into rubberized asphalt, and  
6 it's an additional incentive to use that?

7 CHAIRMAN PENNINGTON: "Good faith effort."

8 JUDITH FRIEDMAN: Maybe, I could provide some  
9 clarity. Part of the confusion might be from the change  
10 from the concept of diversion credit to disposal reduction  
11 which occurred with 2494. We measured disposal reduction.  
12 If it doesn't go into landfill now, then it's reduced -- I  
13 mean, it's disposal reduction.

14 So the things that you're talking about do  
15 count as disposal reduction.

16 CHAIRMAN PENNINGTON: So you're saying that while  
17 it's not counted as diversion, it's called disposal  
18 reduction? And it's counted that way?

19 JUDITH FRIEDMAN: Well, that is diversion. If  
20 it's reduced, it's --

21 CHAIRMAN PENNINGTON: Right.

22 JUDITH FRIEDMAN: If it's diverted from the  
23 landfill, then it's disposal reduction.

24 MEMBER FRAZEE: And I guess you get into a  
25 cross-jurisdictional problem there where the one that's

1 using rubberized asphalt may not be the jurisdiction that's  
2 getting credit for the diversion. That may be the source  
3 of the problem.

4 CHAIRMAN PENNINGTON: The source of the  
5 rubberized asphalt may not be from that jurisdiction.

6 MEMBER FRAZEE: The other issue I wanted to raise  
7 is item three on page five that's in attachment three.

8 "What barriers exist that a jurisdiction cannot remove."

9 It seems that one is -- kind of cuts both  
10 ways. If a jurisdiction could in effect hang their hat on  
11 that one and complete inability to comply based on a whole  
12 list of items that are barriers that they cannot remove, it  
13 seems that makes the task much more difficult.

14 On the other hand, I think it's worth having  
15 there. But it's one that shouldn't have too much emphasis.

16 JUDITH FRIEDMAN: Again, these are factors to  
17 consider. They're not absolutes. I think -- I can't  
18 stress that more.

19 MEMBER FRAZEE: Because if you took that one to  
20 the extreme, then getting back to my original question  
21 about -- you know, everyone must ultimately comply, why  
22 couldn't you make a case of why you never could comply if  
23 the barriers are such that its compliance is impossible?

24 CHAIRMAN PENNINGTON: Any others? If not, I  
25 think we're ready to move into the public discussion

1 portion of this. Guess there's -- you need a break?

2 COURT REPORTER: No.

3 CHAIRMAN PENNINGTON: Does anybody up here need a  
4 break?

5 MEMBER RHOADS: No.

6 CHAIRMAN PENNINGTON: Okay. So we're ready to  
7 move to the public discussion. However, the problem is I  
8 have no sheets from anybody who says they want to discuss  
9 anything. If you're out there and you want to discuss  
10 something, if you'll fill out a sheet bring it with you  
11 when you come to the podium so we can --

12 MEMBER EATON: May be we can take a five minute  
13 break while they fill out their forms.

14 CHAIRMAN PENNINGTON: Okay. We'll take a five  
15 minute break. And you can bring up your forms. While  
16 we're breaking, you bring me your forms.

17 (Recess taken.)

18 CHAIRMAN PENNINGTON: Okay. Let's get back to  
19 work here, folks. And we'll start -- think we'll start.

20 Yes. I see one here.

21 Yvonne Hunter.

22 PUBLIC TESTIMONY

23 YVONNE HUNTER: Good morning. I'm Yvonne Hunter  
24 with the League of California Cities. And, technically,  
25 I'm on vacation this week and next week, but I couldn't

1 miss coming to this meeting.

2 MEMBER EATON: We owe you a day.

3 YVONNE HUNTER: Okay. That's a good idea.

4 CHAIRMAN PENNINGTON: What do you mean? This is  
5 better than Disney Land?

6 YVONNE HUNTER: I thought I was at Disney Land.

7 No. I'm sorry. You opened the door to that one.

8 CHAIRMAN PENNINGTON: Fantasy World.

9 YVONNE HUNTER: It was snowing up in the  
10 mountains yesterday. At Carson Pass, it snowed.

11 The League was a sponsor of SB 1066. And we  
12 worked closely with Board staff on the technical drafting  
13 of the Bill. And we are indebted to them, because there  
14 were some technical issues that we had to resolve. And  
15 they helped us do that.

16 What I'd like to be able to do is just  
17 provide some comment on some of the opening questions and  
18 statements. And then if the chairman will allow me later  
19 on to speak again after, because I had not been planning on  
20 speaking until most everyone else had spoken. I jotted  
21 down some notes.

22 And I think a lot of the questions that were  
23 raised were very very appropriate and to the heart of how  
24 do you implement the Bill? And, in general, one of the  
25 questions was, I guess -- who was it -- Steve. I think

1 Steve said it, or perhaps it was Danny, or maybe it was Mr.  
2 Frazee.

3 MEMBER FRAZEE: One of you.

4 YVONNE HUNTER: When does this window open? One  
5 of you astute people -- when does the window open? When  
6 you are eligible for an extension?

7 And the statute very clearly says you're  
8 extension doesn't start until January 1, 2000, and it  
9 doesn't go beyond the end of 2000 and 5, correct?

10 But simply from a process standpoint, I  
11 would encourage the Board to set up a system where if a  
12 jurisdiction wishes, they can apply perhaps six months or  
13 whatever before that date, the 2000 date starts.

14 And the Board could say, "Yes. We will  
15 grant you one-, two-, three-years' extension conditional  
16 upon such and such," because that -- otherwise they  
17 wouldn't be able to get their full -- the full extension  
18 that they're eligible for.

19 On one of the previous slides, I think that  
20 it said that the 50 percent numbers would not be in to the  
21 Board until August. And then if the jurisdiction has to  
22 start the request procedure after that, they basically lost  
23 a lot of time.

24 So I think jurisdictions are going to know  
25 in '99 that where they are, are they going to need an

1 extension. And with all due respect Mr. Eaton, if they  
2 know six months in advance or three months in advance, I  
3 don't think it's all that terrible. It's not like they are  
4 getting a six-year extension.

5 MEMBER EATON: No. But I agree with that. I was  
6 saying in 1999. However --

7 YVONNE HUNTER: That's next year, though.

8 MEMBER EATON: Correct.

9 YVONNE HUNTER: Right.

10 MEMBER EATON: Right. So your advocating when  
11 should the window go up? That's what I'm trying to get at.

12 YVONNE HUNTER: I think to continue the analogy,  
13 the window can go up for them to begin to put the paperwork  
14 I would say in the middle of '99, based upon their '99  
15 data.

16 They can't actually step through the  
17 window -- or let's do this. They can't step from the door  
18 until January 1, but they would at least know that they  
19 submitted their request. They've taken the two or three  
20 months as staff indicates or maybe more to discuss it with  
21 the Board.

22 But I think if you wait until January 1 to  
23 do that -- what's beeping? -- you're going --

24 CHAIRMAN PENNINGTON: You're hitting something  
25 there.

1 YVONNE HUNTER: Okay. I'm pushing the documents'  
2 presentation section here.

3 MEMBER EATON: I think you gave the wrong answer,  
4 and that's what happened.

5 YVONNE HUNTER: As long as that's all that  
6 happens, as opposed to a trap door, I'm fine.

7 MEMBER EATON: This is the House of Horrors.

8 YVONNE HUNTER: I agree with the goal about not  
9 making these formal regulations. I think we need some  
10 flexibility. But I would encourage the Board -- and I  
11 assume you're going to be doing this to circulate  
12 extensively to all cities and counties and all interested  
13 parties the draft guidelines similar -- and have some  
14 additional Workshops whether they're put together similar  
15 to what was done in putting together the enforcement  
16 document, which I think is one of the best documents this  
17 body has done.

18 The non-rural regional agency alternative  
19 diversion rate has already been discussed. But let me  
20 state it again. We -- the reason non-rural regional  
21 agencies are not eligible for a reduced diversion rate is  
22 they were not eligible for it pre-1066. That is the very  
23 absolute simple reason. And, in fact, we had thought they  
24 had been eligible working with staff.

25 So if you look at an earlier draft of 1066,

1 regional agencies were included. And then Board staff  
2 called and said they double checked. They weren't  
3 eligible. So we crossed it out. That is the pure and  
4 simple reason. It's not that the sponsors would have  
5 necessarily wanted it one way or another. I think we would  
6 have liked them to be eligible for it. But we just wanted  
7 to be consistent with existing law.

8           As far as the discussion of "good faith  
9 effort" -- and I know we're going to get into this a little  
10 bit later. One of the key philosophies of 939 from the  
11 very beginning was to give local agencies some broad  
12 guidance, give them some goals, but let them put together  
13 their own programs. And the Board was not to micromanage  
14 the activities at the local level.

15           It's their decision what programs they want  
16 to choose. And I want to make sure -- I don't think I've  
17 heard anything that's quite getting us there, but I want to  
18 emphasize this. In discussing what is a "good faith  
19 effort" and what isn't, I view it -- and I think we all  
20 have, as taken as a whole, the constellation of activities  
21 that the local agency has done. And this was always in  
22 reference to whether or not they're eligible for fines.

23           But I think it applies as well as your  
24 counsel said to determining whether they've made a "good  
25 faith effort" to be eligible for an extension. Taken as a

1 whole, when you look at all the activities, the programs  
2 that the jurisdictions have done, have they been making a  
3 "good faith effort?"

4           And I don't know whether having a curbside  
5 program that collects two types of materials as opposed to  
6 six materials would really make that much difference in  
7 "good faith effort," because they may have also implemented  
8 a major, major program in the commercial sector where they  
9 decide that that is where they need to really address  
10 their activities at the local level.

11           So I would encourage the Board to tread very  
12 cautiously in that area. One thing also is someone  
13 discussed, can you have a menu of options? If you've done  
14 "X, Y, and Z," you've made a "good faith effort." We would  
15 think because this is a subject that did come up actually  
16 in the discussion of 1066 and pre-1066, if you're doing  
17 five programs, it doesn't matter whether you've achieved 50  
18 percent goal or not. You've been deemed making a "good  
19 faith effort," and you're home free.

20           I don't think you can do that in regulation.  
21 I think that would require a change in statute. And I'm  
22 not sure how local governments would look at it.

23           We had some preliminary discussion at the  
24 League with our technical committees, and they were very  
25 leery, because they were concerned of exactly the kinds of

1 things that were raised.

2           Okay. If we have a curbside program, will  
3 we be told it has to have ten materials collected? And it  
4 has to be every week as opposed to every other week.

5           So that's a real tricky area. And I think  
6 that's the result conclusion of my comments.

7           In sponsoring 1066, we wanted to give local  
8 agencies and the Board a little bit more guidance on what  
9 constituted "good faith effort." And we also wanted to  
10 recognize that their were a lot of jurisdictions that  
11 probably wouldn't achieve 50 percent by the year 2000. But  
12 under the existing scheme, pre-1066, they probably by any  
13 stretch of the imagination would be.

14           Everyone would agree they're making a "good  
15 faith effort," and the Board would say, "Continue. Go  
16 forth. Continue making your 'good faith effort.' We'll  
17 see you next year. And we're not going to fine you."

18           And rather than do that continuously, we  
19 thought it would be more appropriate to revisit the  
20 provision of law that only allowed jurisdiction -- a  
21 non-rural jurisdiction one, one year extension. And we  
22 just thought that was sort of more honest and up front.

23           So we look forward to working with you on  
24 the guidelines. And I look forward to hearing what other  
25 folks are going to say about this process.

1 CHAIRMAN PENNINGTON: Questions?

2 YVONNE HUNTER: Any questions?

3 MEMBER EATON: I too share -- and one of the  
4 reasons for the comments was I didn't want to rush into  
5 doing this just after two workshops.

6 YVONNE HUNTER: Oh, right.

7 MEMBER EATON: And I think it has to be a longer  
8 process, because the more information we have, hopefully  
9 the better informed decisions will be.

10 Let me just ask you a couple of questions.

11 Some are philosophical and not necessarily perhaps on the  
12 League's perspective but perhaps your own. In having spent  
13 some time here, do you view -- if you come in and get an  
14 extension, for instance, and you have to do a corrective  
15 action plan, the Board's role in that corrective action  
16 plan -- I mean, because that's a teetering in a balance  
17 between prescriptive in micromanaging to some extent?

18 YVONNE HUNTER: I --

19 MEMBER EATON: And encouraging or kind of  
20 bullying in some cases along --

21 YVONNE HUNTER: Well, hopefully the Board would  
22 know the bright line between encouraging and suggesting,  
23 helpful suggestions and bullying. But I think there is  
24 something in the statute that says the Board may suggest  
25 programs that the local agency may adopt to help them

1 achieve the goal.

2           It's still the local agency's  
3 decision. And I -- there is a fine line. I mean,  
4 clearly, if the Board says, "In order to do this, we think  
5 you ought to construct a 50-million dollar MRF."

6           And if local agency says, "No. I don't  
7 think we can afford that. That will triple our garbage  
8 rates. However, what we are going to try to do is increase  
9 working with the downtown business community, the  
10 commercial sector. We're going to promote an apartment  
11 recycling program, et cetera, et cetera. That's what we  
12 think we're going to do."

13       MEMBER EATON: Well, now that you've raised the  
14 issue of the MRF -- or let me give you another  
15 hypothetical. Do you think the Board can base it's  
16 decision on "good faith effort," that if let's say this  
17 year or next year local jurisdiction is going to build a  
18 transfer station or allows one to be built and there's no  
19 kind of recycling or a diversion program effort made in  
20 that, that should be looked at as a factor when they've had  
21 an opportunity to do so and just haven't done so?

22       YVONNE HUNTER: Well, I think that's kind of  
23 taking it out of context. First of all, why are they  
24 building the transfer station? Are they building it simply  
25 to be a transfer station, and they have other means to do

1 recycling or diversion elsewhere?

2           If it's appropriate to have a diversion  
3 program within the facility, then that's the local  
4 jurisdiction's decision to take it one step farther,  
5 because I have chatted with a few folks on what preceded  
6 some of this discussion.

7           The whole issue of "prevent and impair" is  
8 gone. It is statutorily no longer on the books. And if a  
9 jurisdiction approves a MRF -- no not a MRF -- approves a  
10 disposal facility, that is gobbling up recyclables and that  
11 is hurting the jurisdiction's ability to achieve the 50  
12 percent goal, the Board can certainly raise that saying,  
13 "Are you aware that this may hurt you? We just want to go  
14 on the record."

15           It is still the local agency's authority and  
16 ability to go forward with that facility. And if the local  
17 agency two or three years down the line comes to the Board  
18 and says, "Oh, please, don't fine us. We built this  
19 facility, and it gobbled up all of our recyclables." I  
20 think the Board can as easily say, "We're sorry. You  
21 should have known that. We told it to you. That is not an  
22 excuse for achieving the goals." And I think that's  
23 consistent.

24           MEMBER EATON: That's what I'm trying to get at.

25           YVONNE HUNTER: Right. That's consistent with

1 what we said during the debate and discussion on "prevent  
2 and impair." And what happens when it goes away and all  
3 that? The jurisdictions are very smart, and they're aware.  
4 And they shouldn't be able to use that as an excuse.

5 MEMBER EATON: Right. And that's one of the  
6 things that concerns me, as well. How about with regard to  
7 Mr. Jones as a partnership with local government? The  
8 actual -- if they do have some legitimate -- I don't want  
9 to use the words "barriers" -- but problems because of the  
10 information about the procurement policies as substitutes  
11 in doing their fair share to help in the overall effort  
12 statewide.

13 Your thoughts there?

14 YVONNE HUNTER: I would like to think that all  
15 jurisdictions are trying to do their fair share, and --

16 MEMBER EATON: I can assure you --

17 YVONNE HUNTER: And I would like to hope that  
18 state is also doing its fair share. But that being said,  
19 the -- there's a difference from -- I would say there's a  
20 difference from a philosophical approach and what the  
21 statute requires. Progress towards achieving -- complying  
22 with 939 is based upon measuring changes in disposal as  
23 well as whether or not you're implementing your SRRE.

24 And I asked staff to raise their hand or  
25 interrupt if I miss speak. That does not include whether

1 or not the jurisdiction is going above and beyond in their  
2 own house in purchasing recycled products, in grass  
3 recycling programs, and all of that. They should be.

4 But when you get right down to measuring,  
5 have they achieved the goal? And what is a "good faith  
6 effort?" I don't think you can fine them simply because  
7 the Board thinks they should be doing three times as much  
8 internally in procurement policy.

9 MEMBER EATON: But this is subsequent to the  
10 extension being granted. What are they going to do in the  
11 future?

12 YVONNE HUNTER: Well, that might be one of the  
13 activities that the Board suggests, not requires, but  
14 suggests that the local agency undertake.

15 The question is, how many percentage points  
16 is something like that going to get the local agency versus  
17 how much it's going to cost them?

18 MEMBER EATON: It might --

19 YVONNE HUNTER: Shouldn't the agency be focusing  
20 on and all their resources both hard dollars and staff on  
21 activities that are really going to get them results, as  
22 opposed to what may be philosophically important but not  
23 really bump the numbers that high up?

24 MEMBER EATON: But you can't have it both ways.  
25 You can't use market conditions as an excuse to why you

1 can't do something and then not participate in the market.

2 YVONNE HUNTER: I'm not -- I wasn't -- I agree  
3 with you. And I wasn't using the market condition as a --  
4 maybe, there was a disconnect in our discussion.

5 Market conditions clearly could be, not will  
6 be, but could be a reason why jurisdictions have problems.  
7 A jurisdiction could do everything that the Board would  
8 suggest that both of you have suggested and that still  
9 isn't going to effect markets. And they still may not be  
10 able to achieve goals, because the market's -- because they  
11 could have generators out there, a large commercial sector.

12 Or it's a problem that is way beyond what  
13 they can remedy simply by increasing their own procurement.

14 MEMBER EATON: To keep an open mind about some of  
15 these, because I think there is a much tighter connection,  
16 we are not so naive to think that we can create world  
17 markets by what we do. We do, however, believe -- or I do  
18 believe that somehow there is a connection in that basic  
19 law of laissez-fair economics in that the consumer and the  
20 demand for a certain type of product does create the supply  
21 and, therefore, create a market.

22 YVONNE HUNTER: Correct.

23 DAN EATON: And I think that that's kind of what  
24 we're looking at. And I think if you look across the  
25 nation and other places that I think are far more advanced

1 than we are with regard to their procurement policies.

2           They are creating some of that. That  
3 relieves, I think, some of the battles that you've had  
4 to endure over the last couple years between yourself and  
5 industry. And I wouldn't name the types of legislation,  
6 but I think those ease the tension.

7           YVONNE HUNTER: Right.

8           MEMBER EATON: And that's what I kind of think  
9 we're looking at. I appreciate your forthrightness. And  
10 go back on vacation.

11           YVONNE HUNTER: One -- a perfect example of  
12 barriers over which they have no control is, if you have a  
13 military base within your jurisdiction. And that is  
14 exactly the kind of thing that we were thinking of, or you  
15 had been planning a MRF, and you were going to have flow  
16 control, and the Carbone decision came down, and those are  
17 the kinds of things that we were thinking of.

18           CHAIRMAN PENNINGTON: Mr. Frazee?

19           MEMBER FRAZEE: Four points that I had -- and I  
20 wanted to discuss -- first of all, just a question on  
21 the -- regarding "good faith effort." Does the Board have  
22 the authority to reduce a time extension? And, for  
23 example, a jurisdiction comes in and applies for a  
24 three-year extension, do we have the ability under this  
25 because it says up to --

1 YVONNE HUNTER: I think so, because the statute  
2 --

3 MEMBER FRAZEE: We can say, "We know you can  
4 accomplish this in one year, so we're only going to grant  
5 you one year."

6 YVONNE HUNTER: Because the Board -- I believe  
7 the statute says the Board may grant one or more single- or  
8 multiple-year extensions.

9 MEMBER FRAZEE: But even though the jurisdiction  
10 applies for three, we can reduce that?

11 YVONNE HUNTER: I think so. You can say, "We  
12 think you can you do it in two. Come back and let us  
13 know."

14 MEMBER FRAZEE: Number two, the non-eligibility  
15 of regional agency troubles me, because here we've been  
16 putting a lot of effort out to encourage the establishment  
17 of regional agencies. And this, I think, tends to put a  
18 halt to that, because it closes the window that local  
19 jurisdictions could not take advantage of this if they  
20 participate in a regional agency.

21 So I think it has a real downside to it.  
22 And I appreciate that it's in statute. And we're not going  
23 to do a whole lot about it.

24 YVONNE HUNTER: We would agree with you. It was  
25 one of those political realities that we've had to face.

1 MEMBER FRAZEE: Number three, the timing  
2 situation that you brought up. And I think that brings  
3 about a real quandary, because you're suggestion that  
4 perhaps there be a six-month lead time, but the actual  
5 knowledge of what the progress towards achieving the goal  
6 is not going to be available until six months later,  
7 actually a full year later from that six-month time step.  
8 So I don't know how we measure those.

9 You could have a jurisdiction coming in and  
10 asking for a time extension and then end up achieving the  
11 goal.

12 YVONNE HUNTER: You could -- the Board could go  
13 through that early review process and say, "Your time  
14 extension is effective January 1, assuming 'X Y and Z'.  
15 And, oh, if you achieve the goal, you no longer have the  
16 time extension, because there's no need for it."

17 MEMBER FRAZEE: Right.

18 CHAIRMAN PENNINGTON: It's mute then.

19 YVONNE HUNTER: Right.

20 MEMBER FRAZEE: I guess. And then fourth, not a  
21 question for you, just a comment on to Mr. Eaton. On the  
22 question of a transfer facility versus a MRF and the fact  
23 that that could show "good faith effort." I think we have  
24 a good example with that with the world's largest MRF  
25 that's now shut down, and the equipment for sale in my home

1 area for the very reason that the jurisdictions that fed  
2 that MRF were already doing such a good job of recycling  
3 that the waste was already creamed by the time it got to  
4 the MRF.

5           And so it's not necessarily a measure of  
6 whether you can build a MRF or a transfer station as a  
7 measure of whether the jurisdiction is involved in a "good  
8 faith effort."

9           And that's such a prime example, because all  
10 of the jurisdictions that were feeding that MRF had already  
11 implemented curbside -- you know, three-truck system on  
12 curbside, and so there wasn't much left to recycle out of  
13 the waste stream. And that's one of the principal reasons  
14 for the failure of the MRF.

15           CHAIRMAN PENNINGTON: Mr. Jones?

16           MEMBER JONES: Yeah. Just a couple things. On  
17 the "good faith effort," when I was talking about  
18 procurement, it wasn't to increase the percentage. I'm  
19 assuming that this is a jurisdiction that has fallen well  
20 short of the mandate and are coming to us and saying,  
21 "Look. We've provided a 'good faith'."

22           And I view it from the standpoint of any  
23 kind of business negotiation that one party means one  
24 thing, another party wants something else. And does the  
25 negotiation end at the end of the meeting? Or does it set

1 up the basis for a continuing relationship?

2           So my questions about procurements were not  
3 so much to increase that number -- that numeric number, but  
4 if you've done these programs, this is as good as it's  
5 going to get or as far as you're willing to go, then are  
6 you willing to do these types of things that don't have a  
7 huge impact?

8           YVONNE HUNTER: And I think that's certainly a  
9 fair question. And let's face it. There may be some  
10 jurisdictions that either are eligible for an alternative  
11 reduction -- or another way of looking at it -- are never  
12 ever going to achieve 50 percent goal no matter how much  
13 they try, unless they triple, quadruple whatever their  
14 garbage rates are.

15           And in that case -- I have to phrase my  
16 statement carefully. It is appropriate -- it's probably  
17 appropriate to look at some symbolic, or request some  
18 symbolic demonstration on their part.

19           Remember though, if a jurisdiction does get  
20 a reduction and certainly if they get an extension, they  
21 still have to report back to the Board each year what  
22 they've been doing to demonstrate they've continued to make  
23 a "good faith effort" that the circumstances haven't  
24 changed that now all of a sudden makes them eligible to  
25 achieve the goal. But under those circumstances, I think

1 that's a reasonable thing to discuss.

2 MEMBER JONES: Because you know the cities and  
3 counties that have implemented programs, I'm -- I know that  
4 we shouldn't micromanage. I don't want to see a lot of  
5 micromanagement, but I think that it's, you know, part of  
6 the statute says, "effectively implement," and that's why I  
7 brought it up earlier. Because I toured an awful lot or  
8 built an awful lot of this infrastructure by -- I went to a  
9 city -- I won't tell you what city it was.

10 But I went down to Southern California at  
11 their request. They showed me their newsletter that goes  
12 out once every quarter. They showed me their school  
13 curriculum, which they said they couldn't -- they really  
14 didn't have any. They couldn't mandate --

15 YVONNE HUNTER: Which is true.

16 MEMBER JONES: And that's reasonable.

17 They showed me their four buy-back centers in a  
18 town that's got a quite of few people in it. And then they  
19 brought me to an apartment building complex and showed me  
20 the two bins for junk mail, and that was the extent of  
21 their programs.

22 And I'm thinking to myself, number one, this  
23 is a fairly sophisticated area. Not to put too much  
24 credence in the fact that I am a Board member of the Waste  
25 Board, but it seemed kind of inappropriate that they were

1 trying to sell me on the fact that this was the extent of  
2 the programs and that if we ever took enforcement action on  
3 them, they would leave this meeting and fly to Ted Copel.  
4 And I said, "Book me a flight -- I mean book me a seat next  
5 to you, because I will be there."

6           That is a problem in my mind. That's not an  
7 effective implementation. And that's something we're going  
8 to have to grapple with. But when I spoke at SCAG in  
9 Southern California, the first comment was -- and it was  
10 actually directed to Jim Strock who had just left EPA, and  
11 he deferred it to me. "Is the Board going to enforce AB  
12 939?" And my answer was I think this Board will enforce AB  
13 939.

14           And we've shown that. And that a fourth  
15 grade education program as the only program is not a "good  
16 faith effort."

17           So, you know, somehow we have to figure out  
18 that. You know, I don't want to add burden, but you know,  
19 we always refer to market conditions. And we had an issue  
20 yesterday when we said the Bill was written in 1989 -- the  
21 markets conditions in 1989 -- the market conditions were  
22 one of the issues, right, when this thing was written?

23           The market prices in '89 had always stayed  
24 the same. The blurb came in '94, you know, to '95 and then  
25 went back down.

1           But if you look at a 15-year history of  
2 prices for any of the commodities that are normally  
3 collected, they're static other than that blurb. So when  
4 we have to look at market conditions, do we look at them in  
5 1989 or '90 when they developed the plan? Or do we try to  
6 base them off that blurb in '93 to today? Because I think  
7 the infrastructure was built before the spike in the  
8 commodities.

9           YVONNE HUNTER: I'm not going to ask you here  
10 what jurisdiction that was.

11          MEMBER JONES: I'll share it with you later.

12          YVONNE HUNTER: I'm sure you will. I don't know  
13 if I want to know.

14                 We grappled for quite a long time trying to  
15 come up with the definition of "good faith effort." And  
16 when we -- I forget what the Bill originally went into  
17 early on where we talked about "good faith effort."

18                 We went around and around in circles trying  
19 to come up with some statutory definition. And we realize  
20 that you couldn't define it specifically in statute that it  
21 was a process. It would be a constellation of activities  
22 taken as a whole. And that's why we punted to the Waste  
23 Board.

24                 And I think the guidelines -- the  
25 enforcement guidelines really do cover the range of

1 activities that a jurisdiction could use to demonstrate  
2 that it's been making a "good faith effort."

3           The goal of the League has always been we  
4 want to provide a safe haven, a reasonable level of  
5 protection from being fined for those jurisdictions that  
6 really have been making a "good faith effort." And for  
7 those jurisdictions that have thumbed their nose at the  
8 law, ignored the law -- and I would like to think they're  
9 very few of them that have not made a "good faith effort,"  
10 then that is for the Board -- the Board's enforcement  
11 authority.

12           But we hope that those that really have made  
13 a "good faith effort" that they would be given the ability  
14 to get extensions.

15           I think very few are going to probably be  
16 eligible for a reduction but to get extension. And even if  
17 they don't ask for an extension or if they get up to the  
18 year 2000 and 5 or whatever it is and they hadn't achieved  
19 the goal and they are trying as hard as they can that --  
20 "Continue on your way. We're not going to fine you."

21           MEMBER JONES: Right.

22           YVONNE HUNTER: And I think the fact that the  
23 Board did substitute some enforcement procedures for those  
24 jurisdictions that failed to prepare adequate SRREs shows  
25 that the Board is serious. And we think that's an

1 appropriate act.

2 CHAIRMAN PENNINGTON: Very good.

3 Mr. Rhoads?

4 MEMBER RHOADS: This is a little take off on, I  
5 think, Mr. Jones's comments. First of all, we don't want  
6 to micromanage, of course, and we don't want to do the  
7 regulations. And I'm quite sure we will be sending the  
8 copies of our draft.

9 But I'm kind of curious on this "good faith  
10 effort," also. Maybe, the jurisdiction that Mr. Jones is  
11 mentioning or maybe one that has a few more programs and --  
12 but it's obvious to staff when they ask for an extension  
13 that they're never going to make the 50 percent unless  
14 they do more.

15 And let's say that they submit that  
16 application next year. What do you expect us to do as a  
17 sponsor of the Bill?

18 YVONNE HUNTER: Ask questions of the  
19 jurisdiction, to document their request, look at what is  
20 feasible. There may be lots of other things they can do,  
21 but at what cost?

22 Do they have the regulatory authority to do  
23 it? I think everyone has agreed in the past that it's  
24 generally -- most jurisdictions generally will be able to  
25 achieve the 25 percent goal. It may not be by '95 (SIC),

1 but given a few more years, they can get there. In order  
2 to do the 50 percent goal, we're going to have to really  
3 really attack the industrial commercial sector.

4           What is the mix of businesses of generators  
5 in this commercial industry sector? What authority does  
6 the jurisdiction have to force them or not force them to  
7 recycle? I mean it's things like that. Do they have --

8           MEMBER RHOADS: You would want us to kind of give  
9 them a menu of things to --

10          YVONNE HUNTER: What options they can -- the law  
11 allows you to do that, I think, there's also the Board's --  
12 what is it the computer program data that Eugene Tsing has  
13 put together for jurisdictions?

14                 You have a technical assistance  
15 resource that jurisdictions can tap into given similar  
16 socioeconomic, industrial commercial mixes. These are the  
17 kinds of programs that a jurisdiction could do. And it  
18 still needs to be up to the jurisdiction -- the individual  
19 jurisdiction.

20          MEMBER RHOADS: Let's assume -- and I agree with  
21 your point about the importance is the number, the 50  
22 percent. But let's assume the jurisdiction decides to do a  
23 few of those items, and our staff's gone down to visit  
24 them, and we've gone down to visit them, and we just cannot  
25 see -- you know, I'm new at this. So I got to ask a few of

1 these questions.

2 YVONNE HUNTER: Uh-huh.

3 MEMBER RHOADS: We just can't see anyway they're  
4 going to make the 50 percent by the end of the year, by the  
5 year they're going to ask for the extension, 2005. What --  
6 what do you expect us to do in that case? Do we just grant  
7 the extension and hope?

8 YVONNE HUNTER: I would think, at least, if it's  
9 the first extension, you grant the extension and hope  
10 they're going to achieve it.

11 MEMBER RHOADS: It's a little hard.

12 YVONNE HUNTER: I realize that, but also consider  
13 this -- and I may regret saying this, but I think there are  
14 a lot of SRREs out there where jurisdictions and the Board  
15 have all hoped that the programs that they have included  
16 will get them to the 50 percent. And everyone realizes  
17 that some of them really will get there and others they  
18 probably won't.

19 But, nevertheless, this is our best  
20 guesstimate our best hope at given this point in time that  
21 we will achieve the goals.

22 The alternative to granting them the  
23 extension, basically, if we had not had SB 1066 would be  
24 simply to say, "Okay. You haven't achieved the goals.  
25 You're making the 'good faith effort.' We're not going to

1 fine you."

2           So, at least -- you may be right. I think  
3 there's probably a permutation that we haven't even thought  
4 of, but let's see how it works.

5           MEMBER RHOADS: So you just -- let me see if I  
6 can rephrase and it.

7           The purpose of the legislation was, in your  
8 mind, was to say if they're making a "good faith effort"  
9 then the Board -- then you Board you ought to give them the  
10 extension, or --

11          YVONNE HUNTER: The purpose was --

12          MEMBER RHOADS: -- or was it if they're making a  
13 "good faith effort" and you can see that they're going to  
14 reach their goal of 50 percent, then you give them the  
15 extension?

16          YVONNE HUNTER: Or close to 50 percent. I mean,  
17 what we've heard is a lot of jurisdictions have said, "We  
18 don't think we'll reach 50 percent by the year 2000, but  
19 given two or three more years, we think we'll get there."

20                 Let's try it. There may be some  
21 jurisdictions -- in fact I'm sure there are -- that never  
22 in a million years will reach 50 percent. Maybe, those are  
23 the ones that ought to go for an alternative reduction.  
24 And that's one of the examples that they never ever will  
25 reach 50 percent.

1           So what is the reason for asking for an  
2 extension? First, they're going to go straight to  
3 alternative reduction or to alternative diversion  
4 reduction. And, in fact, in an earlier version of the  
5 Bill, either in print or when we were working on language,  
6 we said you have to ask for an extension before you get to  
7 a reduction.

8           And it was pointed out to us, I think from  
9 Board staff, that doesn't make sense. There are  
10 jurisdictions that clearly you can look at them, now, they  
11 will not achieve 50 percent. Why go through the motions  
12 for the extension? They ought to be able to request a  
13 reduction right away.

14           I suspect in -- unfortunately, in 2004,  
15 we'll be revisiting some of this. Our original -- I don't  
16 know if I'm going to be around then.

17           MEMBER RHOADS: It's not our hope to do that.

18           YVONNE HUNTER: Well, unfortunately we might have  
19 to. Who knows.

20           MEMBER RHOADS: I can say I'm not interested in  
21 granting extensions if I got to come back and revisit this  
22 thing in 2005.

23           YVONNE HUNTER: Well, the problem is -- the  
24 problem is the statute. We had it open ended. And again  
25 political realities, it was five years. And it was you

1 will achieve by the year 2000 and 5.

2           And our feeling was that's fine, because  
3 it's an additional opportunity for five more years for  
4 those jurisdictions that needed it. It's no different than  
5 you will achieve it by the year 2000. And it is certainly  
6 better than those who want to extend it to 2000 and 10 or  
7 remove the enforcement penalties completely.

8           CHAIRMAN PENNINGTON: Okay. Yes, Mr. Frazee.

9           MEMBER FRAZEE: Forgive me for my bit of  
10 philosophy here, but it's the bottom line, and it's all  
11 political in the end result. And I'll cite again my often  
12 used example of airport land-use plans. And those were due  
13 in twenty years ago. And I don't know whether they're  
14 still all in or not.

15           But the political facts of life in that  
16 circumstance was that the principal nonparticipant in  
17 developing those plans was the -- was Los Angeles. And so  
18 they had the political horsepower to get extension after  
19 extension after extension. And I think in this  
20 circumstance, if you have the overwhelming majority that  
21 comply just as they did with the SRRE and you get down to a  
22 few jurisdictions that are not going to be the political  
23 pressure to extend it, but if you have some major players  
24 or a lot of players who just haven't reached it, then I  
25 think the political facts of life are going to be that

1 they're going to be back to the legislature to seek another  
2 extension.

3           So it depends a lot on how good of a job we  
4 do politically, both this Board and local jurisdictions in  
5 achieving this goal.

6           But I think we're -- you know, we're far  
7 ahead of anything that -- that's been achieved in any kind  
8 of a planning effort in the past. The fact that there were  
9 only four jurisdictions that failed to develop their  
10 planning documents on time -- and in fact, I guess those  
11 have all since complied. And that's a pretty incredible  
12 achievement, I think, and compared to a lot of other  
13 efforts out there.

14           So I have great faith that working together  
15 that we're going to achieve that goal, also.

16           MEMBER RHOADS: I should echo that, that also  
17 I've been very, very impressed with the progress that a lot  
18 of local jurisdictions have made.

19           Can I just ask you one other question?

20           YVONNE HUNTER: Sure.

21           MEMBER RHOADS: Dan Eaton brought up the point  
22 about the incentive to go for time extension versus -- what  
23 do we call it, a reduction?

24           YVONNE HUNTER: Alternative reduction diversion.

25           MEMBER RHOADS: -- diversion. What was in your

1 -- as a sponsor of the Bill, you know what went in people's  
2 minds. How do you see different localities dealing  
3 with that particular issue?

4 YVONNE HUNTER: First, I think we -- there was --  
5 there were those two opportunities in law prior to 1066.  
6 The only difference was you could -- again I'm going to  
7 talk about non-rural agencies.

8 For non-rurals you could only ask for and be  
9 granted one, one year extension due to -- I think the  
10 wording was "adverse market conditions beyond your  
11 control." So we expanded that time horizon by five years  
12 total cumulative. We also added some criteria for the  
13 diversion reduction. Let's just call it a reduction in the  
14 50 percent goal, because in essence that's what it is.

15 We've added some guidance on what the Board  
16 would consider when it's granting a diversion reduction.  
17 And the -- as the Board staff said the diversion reduction  
18 now is up to for five years. That's it.

19 I think the difference is going to be for an  
20 individual jurisdiction deciding. Most of them, I think,  
21 will go for an extension first, with those few  
22 jurisdictions that staff has pointed out to us, if you go  
23 for an extension, they will never -- doesn't matter they  
24 still will not achieve it.

25 You're a residential community in the high

1 desert. There's no green waste. There's no commercial  
2 activity. There's barely any grass or trees, or maybe  
3 there's some trees. That's it. They will probably never  
4 ever achieve the 50 percent goal. So perhaps they go and  
5 they request an alternative diversion.

6           Part of the criteria when they do decide for  
7 an alternative diversion, they have to tell the Board why  
8 they didn't go for an extension first. There's probably  
9 nothing in statute that prohibits the Board from saying,  
10 "No. We're not going to give you an alternative diversion.  
11 We want to see what you can do. We'll give you a two-year  
12 extension. Come back, and let us know how that works."

13           I think there's a precedent in that when  
14 some of the rurals asked for a reduction in the 50 -- and  
15 I'm sorry the 25 and 50 percent -- some of the small  
16 jurisdictions, rural jurisdictions and the Board said,  
17 "We'll give you the alternative reduction for 25 percent.  
18 We're not going to do 50 percent yet. Come back, and tell  
19 us how you're doing."

20           And that I think is a reasonable approach.  
21 I think it's going to be on a case-by-case basis.

22           CHAIRMAN PENNINGTON: Okay. Thank you.

23           YVONNE HUNTER: Thank you.

24           CHAIRMAN PENNINGTON: We'll call you back.

25           Jim Greco?

1           JIM GRECO: Good morning. My name is Jim Greco.  
2 I'm an independent sod waste management consultant doing  
3 business as California Waste Associates. My questions and  
4 my comments are not on behalf of any particular  
5 jurisdiction, but they may be very relevant to a number of  
6 jurisdictions I work with. And I have four questions and  
7 one comment.

8           It caught my attention that when -- I think  
9 it was Elliot or maybe Dianne was talking about an  
10 alternative diversion requirement that there was an  
11 eligibility criteria, and that criteria was for a  
12 jurisdiction must have it's SRRE, HHWE, and mid-fee filed  
13 with the Board by July 1, 1998. And what caught my  
14 attention was the word "filed." And so my question is what  
15 does that mean? Submitted? Submitted and deemed complete?  
16 Approved by the Board?

17          DIANNE RANGE: That's exactly what we were  
18 referring to when we had -- is what had been submitted is  
19 being considered filed.

20          JIM GRECO: So if a jurisdiction submitted it  
21 even if it may not have been deemed complete, they would be  
22 eligible for seeking an ADR?

23          DIANNE RANGE: Correct. Right.

24          JIM GRECO: Okay. The second question relates to  
25 pre-Senate Bill 1066. There were some jurisdictions that

1 were given a reduced goal for the year 2000. And it's my  
2 understanding that that goal still would apply. They would  
3 not have to meet 50 percent in the future.

4 DIANNE RANGE: That would be for the rural  
5 jurisdictions only.

6 JIM GRECO: Right.

7 DIANNE RANGE: And those are permanent.

8 JIM GRECO: Okay. Then I recall when this Board  
9 approved a number of SRREs, I think there was the concept  
10 of a conditional approval if the jurisdiction didn't have a  
11 goal of 50 percent or 25 percent. And I think that  
12 criteria was with, like within 10 percent, like if they  
13 were at 48 percent in their goal that would be  
14 conditionally approved until a time, I guess they would  
15 show they would bring it up.

16 As we come closer to the year 2000, is that  
17 kind of thinking also going to be applied? In other words,  
18 you may not be at 50 percent or you may not be at your new  
19 ADR but close so that there would be this leeway?

20 ELLIOT BLOCK: Well, that particular question  
21 gets into issue of biannual reviews, if you will. And we  
22 have not answered the question. The Board hasn't looked at  
23 that. And that substantial compliance the 24 percent, and  
24 the 48 percent the Board used in reviewing the plans, was  
25 based on the fact that those plans were projections.

1           And so it was not going to send the  
2 jurisdictions back through the entire rewriting process, if  
3 you will, just to deal with projections. In terms of when  
4 the biannual reviews occur for those jurisdictions, they go  
5 through the same -- the normal biannual review process  
6 looking at "good faith effort" and all the other factors.

7           And yesterday and then last month, the Board  
8 did complete some biannual reviews for a few jurisdictions  
9 that did determine were acting in "good faith." They were  
10 somewhat below the 25 percent number. But it's primarily  
11 looking at "good faith effort" is the way that analysis has  
12 been done, rather than 24 is okay even if it's not 25.

13           It really defaults back to the "good faith"  
14 kind of analysis.

15           JIM GRECO: You know, as we come closer to that  
16 2000 and I think the nervousness level will increase as far  
17 as, "Can I make our goal of 50 percent?" The way that is  
18 done often depends upon -- on these adjustment factors,  
19 population, taxable sales, employment, et cetera.

20           And I know this Board doesn't drive those  
21 adjustment factors. It's the Department of Finance and  
22 other agencies. But if the jurisdiction is now -- is  
23 getting concerned about the year 2000 and they want to see  
24 how close they're coming, they don't have current or  
25 projected adjustment factors that they could use.

1           And I don't know if there's some way of  
2 coming up with some projections at least as a basis,  
3 because as you come closer to compliance, I mean, those  
4 adjustment factors in my opinion don't have a great  
5 influence. But one percent could mean a lot of difference  
6 between 50 and 49.

7           So that's a suggestion, a comment that if  
8 there was some way of coming up with projected adjustment  
9 factors for population, taxable sales.

10           And then my last question was regarding  
11 approved SRREs. A number of jurisdictions had goals beyond  
12 50 percent -- 52.4 percent. And what is the significance  
13 of that number? They may not meet their goal that was  
14 approved by this Board in their planning document, but they  
15 certainly may have met the 50 percent goal.

16           Is there any significance as far as  
17 enforcement with respect to the goal that was established  
18 in their approved SRRE?

19           JUDITH FRIEDMAN: Maybe, if I can on the  
20 adjustment -- projected adjustment factors, we make  
21 available as soon as we get the information from those  
22 other agencies, as you know, that information that's  
23 provided for factors. In terms of looking at projecting  
24 adjustment factors, we can look at that. But, of course,  
25 you know, the variables of what could happen in the

1 future --

2 JIM GRECO: Yep.

3 JUDITH FRIEDMAN: -- would be anybody's guess.

4 So we can certainly look at that as potential, in terms of  
5 jurisdictions that projected to go beyond 50 percent.

6 The law says every jurisdiction to get the  
7 50 percent, doesn't say 52.4, 58.6, whatever. So if the  
8 jurisdiction set an ambitious goal for themselves, we  
9 obviously applaud that. But if they got to 50 percent,  
10 that's what they need to do in statute.

11 JIM GRECO: That's my questions and comments.

12 CHAIRMAN PENNINGTON: Any questions of Mr. Greco?

13 Okay. Thank you, Jim.

14 Okay. Next we have Evan Edgar.

15 EVAN EDGAR: Chairman, Board members. My name is  
16 Evan Edgar, Edgar Associates. On behalf of the California  
17 Refuge Removal Council. CRRC's a statewide nonprofit trade  
18 association representing the private and independent solid  
19 waste providers of California.

20 CRRC is comprised of over 300 certified  
21 recycling centers, over one hundred and 25 franchise  
22 curbside recyclers, 45 permitted MRFs, a few dozens  
23 permitted complice facilities, and even a few registered  
24 complice facilities with the California Quality Counsel.

25 So CRRC -- we promote the integrity of AB

1 939. We are certified. We are registered. We are  
2 franchised. We are permitted.

3 I'm here today in support of SB 1066,  
4 because waste implementation will protect the integrity of  
5 AB 939. I'm here on behalf of CRRC on talking about the  
6 planning, the implementation, the achievement, the  
7 validation, and the enforcement of AB 939.

8 Today is basically about the integrity of AB  
9 939. There's been some key issues that led up to the very  
10 point today. One of the key issues on the integrity issues  
11 has been the restricted waste policy that was in statute  
12 back in part of AB 2494, I believe.

13 We have base year adjustment policy. We  
14 have the petition for reduction of AB 688. And today we're  
15 talking about SB 1066. CRRC views the waste Board's role  
16 as keeping the integrity of AB 939 not about  
17 micromanagement, not about all those other aspects. But  
18 the integrity of AB 939 is the role of this Board.

19 Kind of reflecting on the base year  
20 adjustment policy, we support it, because we feel there's a  
21 need to move forward. For a long time, we were stuck on  
22 the policy. So on a case-by-case basis, the Waste Board  
23 has an ability to go in to adjust the base years. And when  
24 asked to protect the integrity, we've recently been  
25 involved with regards to agricultural waste in the Tulare

1 County area. When you have a large agricultural waste, is  
2 that compromising the integrity of AB 939?

3 We questioned that. And right now, that's  
4 being researched. Another aspect of it is the closure of  
5 biomast plants. Mr. Jones had a great point. When a  
6 biomast plant closes down, is that really an act by local  
7 government? I don't think so. It's a PRC decision on  
8 restructuring of the electrical industry.

9 Another AB 939 integrity issue is AB 688.  
10 We represent a lot of rural jurisdictions. The heart of  
11 CRRC are the rural communities. We supported AB 688 and  
12 supported the petition for reductions as the entire Sierra  
13 Nevadas and a lot of rural California shifted from disposal  
14 base of pre-subtitle D solid-waste system into a system of  
15 AB 939 transfer station immerse.

16 And we believe in rural jurisdictions. They  
17 should have the flexibility for petition for reductions.  
18 And we supported that. And I believe the Waste Board kept  
19 the integrity of that system. But today we're about 1066.  
20 It's on a case-by-case basis.

21 We believe that during the development of  
22 1066, CRRC supported 1066. We believe that the time with  
23 the weaker markets and with Prop 218 looming and a lot of  
24 other issues, it was time to bend AB 939. We didn't want  
25 it to break under the weight of all the other conditions

1 that was affecting the marketplace at the time. So we  
2 believed in 1066, with regards to the "good faith efforts,"  
3 with respect to the time extensions, and alternative  
4 disposal reporting aspects.

5           What we need is a policy that is fair that  
6 protects the "good faith efforts." I believe that what we  
7 have here today is a good framework to go from. And the  
8 testimony I heard today and the questions today I believe  
9 that we have "good faith" in the Waste Board to have a  
10 great policy on SB 1066.

11           The reason why I supported to the California  
12 Refuge Removal Council is that we have AB 939 as part of  
13 our core-business plan. We are still going immerse.  
14 Yesterday at the Waste Board agenda, agreeing with recovery  
15 was up for a permit. That MRF is going to be recovering 84  
16 percent of the industrial and commercial waste when  
17 crossing that gate.

18           Only 16 percent will be residual. But we're  
19 not doing that at two or three times the cost for the  
20 household per month, because there's a lot of different  
21 reports out there. What will be the cost per household?  
22 It's not going to double or triple as allocated, but about  
23 25, 40 percent in different communities.

24           Franklin Reports did a nationwide study  
25 about the cost of building curbside programs and MRFs. And

1 the cost isn't that much. And I believe if the green waste  
2 recovery situation is not that much. It's about 20, 25  
3 percent increase over the rates.

4           Yesterday on the Waste Board agenda, there  
5 was a transfer station, a hundred tons a day with very  
6 little recovery. Mr. Eaton pointed out the linkages  
7 between when is a solid waste permit being issued versus  
8 implementation of the SRRE. And I call that without the  
9 linkages, we have "prevent and despair" as a new  
10 terminology, because I believe the Waste Board needs some  
11 type of the language.

12           Maybe not in the past of "prevent and  
13 impair," but there needs to be some type of rule the Waste  
14 Board has there to protect the integrity of AB 939 as some  
15 of the core business plans and other companies are going to  
16 transfer station to make landfills. I believe that type of  
17 linkage needs to be discussed at the Waste Board level when  
18 you do have that type of permit or hauling to make a  
19 landfill.

20           The CRRC members that I represent we care  
21 about the mainstream issues. We're private independence in  
22 the local communities. And we're not really responsive for  
23 the way Wall Street issues of other companies about hauling  
24 to make landfills. So that's why I'm here today to really  
25 support the integrity of AB 939 to make sure that it gets

1 implemented fair and just.

2           But part of it when I do my over arching  
3 research, I need data. Data management would be great for  
4 this Waste Board to look at, in order to look at trade  
5 analysis, in order to access information about AB 688,  
6 about SB 1066, in order to see who's being approved, how  
7 much.

8           And one of the things I'm going to be  
9 requesting as part of my -- in paper after the fact here is  
10 to ask about data management be available, maybe, posted on  
11 the Internet or some type of easily accessible information  
12 so that as SB 1066 program roles out that we can engage the  
13 development of that.

14           But what is "good faith effort?" Well, I  
15 believe that AB 939 is designed to have flexibility. And  
16 we're trying to grapple with what is a "good faith effort."  
17 And I believe that "good faith effort" is about character.  
18 And what is character about? It's about implementing your  
19 SRRE when nobody is watching. And CRRC has character. And  
20 we support AB 939.

21           Thank you.

22           CHAIRMAN PENNINGTON: Any questions of Mr.  
23 Edgar?

24           Okay. Thank you, Evan.

25           Okay. And now we have Ike Anderson, City of

1 Fairfield.

2           IKE ANDERSON: Good morning, Board. Ike  
3 Anderson, City of Fairfield. Thanks for the opportunity to  
4 speak with you this morning. And I'd also like to thank  
5 Yvonne Hunter for her hard work, her ability to forgo  
6 instant gratification of vacation, and to come and speak in  
7 our support this morning.

8           I wanted to talk with you really about a  
9 single issue and that is the issue of "good-faith"  
10 determination and to discuss specifically the item on  
11 attachment three, page five, I believe it is. Item three  
12 speaks to barriers that exist that jurisdictions find  
13 difficult to remove.

14           And there was some comment I believe,  
15 justified comment by Mr. Frazee regarding permanent  
16 barriers. Would that prevent an agency from ever achieving  
17 a 50 percent diversion?

18           My point is that there are temporary  
19 barriers that exist. And we believe 1066 is a temporary  
20 reprieve that is appropriate in the cases -- in cases of  
21 those temporary barriers.

22           I wanted to speak specifically about the  
23 barrier of contractual or legal issues which in some sense  
24 provide cities or place cities in advantageous positions  
25 when we are trying in a "good faith effort" to pursue the

1 50 percent diversion.

2 I ask the Board to give due consideration to  
3 applications that request an extension based on the need to  
4 place cities, the rate payers in the community overall and  
5 an advantageous and opportune position to negotiate  
6 contracts with waste haulers and to provide those large  
7 scale services, such as green waste programs and MRF  
8 facilities that will have serious impact on the rate  
9 payer.

10 We would like to be in a competitive and  
11 favorable environment when we do so. And there are some  
12 contracts -- some cities with existing contracts wherein  
13 the extension would put us in a position of providing the  
14 rate payer with the best service and achieving 939  
15 eventually with the extension in mind.

16 So those are my comments, and --

17 CHAIRMAN PENNINGTON: Okay. Any questions?

18 Mr. Jones?

19 MEMBER JONES: I think I understand. I think I  
20 understand what you're saying that, you know, if it is a  
21 matter of negotiating with your franchise hall or whatever  
22 to give you the time? Not is it to use this Board to pit  
23 one against the other?

24 IKE ANDERSON: No.

25 MEMBER JONES: Okay.

1           IKE ANDERSON: It is to give the cities  
2 opportunities to either renegotiate contracts or be in a  
3 competitive environment to produce MRFs, green waste  
4 programs, that sort of thing. In extensions -- in our  
5 specific case, an extension would allow us to do that.

6           And I suggest that we are not alone in that  
7 -- in that situation.

8           MEMBER JONES: I can appreciate that. I just --  
9 one of the things we have to deal with "good faith effort"  
10 is when 218 got passed, I know a lot of companies who were  
11 going for rate increases were told by cities and counties,  
12 "No. No. No. 218 got passed. You know we got to put  
13 your rate increase out for a vote."

14           And I don't think -- I don't think that was  
15 the intent of 218. And there was a lot of discussion. And  
16 cities can use those types of things to, you know, stretch  
17 out negotiations.

18           And I just wanted to make sure that the  
19 extension wasn't a way of, you know, looking at that,  
20 because it's pretty disconcerting when you look at 218, and  
21 it's interpreted that you can't do any programs to comply  
22 with AB 939 if you are a public agency. That's whose job  
23 it is to provide health and safety.

24           You know, I think most of those things got  
25 worked out, but I think you'll agree or maybe you heard of

1 some of those horror stories. But I remember there was  
2 a -- there was a rush right after that got passed as to why  
3 there could never be a rate increase again in the State of  
4 California based on 218 that it was -- it was an  
5 interesting way of using a law to preclude growth or  
6 equitable compensation for services.

7       IKE ANDERSON: And I assure you that is not our  
8 intent. But again I would like to emphasize that I believe  
9 it's in the best interest of the rate payer to provide  
10 these programs in an environment where we get the best  
11 service at the best dollar.

12       MEMBER JONES: Right.

13       IKE ANDERSON: And if an extension would produce  
14 that, we think it is a good qualifying criteria. And we  
15 would suggest that you give that due consideration.

16       MEMBER JONES: And that makes a lot of sense.

17       CHAIRMAN PENNINGTON: Any additional questions of  
18 Mr. Anderson?

19             If not, thank you very much, Mr. Anderson.

20       IKE ANDERSON: Thank you.

21       CHAIRMAN PENNINGTON: Yvonne, did you want to  
22 come back?

23             That seems to be our public comment.

24       MEMBER JONES: Oh, we got one more.

25       CHAIRMAN PENNINGTON: Sure.

1 PAT QUINN: I'll be really quick.

2 CHAIRMAN PENNINGTON: Okay. Pat Quinn.

3 PAT QUINN: I'm from Sacramento County Waste  
4 Management and Recycling Division.

5 I noticed the statute calls for corrective  
6 action plan. I would like to see some kind of guidance as  
7 to what such a plan should include, not regulations, but  
8 examples as were used in the "good faith effort" policy.  
9 And I would not like to see prescriptive content  
10 regulations as we had in the past with other planning  
11 documents.

12 That's about it.

13 CHAIRMAN PENNINGTON: Questions of Mr. Quinn?

14 Okay. Thank you. That concludes the  
15 public-comment period here.

16 Staff have anything they wanted to add  
17 before we close this?

18 DIANNE RANGE: I would just like to mention  
19 that -- excuse me. Is Yvonne Hunter going to give more  
20 wrap-up comments?

21 CHAIRMAN PENNINGTON: Oh, I'm sorry. Did you  
22 want to?

23 YVONNE HUNTER: No. I thought there would be  
24 more comments. Thank you.

25 CHAIRMAN PENNINGTON: Okay. You covered it all.

1 That's why.

2 MEMBER EATON: She's resting for the time being.

3 That's why.

4 YVONNE HUNTER: I'm going home to pack.

5 CHAIRMAN PENNINGTON: For Diamond Bar, right?

6 YVONNE HUNTER: Not quite.

7 DIANNE RANGE: Okay. Then I guess I want to move  
8 to item number four, which is the closing remarks. And,

9 basically, what I would hope to do is to -- what we're  
10 trying to do is identify what the next steps will be for

11 these procedures. What we hope to do is modify the  
12 procedures by November, sometime in November.

13 So within the next two weeks, I would  
14 encourage everyone to submit some written comments to me.  
15 And they can probably submit them to Bonnie Lilley over  
16 there. And it's -- the address is on our Workshop notice,  
17 or give us a call.

18 And I hope to have a public review and  
19 develop the model for the final procedures in December and  
20 have that available to go to the Board January, February  
21 time frame to disseminate those by February or so, so that  
22 jurisdictions can use those to start preparing their  
23 requests. So if that is at all possible, if you have any  
24 questions, please feel free to give us a call.

25 CHAIRMAN PENNINGTON: Are you all through?

1 DIANNE RANGE: Yes. We're complete.

2 CHAIRMAN PENNINGTON: Judy, are you complete?

3 JUDITH FRIEDMAN: Yes.

4 CHAIRMAN PENNINGTON: Mr. Jones?

5 MEMBER JONES: Just real briefly for the people  
6 that came here. Couple weeks ago this Board took an action  
7 on the positive side of AB 939 where we're going to  
8 acknowledge cities and counties that have met the first  
9 part of the mandate in conjunction with ARD events to bring  
10 public focus to -- by recycled message, and at the same  
11 time to acknowledge cities and counties and elected  
12 officials that have made the tough choices and have  
13 achieved that first part of the mandate.

14 The only reason I bring it up is a lot of  
15 you probably don't follow what we do, and I wouldn't blame  
16 you. But you can't leave this room thinking that all we're  
17 talking about is extensions, fines, and those types of  
18 things.

19 This was a critical part of our strategic  
20 plan was to acknowledge those cities and counties that have  
21 made the effort. And as part of that, every one of these  
22 Board members, our advisors, our analysts, and our  
23 executive staff were notified where somebody has gone  
24 through the biannual review and has met the first part of  
25 the mandate, we will personally go to an ARD event where

1 there is public, where we can bring focus to those cities  
2 and counties in a media event and give them some cover.

3           And you have until November 4th to let us  
4 know if you're having one of those events and if you want  
5 us there. But the commitment from these Board members is  
6 that we will go throughout the State on that day and  
7 present cities and counties with the acknowledgment that  
8 they deserve. So this is not all one way.

9           CHAIRMAN PENNINGTON: Thanks.

10          MEMBER RHOADS: I'd like to say --

11          CHAIRMAN PENNINGTON: Mr. Rhoads?

12          MEMBER RHOADS: I think we would probably be also  
13 interested in entertaining those type of events even beyond  
14 that event. I for one would be very interested to go out  
15 to cities and counties, local jurisdictions that have  
16 reached their goals. And if they -- they're planning a  
17 special ceremony or would like somebody from the Board to  
18 be there, I'm quite sure we can arrange that.

19          CHAIRMAN PENNINGTON: Absolutely.

20                 Mr. Eaton?

21          MEMBER EATON: I just wanted to say that I think  
22 this morning was a good -- a good start and that we have  
23 begun to design the architecture of what our task lies  
24 ahead.

25                 I also want to say that we did hear both

1 from staff and from those who decided to publicly comment.  
2 Their concerns -- and hopefully I think that I need a  
3 little more specificity, I think, following up on what Mr.  
4 Rhoads said and both from our staff.

5           And I think it's an ambitious time frame for  
6 the procedures. But I'm not sure that given some of the  
7 comments that were made by Yvonne and others that we're  
8 going to be able to meet those. But I think that we should  
9 try and look at some of those things as well.

10           And as we go through it, it is going to be  
11 more of a cooperative kind of process as it always has  
12 been. There will be some times when it will be somewhat  
13 adversarial in the sense of what issues get resolved and  
14 how.

15           But I think the important point is, is  
16 really not to lose sight of the overall goal. And that's  
17 really whether it be in the year 2000, the year 2005 is  
18 that we have to continue to do the kinds of things that are  
19 necessary in the long run to protect our environment and  
20 the health and safety of the citizens of California, at the  
21 same time, some of the investments made by those  
22 individuals at the beginning of 939, as we try and make  
23 those adjustments, and those people have invested and  
24 reinvested in those things.

25           And that's all I have to say. I look

1 forward to continued workshops that we have, and that as  
2 additional information comes available, we should get that.  
3 You just don't need workshops to provide information.

4 I think, you know, one of the things that I  
5 would like to see is perhaps in the next Workshop almost a  
6 model where we actually go through a jurisdiction. Not  
7 this next one. It is going to be Diamond Bar. But we do  
8 take some of the comments that we made, we are finding just  
9 so you know where there are some jurisdictions that are  
10 dropping programs.

11 Well, your first reaction is, "Well, if you  
12 drop programs, then you shouldn't get an extension." Or  
13 that shows your bad faith. That's not necessarily the  
14 case. There may be very good sound reasons why those  
15 programs are dropped. They may not be working. They may  
16 be too costly. There may be other alternatives that are  
17 available that actually increase the diversion.

18 It's in those types of cases I think we're  
19 going to have to be on a case-by-case basis. What we need  
20 the assistance from both staff and from the public, I  
21 think, is how do we apply, because anytime you deal with a  
22 case-by-case basis, it's very difficult to find the  
23 consistency and the fairness and flexibility so that  
24 everyone has an equal opportunity to present their case and  
25 that you can't just sort of make one standard.

1           And that's a tough job. But I think we can  
2 do it. We can achieve it with all your help. And that's  
3 all I have to say now.

4           CHAIRMAN PENNINGTON: Very good. In closing, I'd  
5 just like to thank you all of you for being here this  
6 morning and participating. And it's important to the Board  
7 to hear the comments, to hear staff's thinking, and to hear  
8 public comments. We obviously can't operate in a vacuum.  
9 And so we do appreciate you being here.

10           Again, I'll remind you that are next  
11 Workshop will be October 28th in Diamond Bar. And we will,  
12 as staff said, continue to take public comment and between  
13 the workshops, and we're going to have more participation.  
14 So again, thank you. And we're adjourned.

15           (Meeting adjourned at 12:15 p.m.)

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CERTIFICATE OF REPORTER

I, DONNA L. ARCHULETA, authorized to administer oaths pursuant to Section 8211 of the California Code of Civil Procedure, do hereby certify;

That the proceeding was reported by me and was thereafter transcribed by computer under my direction into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing proceeding and caption named, nor in any way interested in the outcome of the cause named in said caption.

Executed October 22, 1998, at Sacramento, California.



DONNA L. ARCHULETA  
CSR No. 11828