

UST POLICY COMMISSION MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

May 15, 2002

9:20 o'clock a.m.

UST POLICY COMMISSION

JENNIFER SCHUCK, RMR, CRR

Certified Court Reporter

Certificate No. 50020

1 THE MEETING OF THE UST POLICY COMMISSION held on
2 May 15, 2002, at 9:20 o'clock a.m., at the Arizona
3 Department of Environmental Quality, 3033 North Central
4 Avenue, Room 1709, Phoenix, Arizona, in the presence of:

5
6 Michael O'Hara, Chairman

7 Roger Beal

8 Ian Bingham

9 Theresa Foster

10 Harold Gill

11 Nancy Jamison

12 ABSENT MEMBERS:

13 Michael Denby, Vice Chairman

14 Elijah Cardon

15 Karen Holloway

16 Myron Smith
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P R O C E E D I N G S

CHAIRMAN O'HARA: I want to welcome everybody to the May meeting of the Policy Commission. I apologize for the delay. I'm trying to wait until we possibly get a quorum. It doesn't look like we're going to get one. I know Myron Smith and Karen Holloway had sent e-mails to me saying they wouldn't be here today. So we may not be able to vote, but we can certainly discuss the items. And if we get a quorum, we will be able to -- I think we have at least one vote on the agenda, at least the minutes.

Let me move forward and have a roll-call of people present, starting to my left.

MR. GILL: Hal Gill.

MS. FOSTER: Theresa Foster.

CHAIRMAN O'HARA: Michael O'Hara.

MR. BEAL: Roger Beal.

MR. BINGHAM: Ian Bingham.

CHAIRMAN O'HARA: Thank you. Moving on to Item 2, administrative issues, I'm going to table Item A till next meeting unless we get a quorum and we can approve the minutes.

1 MR. GILL: Can we mention changes?

2 CHAIRMAN O'HARA: Sure.

3 MR. GILL: Without voting?

4 CHAIRMAN O'HARA: Probably, yeah. Go ahead.

5 MR. GILL: I just -- some people actually do
6 read these just so I can read my incoherent babbling. On
7 page 17, line 10 -- 9 and 10 to finish the sentence, the
8 sentence says, "So there was some questions and concerns
9 on DEQ's part about when this was going to Ian." It
10 should be "end," E-N-D, meaning the process -- when was
11 the process going to end, not when Ian was going to end.
12 That was the only thing I found.

13 CHAIRMAN O'HARA: Thank you. Any other
14 corrections?

15 Item B, discussions of the cancellation of the
16 July meeting, it is my understanding that the Department
17 of Environmental Quality is moving that month. Also, I
18 know that last year, I think, we cancelled the meeting due
19 to vacation schedules. So unless there is an objection, I
20 would request that we cancel the July meeting and move
21 everything from -- on the agenda for that meeting to
22 August.

23 Any comment? We don't necessarily need to vote
24 on it. I just wanted to get the word out and get a
25 consensus.

1 MR. GILL: It doesn't look like I'm going to
2 be here for the next meeting because I'm going to be on
3 vacation at the next meeting. The 19th, I think that's
4 the third Wednesday.

5 CHAIRMAN O'HARA: Maybe we can discuss that,
6 Hal, as you are moving through your technical subcommittee
7 section because I know that this guidance document and
8 some other things may come up for vote in that meeting.
9 So we may see if we can work around your schedule and
10 maybe change the meeting.

11 MR. GILL: Okay. I'll address that when we
12 get there.

13 CHAIRMAN O'HARA: Just let me know, as you
14 are going through the subcommittee discussion, what items
15 you think we are going to vote on at the next meeting, and
16 we'll determine if we need to change that date.

17 Moving on to Item 3, technical subcommittee
18 update, I'll turn this over to Hal.

19 MR. GILL: Can I go back to administrative?
20 There is two items I wanted to bring up, and I don't know
21 if we can discuss them or not. I don't know if you have
22 to have detailed administrative issues on the agenda for
23 discussion or not. One of them deals with our sign-in
24 sheet, and the other one is just our mandate. Do those
25 have to be --

1 CHAIRMAN O'HARA: Let's move the mandate
2 down to Item Number 6, discussion of agenda items for the
3 next Commission meeting. I think under administrative
4 issues, you can go ahead and talk about the sign-in sheet.

5 MR. GILL: All I wanted to bring up is,
6 personally, I would like to get a fax of the sign-in sheet
7 just to see because we never know -- except the typical
8 cast of regulars that we see, we don't really know if the
9 people that we represent are necessarily here or not. And
10 it would be kind of nice to know who in the audience are
11 people that we are supposedly representing.

12 CHAIRMAN O'HARA: Okay.

13 MR. GILL: I don't know -- personally, I
14 would like to get a copy. I thought I would bring it up
15 in case other people were interested as well.

16 CHAIRMAN O'HARA: Al, do you know what
17 becomes of the sign-in sheets, who maintains those?

18 MR. JOHNSON: We keep that with all the
19 other information. I would be happy to forward that to
20 whoever wants a copy.

21 CHAIRMAN O'HARA: Moving on to Item 3,
22 technical subcommittee updates, go ahead, Hal.

23 MR. GILL: I guess the first thing is the
24 general update on UST corrective action rule, and I
25 usually pass that on to Ian.

1 MR. BINGHAM: As of right now, we are
2 working with GRRC to get it on the July agenda provided
3 that we are able to approve and vote on the guidance
4 document either today or in the June meeting.

5 MR. GILL: Under the A1, these are issues
6 that are -- that were presented to me basically at the
7 last two or three meetings, that these three issues are
8 issues that stakeholders believe should either be in the
9 rule or in the guidance document.

10 And A, which is the UST section policy for
11 assigning LUST numbers and release locations and UST
12 section policy on reopening closed LUST sites, both of
13 these were discussed briefly last month as well. My
14 understanding is these still are neither in rule or in
15 guidance document. The MTBE policy is -- I would assume
16 is in there. I was told whatever day it was when we had
17 the meeting that it would be in here, the MTBE policy.

18 Joe, somebody, is the MTBE policy in here?

19 MR. DROSENDAHL: Should be.

20 MR. GILL: That was going to be added to
21 this draft document. Again, the stakeholders feel that A
22 and B need to be addressed either in rule or in the
23 guidance document. And at this point, they're not. So I
24 guess that's open for comment or discussion.

25 And I know, Ian, you expressed to me in our

1 guidance document meeting that --

2 MR. BINGHAM: I keep repeating myself?

3 MR. GILL: Yeah. Is it the same as last
4 time, that you don't -- Well, I don't want to paraphrase
5 what you said.

6 MR. BINGHAM: Are you asking me to respond?
7 The policy for assigning LUST numbers is something I said
8 we started to work on. I stopped it because we don't have
9 time. I'm waiting for this guidance document to finish.
10 It is not a part of that process. It is something that we
11 do agree is needed. And as soon as we are finished with
12 this thing, then we can move forward.

13 We've discussed the policy about -- or a need
14 for a policy for reopening LUST sites. The Department is
15 open to discussion. And following the other policy, if we
16 need to develop one, then sobeit.

17 MR. GILL: And the MTBE is, indeed, in the
18 draft?

19 MR. BINGHAM: Yeah.

20 MR. GILL: It should be in the appendix.
21 That's a summary?

22 MR. BINGHAM: I didn't find it, but it's
23 supposed to be.

24 MR. GILL: Any other discussion from the
25 Commission members?

1 How do you want to do this, Mike, as far as
2 comment from the public? Do you want to do it each one,
3 or at the end of the section?

4 CHAIRMAN O'HARA: I think we are pretty
5 flexible, Hal. You can take comment from the public any
6 time you feel it is appropriate.

7 MR. GILL: Again, this came from the
8 regulated public, these. And so if there is any comment
9 from the general public on these three issues.

10 CHAIRMAN O'HARA: Mr. Pearce.

11 MR. PEARCE: John Pearce. Just a question.
12 How is ADEQ assigning LUST numbers now? Under what
13 criteria?

14 MR. BINGHAM: The same process we have been
15 using for the better part of ten years.

16 MR. PEARCE: So if we were to consult the
17 policy document that was authored, I believe, by Quinn
18 Thacker some time ago --

19 MR. BINGHAM: Generally speaking.

20 MR. PEARCE: -- that would be -- Okay.

21 MR. GILL: Moving on to A2, this was put
22 down incorrectly on here, although we don't have enough
23 people to vote on it anyway. But what I had sent in for
24 the agenda item was a discussion on the vote because we
25 run this problem every time we are preparing to vote on a

1 large document or any large policy, is we have the
2 documents reviewed by the technical subcommittee or the
3 financial subcommittee, whatever the case may be. And
4 then when it comes to a vote of the Commission members,
5 we've never really established a process of how are we
6 going -- how do we want to vote on these documents.

7 This, as you can see, is a fairly large
8 document. And I sent out an e-mail to Commission members
9 asking for input on how do we really want to vote on this.
10 In other words, do we want to take the recommendation of
11 the technical subcommittee or do we want to -- everyone
12 want to read it and make and have their own comments and
13 resolve those questions or what?

14 And that's what I had sent out to the members
15 for discussion, and I open that out for discussion too.
16 So that was really supposed to be discuss the vote because
17 we can vote any time on anything based on the...

18 CHAIRMAN O'HARA: Hal, have you already had
19 a vote of your technical subcommittee on the document?

20 MR. GILL: We don't really vote. We just go
21 through and resolve the issues. And once we have
22 consensus on all the issues, then we would bring it
23 forward. I would write a letter bringing that forth to
24 the Policy Commission saying that it is my recommendation
25 to whatever or I have problems with these issues.

1 As I mentioned in my e-mail, and I think I
2 mentioned at the last meeting last month, is I would do
3 just that. If we had consensus on everything, I would
4 send in a letter to the Policy Commission recommending --
5 or the recommendation of the technical subcommittee is
6 that we recommend these rules to -- for a vote. And then
7 if there were any issues that we could not reach consensus
8 on, we would bring those forth for discussion for the
9 Commission.

10 MR. BINGHAM: This is guidance, not the
11 rules. The rules have already been through this. This is
12 guidance.

13 MR. GILL: Guidance.

14 CHAIRMAN O'HARA: For what it's worth, Hal,
15 I would agree with that plan. I think you bring forward
16 as the technical subcommittee your recommendations. And
17 we, as the Commission members, should defer to your
18 technical subcommittee unless we have specific problems or
19 questions with that guidance document because you spent
20 all the time in your technical subcommittee going through
21 the issues.

22 And if some of the Commission members have
23 specific issues, hopefully, they would come to your
24 technical subcommittee and work on those with the
25 appropriate people. I think your plan is fine to bring

1 forward your recommendation. If we have specific issues,
2 we can discuss them. Hopefully, we'll defer to your
3 recommendation.

4 MR. GILL: Okay.

5 MR. BINGHAM: Does the recommendation have
6 to be in writing?

7 CHAIRMAN O'HARA: Not necessarily. I just
8 think when it comes to his time for the technical
9 subcommittee update, I would hope you would bring forward
10 your recommendation. If you can give it to us beforehand,
11 that would be great so we can read it, understand it, and
12 look at the problems you have.

13 MR. BINGHAM: The reason I asked, if he's
14 got vacation scheduled in June, I know my calendar is kind
15 of filled in June in terms of finding another time for a
16 meeting. If we were to get a quorum today and if Hal is
17 in a position to make that recommendation today, I would
18 like to vote on that today and avoid the issue. Now I can
19 go to GRRC and say proof positive, Please get it onto the
20 July agenda so we can move forward.

21 CHAIRMAN O'HARA: It might be moot, unless
22 we get two more people.

23 MR. BINGHAM: Yeah.

24 CHAIRMAN O'HARA: We can schedule -- Several
25 options. I don't want to have -- if Hal could call in.

1 That's his vacation. I wouldn't expect you to do that.
2 We could have a conference call or a special meeting just
3 for the approval of this. If we don't have Hal at the
4 next meeting to bring forth the vote, do the Commission
5 members feel they have the appropriate information
6 beforehand to make -- to accept the recommendation to have
7 the vote? That's the question. Otherwise, we need to
8 move the meeting or have a special meeting.

9 MR. BEAL: Is this finished now? Can it be
10 reviewed so that we would have an understanding of the
11 positions that guidance represents?

12 MR. GILL: This document here is the -- this
13 isn't the final final. In other words, it has the
14 strike-outs and those things in it, which I -- we
15 discussed last technical subcommittee meeting. I said
16 that would be fine because I just wanted this -- the
17 document in its final form, as it could be right now
18 before the strike-outs were removed, provided to the
19 Policy Commission members so they could look at any
20 sections that they have real interest in and see if there
21 is any -- if they have any concerns.

22 But I haven't really -- I haven't seen all --
23 there was some sections -- or parts of sections that we
24 had not seen yet in the subcommittee. Like, for instance,
25 I did not know if MTBE was in there. So I haven't really

1 looked at that. My understanding is all that was done was
2 removal of the narrative standards, but I haven't had a
3 chance to read that to see because this is the first time
4 that we've seen -- the people that were coming to these
5 meetings would have seen these as well.

6 So, basically, I haven't had a chance to look at
7 this document to see if everything we've discussed is in
8 there. I'm assuming it is, but I haven't looked at that
9 yet.

10 CHAIRMAN O'HARA: Joe, go ahead.

11 MR. DROSENDAHL: There might be some
12 logistic things. We haven't gone through and looked at
13 every citation to see if it references exactly the right
14 table and everything. So there might be mistakes like
15 that that we haven't gone through, the page numbers and
16 everything. But the actual content of it is complete, so
17 you could go ahead and look at it.

18 CHAIRMAN O'HARA: Can we get a
19 recommendation from you in the interim, between now and
20 next meeting, recommending it or your discussion?

21 MR. GILL: Probably. I'll have to look and
22 see if I think we need to meet again because I don't know
23 that we would -- I don't suspect that we would have to
24 meet again as a technical subcommittee. If everything in
25 here as we discussed at our last meeting is in here, that

1 should not be a problem because there was just -- there
2 was some sections or parts of sections, tables, the MTBE
3 policy, those kinds of things, we had not seen in the
4 document yet. And that's what I wanted -- that's what I
5 told us before.

6 Before I really can recommend it and before the
7 Policy Commission can really recommend a vote on it, they
8 need to be able to see that all the sections are in there.
9 That's what I really need to look at to see if they are
10 there. If there is no real problem, then I can probably
11 go ahead and -- But I don't know how we would do that, I
12 mean, if we would have a special meeting just for that.

13 CHAIRMAN O'HARA: I think you have
14 flexibility as the technical subcommittee chair.

15 MR. GILL: I mean for the Policy Commission
16 for the vote.

17 CHAIRMAN O'HARA: We'll vote on it next
18 meeting. Apparently we can't reschedule the meeting and
19 have Ian there also.

20 MR. BINGHAM: I am not saying you can't.
21 I'm just saying it's going to be difficult.

22 CHAIRMAN O'HARA: It will be difficult.

23 MR. GILL: The section I'm going to be gone
24 in is right in the middle of the month. Didn't you say
25 you guys are moving the 24th of June? When do you start

1 your move?

2 MR. BINGHAM: The agency starts it.
3 Conference rooms are going to be unavailable. Our program
4 itself doesn't move until the early part of July.

5 MR. GILL: Okay. I'm not back until the
6 20th. That would only leave the last week if we were
7 going to move things.

8 CHAIRMAN O'HARA: Well, you want to get with
9 Ian and check your schedules and see if there is a
10 possibility of changing. We can circulate an e-mail
11 between the Commission members to see what their schedules
12 are and either keep the meeting or change the date. Just
13 if you will get with Ian and check schedules and see when
14 you guys are both available. Obviously, we would like to
15 have both of you at the meeting to make the vote.

16 MR. BINGHAM: I would like to be there.

17 MS. BERG: Mr. Chairman, Alan Berg with KCB.
18 I was wondering if that's available -- the changes that
19 Mr. Gill was talking about, are they available on the
20 Internet?

21 MR. BINGHAM: I don't think we've got it on
22 the Internet as yet. We finished it up Monday and
23 photocopying and stuff yesterday. I don't believe we've
24 made it to the Internet as yet.

25 CHAIRMAN O'HARA: Where can he get a copy of

1 it, Mr. Berg?

2 MR. BINGHAM: You want mine?

3 MR. BERG: Sure.

4 MR. BINGHAM: I got probably 100 drafts.

5 CHAIRMAN O'HARA: That's a lot of paper.

6 Roger.

7 MR. BEAL: I would like to have an
8 opportunity to discuss this document after the community
9 has a chance to look at it from different points of view.
10 I would expect the Commission to recommend it as the
11 technical subcommittee, since they're the ones that
12 chaperoned it. But I don't know who was there. I can't
13 participate in many, many meetings. As you know, I'm from
14 out of town.

15 I'm still concerned that the owner-operators
16 have a chance to look at how they are going to be governed
17 in projects.

18 CHAIRMAN O'HARA: Sure.

19 MR. BEAL: I would like to hear a fresh
20 point of observation.

21 MR. GILL: And, again, that's the issue. I
22 understand, Roger, that you can't come to all the meetings
23 because you are all the way down in Tucson. But the
24 meetings are open and they -- we mention them in these
25 meetings all the time. And very, very seldom do we ever

1 see any owner-operators, even though we ask them to come.

2 But at the very -- at the very most, if we are
3 going to vote on this next meeting or in an interim one
4 in-between, or however we do it, you or whoever else who
5 wants to make any comments is going to have to read this
6 document or the sections they are concerned about and make
7 the comments so we can discuss it before we vote.

8 But we can't wait for everybody to read it
9 because we can't make them read it. And when are we ever
10 going to vote on it? That was the whole point of my
11 wanting to having to discuss this so we can figure out how
12 are we going to do this.

13 MR. BINGHAM: I want to add this is not the
14 last opportunity for the guidance document. Comes final,
15 gets into play, if there is issues -- and I'm sure there
16 will be -- to be revisited. This is going to be a living,
17 breathing document. This is not the final opportunity to
18 provide the Department with comments on it or the
19 Commission.

20 MR. GILL: And, actually, before I forget,
21 that does raise a point because we hear that. And I
22 agree, this is a living document. But what we don't have
23 in place -- And I don't know if DEQ has a process in place
24 from other policies as far as how and when they are
25 revisited. We -- I think that's something that needs to

1 be put in place for this document in particular because it
2 does have things that affect the entire program. And so
3 we don't want -- in other words, I don't think a process
4 that says we revisit the guidance document once a year
5 would be appropriate because if there is a policy we
6 identify early on that isn't working right and it needs to
7 be changed, we need to be able to go in and change it as
8 soon as possible.

9 So I don't know if DEQ does that for policies.
10 But I think that's something that needs to be set up in
11 particular for this document.

12 MR. BEAL: I guess what I may be trying to
13 say is that we've waited on the rules package for the
14 guidance document. And I would expect the technical
15 subcommittee and those people that worked on it to
16 recommend the efforts of their work, which have been many
17 hard hours. I'm just simply saying we probably should
18 have the opportunity for people that haven't been able to
19 participate on a meeting-by-meeting basis to voice a
20 concern as to whether or not there is any issues that are
21 remaining out there.

22 I'm not suggesting that we don't vote on it,
23 that we don't accept the recommendation. I'm just saying
24 that we need to provide the opportunity to know that, in
25 fact, your recommendation is agreed upon by the community

1 as a whole. And at that time, we could go ahead. That
2 doesn't put it on and on and on and add discussions.

3 Perhaps, if people read this and there is a
4 subsequent technical subcommittee meeting, you may find it
5 there. But up until now, we haven't had anything to
6 comment upon. It is just an opportunity that I think we
7 should afford the general regulated community and those
8 people that are here. .

9 CHAIRMAN O'HARA: In general, I would just
10 make a comment that I agree that -- Let me back up. If
11 you have those concerns and there are those concerns, I
12 think the forum for those concerns from the Policy
13 Commission standpoint should be the technical subcommittee
14 because it would be very difficult to refer an issue to
15 the technical subcommittee, have them do all this work and
16 address all these concerns, and make a recommendation to
17 us and then we start from scratch and rehash it as a
18 Commission. We'll take it back to the technical
19 subcommittee. It doesn't really -- it is not going to
20 make for a workable system.

21 I think if there are concerns -- Hal's had
22 several meetings -- bring those concerns forward at the
23 beginning so they can be addressed. By the time it gets
24 to us, it is in a format that's fairly complete and we can
25 make a vote. Otherwise, we are just going to go back and

1 forth. So I think we --

2 MR. GILL: I'm sorry.

3 CHAIRMAN O'HARA: Go ahead, Hal.

4 MR. GILL: I have no problem holding another
5 technical subcommittee meeting -- we met Monday -- the end
6 of this week or next week to give people -- because I do
7 understand one of the difficulties with this document,
8 because it is so big and it has so many sections and there
9 were so many sections in rewrite all the time, it was
10 always difficult to try to get a document that people
11 could look at. Unless you were coming to the technical
12 subcommittee meetings, that was the only way that you
13 could get those rewritten sections. So that is a problem.

14 But now that this is out -- And granted, as I
15 said, it is a strike-out version. It is not the final
16 final with all the table of contents and all that, and
17 there may be page number problems and things like that.
18 Now that this is available, I don't have any problem
19 having another meeting where the sole purpose is if anyone
20 else that has had a chance to read it who hasn't in the
21 past who wants to comment, then that's...

22 CHAIRMAN O'HARA: That would be a good idea.

23 MR. GILL: The word needs to get out somehow
24 that here is the final draft, read this, come to a meeting
25 whenever or however long we need -- a week, two weeks,

1 whatever you need -- time period you think it needs to be.
2 But we do need to bring it to an end and then prepare to
3 vote on it the next meeting. But I understand that some
4 people can't come to them.

5 CHAIRMAN O'HARA: Is there a time frame, a
6 deadline, or something pushing us on this guidance
7 document?

8 MR. BINGHAM: Sunset performance measure for
9 the agency.

10 CHAIRMAN O'HARA: We have time constraints?

11 MR. GILL: We have been trying to get it
12 done, so we can continue forward with the rule.

13 CHAIRMAN O'HARA: Go ahead, Roger.

14 MR. BEAL: I think if you could set a date
15 out there for people who would have comments on this as
16 long as the subcommittee is made aware of any other views,
17 if there are any, in fact, you may have a meeting that no
18 one attends and then make a recommendation. But as long
19 as the opportunity for review of a complete document is
20 there, then that's adequate.

21 MR. GILL: I guess the -- well, I don't want
22 to open -- I understand the need, obviously, to have the
23 regulated public review this. But I don't want to open a
24 can of worms at the same time. In other words, if the
25 Department sends out an e-mail saying that this draft --

1 final draft is available, review it, and come to a meeting
2 and suddenly we end up with 60 people there with all -- we
3 will be back at square one again. And so I don't know
4 where -- what you do to make everybody happy.

5 MR. BINGHAM: Didn't we provide everything
6 about RBCA to everybody a couple months ago, at least a
7 month ago?

8 MR. GILL: We provided the --

9 MR. BINGHAM: RBCA --

10 MR. GILL: -- the draft. Was that a month,
11 two months? Well, to the Commission. I don't know if it
12 went out on the Web page or anything like that. But we
13 provided the Commission members. And that was -- even
14 though I knew it wasn't the final-final draft, that's the
15 reason I wanted it handed out so that they can start
16 reviewing it and reading it.

17 MR. BINGHAM: Because those sections were
18 not going to be touched. It was just Chapter 6, RBCA,
19 that was still going. So those chapters have been out
20 there for a couple months for people to review. I think
21 that was your intent from the get-go. So once we finished
22 Chapter 6, that was the last thing. We could move
23 straight into a vote.

24 MR. BEAL: Whether you have a meeting or
25 not, maybe we could just simply say, Let you know if there

1 is any issues and you can tell us about that.

2 MR. GILL: I think at the very minimum, I'm
3 always available for e-mails or letters or whatever,
4 faxes, to come to me with any questions.

5 But I guess, like I said, I can set up one more
6 meeting between now and when we vote on it to take any
7 final comments. And, preferably, I would like the people
8 to be there so they can address their issues personally so
9 I'm not trying to paraphrase somebody else's problems.
10 But I know you can't run up here every day.

11 So, Roger, you can either --

12 MR. BEAL: I probably won't be there. I'm
13 just trying to make sure that people have the opportunity
14 to see a finished document. And if they have an area of
15 concern, that you might either be able to discuss with
16 them and explain how that concern is being addressed and
17 why what you've done is adequate.

18 And then just maybe highlight in the meeting
19 ahead of the vote that there was some issues in these
20 areas and this is how -- why our document is being
21 recommended. And then we can accept your recommendation.
22 If you discover that there is some holes that you didn't
23 know about, then perhaps they should be revisited.

24 MR. GILL: Any discussion from the public?
25 Why don't we set up a meeting for, I guess, next Friday.

1 MR. KELLEY: Mr. Chairman.

2 CHAIRMAN O'HARA: Mr. Kelley.

3 MR. KELLEY: This is the -- Hal, this is the
4 final meeting to bring all of your issues?

5 MR. GILL: If there is any other concerns.

6 MR. KELLEY: Can we get just one more week
7 just to give people a chance because for many of these
8 Policy Commission members, this is it. This is the first
9 delivery of the whole thing. Is there any reason we can't
10 go one more week out?

11 MR. GILL: Well, when do you lose the
12 meeting rooms?

13 MR. BINGHAM: I don't even know.

14 MR. GILL: Is it the end of the month?

15 MR. DROSENDAHL: It is in June, the end of
16 the month. I think it is the 14th of June.

17 MR. KELLEY: Let's just have it before the
18 end of the month.

19 MR. GILL: I would kind of like to get it
20 in-between in case I -- because I want to make sure I have
21 time, if I have to, to finalize a letter if we cannot work
22 out a time that I'm going to be able to be here for the
23 vote. I would like to be able to get a letter with all my
24 concerns, if any, and recommendations.

25 And that gives us basically a week and a half,

1 if we have it on the 24th. And I would like to get it --
2 Well, plus that gives me -- if there are, indeed, issues
3 brought up at that meeting, that gives us another week
4 so to speak, to try to take care of those, if we have to
5 meet again, heaven forbid.

6 So I think I would like to make it for the 24th,
7 which is a week and a half from today.

8 MS. PASHKOWSKI: You have a long weekend.
9 You may not have people available.

10 MR. GILL: How about the 23rd? May 23rd,
11 which is a Thursday. And I don't know the availability of
12 the rooms yet or morning or afternoon. We are going to
13 try for nine to noon in one of these rooms here. If not,
14 we'll find a room. We'll post it.

15 CHAIRMAN O'HARA: Is Al Johnson here? See
16 if we can get Al to schedule a room before the meeting is
17 over today.

18 MR. GILL: So we are trying for the 23rd.
19 Did he leave before he heard the 23rd?

20 MS. NOWACK: Yes.

21 CHAIRMAN O'HARA: Let the record show that
22 Nancy Jamison is present.

23 MR. KELLEY: Mr. Chairman, could I ask two
24 questions, please?

25 CHAIRMAN O'HARA: Go ahead.

1 MR. KELLEY: Maybe Ian or Joe would be the
2 best one to answer it. Is the only difference in this
3 guidance document that was handed out in the collection of
4 everything we received to date the MTBE policy? Is that
5 the only thing that's been added to this version here
6 that's different than what's been distributed to date?

7 MR. GILL: Section 6.

8 MR. KELLEY: We got Section 6 last week, I
9 guess. That's why I'm asking. Is Section 6 changed in
10 this version also?

11 MR. DROSENDAHL: Yeah.

12 CHAIRMAN O'HARA: Go ahead.

13 MR. DROSENDAHL: This is Joe Drosendahl.
14 Yeah, other changes have been made from comments from the
15 meetings. So any --

16 MR. KELLEY: So the most current guidance
17 document that we need to get is Section 6 because it has
18 been changed since Monday and the MTBE policy?

19 MR. DROSENDAHL: Right. Some of the other
20 appendices, I think some of the other sections, were also
21 revised based on comments from the meeting. So the
22 version here is the most correct.

23 MR. KELLEY: So then maybe I think a better
24 question would be: How should we go about getting one of
25 these hard copies? Will they be available on the fourth

1 floor today?

2 MR. DROSENDAHL: Yeah, or tomorrow. We've
3 got some. We can make more.

4 MR. KELLEY: Okay. So we can get this on
5 the fourth floor by tomorrow afternoon, you think, Joe,
6 this bundle that's right there? Okay, great.

7 And the other question I had was about the
8 rules. The public comment ended April 30th. And, Ian,
9 isn't there some -- you have to have another time frame
10 that you have to put your final rule forward by? I'm not
11 sure what that date is called.

12 MR. BINGHAM: Today.

13 MR. KELLEY: There is another due date.

14 MR. BINGHAM: Due today.

15 MR. KELLEY: Today? And so later this week,
16 we can go to the Secretary of State, download the agency's
17 rule -- corrective action rule?

18 MR. BINGHAM: You should have it. It hasn't
19 changed one bit.

20 MR. KELLEY: And all of the CES and all of
21 that will be available. Today is the day you have to
22 submit it? Okay.

23 MR. BINGHAM: Actually, I think it is
24 Monday. I'm sorry. We are shooting for today. I think
25 the actual due date is Monday.

1 MR. GILL: I'm just glancing through here.
2 And I don't -- What is the appendix number for MTBE?

3 MR. DROSENDAHL: I'll look at it during the
4 break, if we have a break.

5 MR. GILL: I can't find it in here because I
6 see us stopping at Appendix O, which is the toxicology
7 section.

8 MR. DROSENDAHL: During the break, I will
9 look through it.

10 MR. GILL: Any other discussion on the
11 corrective action guidance document?

12 Okay. 3B, discussion on ADEQ UST state
13 assurance fund, the status of the stakeholder meetings.

14 Patricia.

15 MS. NOWACK: Mr. Chair, Mr. Gill, for the
16 record, my name is Patricia Nowack. We've had several
17 stakeholder meetings recently about the cost ceilings.
18 They've gone very well. Yesterday's meeting, I think
19 there were between 30 and 40 people there, real good
20 discussion. We are hoping to get some good comments from
21 the consultants, and we are moving forward with the cost
22 ceilings.

23 We haven't started on the SAF rule at all. And
24 internally or externally, we haven't talked about the
25 parking lot issues. I'm hoping to get covered in the new

1 building, covered parking. All right.

2 Would you make sure the camera is on me?

3 MR. GILL: Just to follow up on Patricia's
4 comments on the cost ceiling meetings, the plan right now
5 is, as you said, there was a good turnout of consultants
6 yesterday. The consultants are to get their suggestions
7 for new cost ceilings, problems with existing cost
8 ceilings, whatever they have, to Patricia within -- what
9 was the -- two weeks from yesterday.

10 And once a draft document is put together of all
11 their comments and what the SAF has been working on thus
12 far, then we will be setting -- starting stakeholder
13 meetings in the technical subcommittee to start going
14 through all those -- all of those issues and descriptions
15 and new or old policies or whatever.

16 And so the regulated public will be made aware
17 of when those meetings are scheduled and the agendas for
18 each. And, basically, those will probably cover the
19 parking lot issues. I mean, most of the parking lot
20 issues overlap in that they're technical issues but their
21 understanding of those issues has a bearing on the cost
22 ceilings.

23 MS. NOWACK: Hal, I just wanted to know for
24 sure if the Commission was interested in seeing those
25 descriptions, if there was a plan for members of the

1 Commission to attend the cost ceiling meetings. What is
2 the desire of the Commission as far as the descriptions of
3 the cost ceilings?

4 MR. GILL: Well, I'm assuming the way we did
5 it two and a half years ago is basically the -- these
6 discussions are going forward in the technical
7 subcommittee meetings. And then, again -- which are
8 always open to anyone and everyone and the Policy
9 Commission members. And that's where we will be
10 discussing the item descriptions and new cost ceilings and
11 whether we need them and whether we need old ones and what
12 we are going to do with the old ones and all that kind of
13 stuff.

14 And then once that document -- And we're on a
15 pretty strict time frame because I think Patricia said she
16 wanted to get the cost ceilings out for the --

17 MS. NOWACK: Survey.

18 MR. GILL: -- survey -- in August? -- yeah,
19 in August to be able to have it back and finalized by
20 December when they have to be completed.

21 And so, again, we'll be moving forward with
22 those meetings. And then just as with the guidance
23 document, bring the cost ceilings document to the Policy
24 Commission for a vote. But I really would prefer as many
25 members as possible to come to those.

1 Any other discussion, questions, on cost ceiling
2 meetings?

3 MR. JOHNSON: I was able to get 1710 for the
4 23rd from nine till noon.

5 MR. GILL: So Thursday, the 23rd, from nine
6 to noon in 1710.

7 Item B2, latest statistics on CRU and SAF
8 backlog applications.

9 MR. BINGHAM: Actually, we didn't get a
10 chance this month to put it into the backlog definition,
11 so I apologize. I'll try and get it out to folks by the
12 end of the week, e-mailed to the Commission members.

13 MR. GILL: Okay.

14 CHAIRMAN O'HARA: Hal, real quick, just for
15 my information, have you noticed -- we've had this for
16 eight or nine meetings -- is there an improvement in the
17 general direction of the backlog?

18 MR. GILL: Without looking back --

19 CHAIRMAN O'HARA: Or, Ian, if you want to
20 address that.

21 MR. GILL: Ian would probably have a better
22 idea of the numbers.

23 CHAIRMAN O'HARA: Is the number going down?
24 Are we getting a bigger backlog?

25 MR. BINGHAM: The direct pay is gone in

1 terms of the cycle time using the definition of 90 days.
2 Pre-approvals are still, I think, probably about 10 or so,
3 if I remember correctly. And we are working on the
4 reimbursement slowly, but we are starting to work on the
5 reimbursements that are not ranked.

6 CHAIRMAN O'HARA: Interesting.

7 MR. GILL: Ready to move on?

8 CHAIRMAN O'HARA: Go ahead.

9 MR. GILL: 3C, discussion of the Brian Beck
10 letters, these were sent out originally prior to the last
11 meeting. And, unfortunately, it looks like the members
12 may not have received the letters or all of the letters,
13 may have not been prepared for this meeting. So at
14 Mr. Beck's request, we are going to table that and put it
15 high on the agenda for next meeting, whenever that may be.

16 CHAIRMAN O'HARA: Does Mr. -- Can I ask a
17 question of Mr. Beck?

18 Brian, do you have electronic versions of these?

19 MR. BECK: Yes.

20 CHAIRMAN O'HARA: So we can easily
21 distribute those to all the Commission members?

22 MR. BECK: Yes.

23 CHAIRMAN O'HARA: Could I get an electronic
24 version of all those, and I'll make sure to get those out.

25 MR. BECK: I need your current e-mail.

1 CHAIRMAN O'HARA: I'll get with you after
2 the meeting. Thanks.

3 MR. GILL: Anything further, Brian? Okay.

4 Section 3D, this, I believe, was on last
5 meeting's agenda as well, but I am not sure we got to that
6 particular letter. We go to the other letter by
7 Mr. Pearce to Shannon Davis, which this one is as well.
8 But this is a different issue.

9 The letter we addressed last meeting was the
10 issue of the concerns of the corrective action rules.
11 This was a letter that concerns with some other issues.
12 And, I believe, Mr. Pearce is here to discuss this letter.
13 This kind of leads into the next two sections which are
14 basically the top ten denials, deficiencies, from
15 consultants and from SAF.

16 MR. PEARCE: John Pearce. I don't know what
17 to add to this issue at the present time. The issue
18 frankly was a discussion about two things really. It
19 focused on some perceived problems of the backlog of
20 handling direct pays and pre-approvals and SAF
21 applications. And then together with that, it focused on
22 the backlog on -- and the timing issues on responding to
23 corrective action plans, site characterization reports,
24 and so forth.

25 And the letter raised issues about whether the

1 Underground Storage Tank program was operating at maximum
2 efficiency. The letter also provided examples of certain
3 repeated instances where there was denials for reasons
4 that were, at least at that time, back in February, a
5 mystery to the regulated community because there had been
6 reinterpretations of statutes and rules by the Department.

7 Now, some of that has been aired out and
8 discussed. Some of it is addressed in Senate Bill 1338.
9 And there has been a stakeholder meeting since then, a
10 small group meeting, with some DEQ management to discuss
11 the issue in more detail. But there is still issues about
12 efficiency, about priorities, and about problems, both
13 present and anticipated. And I'm not sure how much of
14 that is really Policy Commission stuff as opposed to stuff
15 that ought to be discussed with DEQ management.

16 So I'm kind of -- not quite sure how to bring
17 this issue up in this forum today except to say that it
18 appears the Department is trying to work with us on some
19 of these most common deficiency denials to make sure
20 information is shared with the regulated community about
21 where the Department is coming from, which we appreciate.
22 And I think there is more attention being focused by the
23 Department on what the stakeholders at least believe is a
24 policy to make sure that these policies are announced in a
25 timely fashion to the regulated community so they can

1 acknowledge them and react to them.

2 And that would be a good segue to your
3 discussion about -- and I would be eager to hear what DEQ
4 is finding as the most common basis for deficiencies on
5 pre-approvals and work plans.

6 MR. GILL: Okay. Thank you, Mr. Pearce.

7 Then that does take us into the -- last meeting
8 Patricia volunteered to provide a list of the -- what they
9 found in their review of the applications that are the
10 top-ten most common deficiencies for denials. And then I
11 think Roger asked a similar type of list come forth from
12 the consultant community and/or the owner-operators.

13 So I had handed out the list that I -- and I had
14 a number -- I sent this out to a number of consultants and
15 got back many of them. I compiled them in my top 13. And
16 you have that in front of you.

17 Patricia, did you --

18 CHAIRMAN O'HARA: Real quick, Hal. Are
19 these in any particular order, or are they the most common
20 first?

21 MR. GILL: No. I mean, somewhat they are in
22 order to the most common in that order. But I didn't get
23 a huge volume to be able to pick out 10, 20, 30, 40 of
24 them were this. So they are somewhat in that order that I
25 saw more of these than others but not absolutely.

1 CHAIRMAN O'HARA: You want Patricia to
2 present hers?

3 MR. GILL: Yeah. I wanted to see how they
4 compare.

5 CHAIRMAN O'HARA: Go ahead, Patricia.

6 MS. NOWACK: First, I want to explain why I
7 think my denial codes are more accurate than anything that
8 Hal would have.

9 MR. GILL: No way.

10 MS. NOWACK: Mine is computer-generated
11 except for the list that you are looking at was done on my
12 computer last night late. So any spelling errors, just
13 take it to the fact that I worked until after 7:00 and
14 went home and worked for five or six more hours.

15 MR. GILL: Mine doesn't have any spelling
16 errors.

17 MS. NOWACK: Okay. The reason I think mine
18 is more accurate is because I'm looking at all
19 applications that were submitted and not those of just the
20 consultants. The reason just a few consultants might be
21 an inaccurate picture is because their denials may be
22 because of the way they invoice, because of the work they
23 do reports, because they don't do reports and submit them
24 to the Department before they submit the SAF claims.
25 There could be various reasons why one consultant would

1 see -- continually see the same denial code.

2 The top one -- And mine are in order. The top
3 one denial is a D35, and that is costs associated with
4 application prep. And you have to remember when you are
5 looking at my denial list that, again, it is computer
6 generated. And if someone had five or six invoices or
7 invoice items on an application for application prep, you
8 might see that D35 four or five times on the same
9 application even though it's just for application
10 preparation for one application. Is that clear? Did I
11 say that so anybody knew what I was talking about?

12 The Number 2 denial was proposed task was not
13 approved by DEQ. Number 3 most common denial is a D97,
14 which is information that was requested by the Department
15 was not received or not adequate for the Department to do
16 the review. The Number 4 -- And this one we all knew was
17 going to come. This is the R-03, that's costs were not
18 included in the pre-approval work plan. And that is the
19 49-1054(c) issue and changed by Senate Bill 1338. But
20 there will still continue to be some denials at least for
21 a while on the R03 because unless someone tells us what to
22 substitute or we have the information that we need to go
23 ahead and pay that claim the way it is submitted, that
24 denial code will remain.

25 C5A are 605(e) detail that's needed to process

1 the claim. D30 is inadequate proof of payment. Number 6
2 was D30. Number 7, I combined two or three different cost
3 ceilings for this. I think they were, like, P41, P45.
4 But basically they are cost claims exceed the cost ceiling
5 amount. Number 8 was P36, and that's the activities were
6 performed prior to the pre-approval being approved.
7 Number 9 -- I feel like David Letterman. The Number 9 top
8 denial was D31, inaccurate supporting documentation to
9 justify the amounts claimed or the units claimed.

10 The Number 10 was P47, the costs can't be
11 reimbursed and must be submitted on a reimbursement
12 application. That is, again, a 49-1054(c) issue. And
13 then I added Number 11 just because of the D35 and that
14 issue just to throw in. And that was a waste
15 disposal/water disposal issue that seemed to come up a lot
16 in the past, especially using, like, the '96 cost
17 ceilings, that time frame.

18 I also showed these codes to Tony Reed who was
19 very familiar with the denial codes, the computer system,
20 and what we are dealing with because of his experience
21 processing claims, asked him for a gut reaction, Does it
22 look right to you? And he said absolutely. Also, I
23 bothered Pejman when he was sitting here and asked him,
24 What do you think about these? Do they look like normal?
25 Does that computer-generated list look right to you, look

1 like it's in order? And he also agrees. So there you go,
2 three out of three, 100 percent.

3 MR. GILL: Al, did you make copies of this
4 for the audience as well?

5 MR. JOHNSON: Yeah.

6 MR. GILL: They have all been handed out?

7 MR. JOHNSON: No.

8 MS. NOWACK: You'll probably want to write
9 on your list that the top 11 denials are from DEQ and then
10 the other one.

11 CHAIRMAN O'HARA: Patricia, can I ask a
12 couple questions real quick? Just for clarity, was there
13 any time frame associated with these denials? Is that
14 from the beginning of time? Was that the beginning of the
15 database with Peterson?

16 MS. NOWACK: Actually, I did it a couple
17 different ways. But the easiest way for the system -- the
18 system doesn't tie denial codes to a date issued very
19 easily. So what we did was, like, the top ten for each
20 cost ceiling year, and then the top ten for the cost
21 ceiling, and then combined those together and did the
22 numbers.

23 It's interesting to note that some of the
24 Number 9 denials in a number of the years were only used
25 six or seven times. So it gives you an idea. Those

1 obviously are not going to show up on your list. But it's
2 not -- Like I said, the D35 was the most common. And I
3 think it was, like, over the life of the fund it's been
4 used 3,400 times, something close to that.

5 MS. JAMISON: Mr. Chairman, one more
6 question for Patricia. I just need to make clear, this is
7 in descending order of frequency?

8 MS. NOWACK: This is -- The Number 1 top
9 denial code on claims is D35.

10 MS. JAMISON: Okay. But then the others
11 aren't necessarily ranked?

12 MS. NOWACK: They are all in order. The
13 Number 2 is the C25.

14 MS. JAMISON: That was my question.

15 CHAIRMAN O'HARA: Okay.

16 Hal.

17 MR. GILL: Any more questions? I guess the
18 first -- if everyone has had a minute to review the two
19 lists, I guess the most obvious thing to me -- or the most
20 obvious difference, it actually kind of illustrates the
21 problem, I think, that the owner-operators/consultants are
22 in variably concerned about the technical issues where the
23 applications are set up and all the denial codes are set
24 up based on -- and it is understandable, but on the
25 application itself, whether it meets that particular...

1 Like Number 4, cost claims were not included in
2 pre-approved work plan, that's the --

3 MR. BINGHAM: Conform.

4 MR. GILL: -- that's the 1054(c) issue?

5 MS. NOWACK: Right.

6 MR. GILL: These are more -- And you kind of
7 see why we have problems figuring out what the problem is,
8 is because these codes are a lot better than they were in
9 the past. Still, they don't really tell us what is the
10 issue with what we turned in in some cases. If it is
11 Number 4, that's pretty easy.

12 But I think we are identifying that the
13 problem -- and it was mentioned yesterday in the meeting,
14 the problem typically is that you are trying -- we are
15 trying to fit a square peg in a round hole. Trying to fit
16 some type of an activity into an existing cost ceiling
17 because I think there is too much of a misunderstanding
18 out there, that everything has to be a cost ceiling. That
19 isn't the case.

20 If you have something that doesn't fit, turn
21 that in and say -- and provide the documentation as to why
22 you did what you did. But it doesn't have to be a
23 specific cost ceiling. And that is a problem. But
24 that's -- and I guess -- but that's an inherent program
25 with the entire process that we are doing, is that our

1 work doesn't fit in a round hole. It does, it is a drill
2 hole. Most environmental just doesn't fit a real
3 standardized way of doing things.

4 You never know what's going to happen until you
5 put an auger in the ground. So that is a real problem.
6 Maybe when we are looking at the cost ceilings and the
7 descriptions, we need to keep that in mind and figure out
8 how we can work -- if we can, work flexibility into issues
9 or put more -- not necessarily putting a lot of detail in
10 the description isn't necessarily a good thing.

11 I mean, then it limits you, like Mr. Denby was
12 saying last week, just like in policy. When you are
13 putting all the detail down, that doesn't necessarily
14 always help you. I think that's the difference. If you
15 look at the two lists, I mean, most of the ones that I
16 received from consultants are really all technical-type
17 issues that didn't necessarily fit into the round holes of
18 the application.

19 MS. NOWACK: Your list includes
20 deficiencies, mine does not. So that's a big difference.

21 MR. GILL: Maybe that's a semantics problem.
22 I was calling it -- I wasn't -- Let me think. To me
23 deficiencies, you receive deficiencies on work plans that
24 you had an opportunity to respond to. So that's a
25 deficiency. But when it -- Well, then what is the

1 difference between that and the denial?

2 MS. NOWACK: The denial is the decision has
3 been made and it is not going to be approved one way or
4 another. You talk about Number 4, R03, it is interesting
5 to know that R03 has been a denial code, was used -- the
6 second most used for cost ceilings in 1996, the third most
7 common for cost ceilings in 1998, the third most common
8 for cost ceilings in 1999, the ninth most common in 2000.
9 And it doesn't even show up using 2001 cost ceilings.

10 MR. GILL: I think -- in looking at that one
11 in particular, Number 4, and just thinking back to how --
12 because there is so many unknowns when you do an
13 environmental investigation, when you write your work
14 plan, those unknowns are basically in your text. I mean,
15 you say, okay, I'm going to do this, but you don't really
16 know if you are going to be able to do that. You don't
17 know if that's going to be appropriate when you get out
18 there.

19 And that's really a huge problem that is not
20 going to go away. It is always going to exist. That's
21 something we have to think about when we are looking at
22 the cost ceilings, is how can we work in any kind of
23 flexibility because, unfortunately, the denial codes allow
24 no flexibility. And I don't know if we can make that
25 process work. That is a problem. You write a work plan,

1 it is just a work plan. We don't know if that is what we
2 can do. That's why we are having all the problems with
3 the 1054(c), why we are trying to work out with the new
4 language where we can have some kind of flexibility.

5 MR. BINGHAM: It seems to me from what she
6 just reported, the opposite of what you just stated is
7 going on. As we've moved progressively through the
8 years -- It's not?

9 MS. NOWACK: The reason it didn't show up in
10 2001, it had to be a 2001 work plan that was already
11 implemented and we've already had costs.

12 MR. BINGHAM: That's my point exactly. As
13 we're doing work plans --

14 MS. NOWACK: For it to be denied, the work
15 plan had to be approved for 2001, implemented, and we're
16 already processing direct-pay applications on it. So the
17 reason -- Tony, do you agree with me? The reason it's not
18 showing up yet in 2001 is we haven't gone far enough
19 through the process to be looking at work plans for 2001
20 and doing the denial codes for the direct-pay applications
21 on those work plans.

22 MR. BINGHAM: Didn't it drop to nine for
23 2000?

24 MS. NOWACK: It is used 150 times using the
25 2000 cost ceilings. And, again, a lot of those 2000 work

1 plans haven't been fully implemented and we haven't seen
2 and processed the direct-pay applications on those. So
3 even though as time goes on, we'll start looking at costs.

4 MR. BINGHAM: You are telling me in 2002,
5 2000 work plans haven't been implemented yet?

6 MS. NOWACK: I'm saying 2002 work plans --

7 MR. BINGHAM: We are in 2002 now. Work
8 plans approved in the year 2000 have not been implemented
9 as yet?

10 MS. NOWACK: All the direct pays haven't
11 been received and processed on those. And, Ian, you know
12 as well as I do, a lot of people don't implement the work
13 plans after they've been approved. They wait for funds to
14 be encumbered.

15 CHAIRMAN O'HARA: Can I make a couple
16 comments? It seems to me the two lists -- there is no way
17 really to compare them. They are apples and oranges
18 because denial codes are more like -- they are much more
19 general. They are like catchalls. So some of your
20 deficiencies or denials on your list, two or three of them
21 may go into the category of not enough information or
22 information not adequate. So it's hard to compare the
23 lists.

24 But one thing I would note is that on your list,
25 it seems to me, if you'll go through the consultants'

1 common denials and deficiencies, each one of those, there
2 is an underlying policy that's being implemented. For
3 instance, Number 9, denying payment for remedial system
4 install until unit is turned on, there is obviously a
5 policy the Department has that we are not going to pay for
6 remediation systems until it is operational.

7 MR. GILL: It seems to be a moving target
8 too. That's why it has those three and four different
9 reasons.

10 CHAIRMAN O'HARA: I guess what I'm getting
11 at is that underlying policy, whenever the Department gets
12 together on a new issue or something and says, Hey, this
13 is the situation, we need to institute this policy, if
14 that policy can come forward to the Commission and be
15 communicated to the general public --

16 MR. BINGHAM: Can I make a comment to that?

17 CHAIRMAN O'HARA: I think you said that in
18 the last meeting.

19 MR. BINGHAM: That has been brought to my
20 attention. And I have asked for even just one letter
21 where that has been stated. And to date, nobody has shown
22 me a letter that shows where we've done this. I have
23 not -- somebody needs to show me where we did this because
24 I went through -- I literally asked every single case
25 manager that works for me, and we went through the

1 consultant who brought this up, every application that
2 consultant submitted. I have yet to see this happen.

3 And I think at least I ought to be given the
4 opportunity to look before these kinds of statements are
5 made. And I personally called the consultant and asked
6 him for this, and still it has not been provided to me.
7 So I really am irritated.

8 CHAIRMAN O'HARA: My comment --

9 MR. GILL: This isn't a single issue,
10 though. I have had it myself.

11 MR. BINGHAM: Somebody show me. Somebody --
12 somebody show it to me.

13 CHAIRMAN O'HARA: Ian, my comment was
14 general, just as a general thing. It may have happened
15 before you were even here.

16 MR. BINGHAM: Which is fine. Somebody show
17 me.

18 CHAIRMAN O'HARA: But the point is -- And
19 this has gone on for ten years. If we could, I know that
20 my experience of submitting applications, sometimes the
21 first time you find out about the policy is when you get a
22 denial on the claim and you say, Oh, they are going to
23 start doing that now. So I think from my reading of the
24 minutes last meeting, I think there was some
25 acknowledgment and some constructive acknowledgment that

1 we can do a better job of bringing these policies forward.

2 And I think that's -- moving forward that's the
3 solution. If the Department is seeing something new going
4 on out there, let's bring it forward and address it so
5 these guys know before they go out in the field and do
6 work that there is going to be a change in the way it is
7 addressed.

8 MS. FOSTER: Mr. Chairman, I think it ought
9 to be a valid argument. And that should be in writing and
10 that should be provided to DEQ rather than hearsay -- and
11 I don't mean anything negative -- but rather than just
12 word of mouth. It ought to be a valid complaint.

13 MR. GILL: I agree. But here's where the
14 rub is, is that invariably when -- I can bring the
15 response to the deficiency letter for these. I'll have to
16 go -- because it was my last company. I have seen this I
17 don't know how many times.

18 And, basically, my -- ours was the first one,
19 Wait until the unit is turned on. I'll have to contact
20 Lou Brooks to see if we can find that and send it forward.
21 That definitely occurred. But the -- these here are
22 really current. Some of them are being addressed per the
23 1054(c). Other ones are going to be addressed in the cost
24 ceilings. But some of these have been going on for a long
25 time, but you can see the big difference.

1 Mr. O'Hara is absolutely accurate. These
2 represent what we have been complaining about as the
3 regulated community for umpteen meetings now, is these new
4 policies because this is what we're hearing and this is
5 what we are being told or we have been receiving in a
6 deficiency letter.

7 But I will -- on that particular issue, I will
8 be glad to do what I can to find those -- get letters sent
9 to him.

10 Any more comments, Commission members or the
11 regulated public?

12 CHAIRMAN O'HARA: Are you complete with your
13 Item 3, Hal?

14 MR. GILL: Yes.

15 CHAIRMAN O'HARA: I'm going to call for a
16 short break, ten minutes, and reconvene. Thank you.

17 (Whereupon, a recess was taken from 10:29
18 o'clock a.m. to 10:51 o'clock a.m.)

19 CHAIRMAN O'HARA: Welcome back. We are
20 going to start this meeting. Al Johnson would like to
21 make an announcement regarding the UST program conference.

22 MR. JOHNSON: Yes. On June 5th of this year
23 we will be having the annual -- sometimes annual -- UST
24 program conference. It's going to be held at South
25 Mountain Community College, and each of you should have a

1 brochure, little flyer, that has all the pertinent
2 information. You can actually sign up on-line, if you
3 would like to attend. So I encourage everyone to be
4 there. It's always a lot of fun. And you just never know
5 what you are going to miss if you don't come. So I
6 encourage you all to attend. If you have any questions,
7 please call myself or Cynthia Miller.

8 CHAIRMAN O'HARA: Thank you, Al. Moving on
9 to Item 4, ADEQ updates, I think we already took care of
10 the cost ceiling stakeholder meetings.

11 Am I correct, Patricia?

12 MS. NOWACK: I believe so, yes.

13 CHAIRMAN O'HARA: Item B is the new State
14 Assurance Fund application and training seminars.

15 Patricia, would you like to give us an update?

16 MS. NOWACK: We're still continuing to work
17 on the new application. And once it's finalized, we will
18 schedule the training seminars. It doesn't look like they
19 will be until July at the earliest given the fact that
20 we're moving. My unit is moving the last week in June.

21 CHAIRMAN O'HARA: Item C, use of the
22 substitution table and waiver form for 1054(c) denials.

23 Updates?

24 MR. GILL: Mr. Chairman, I can -- I sent
25 that in because I had a question. What I would like from

1 Patricia, if she can do it, is to, once again, go through
2 the way the substitution table and the waiver works
3 because I think the confusion out there is that so many
4 owner-operators/consultants don't know what the new
5 language is going to be. I want to hear from you that the
6 decisions that are going to be made right today are what's
7 in place today. That's why we are still getting denials
8 when we think -- even on substitution waiver tables and
9 things that we believe are accurate, but that's based on
10 what we know is coming.

11 MS. NOWACK: Mr. Chairman, Mr. Gill, I am
12 making a presentation on June 5th to the UST conference
13 about how the Department is implementing Senate Bill 1338.
14 I would be glad to make a presentation again to the Policy
15 Commission. I'm not prepared to do that today. But to
16 answer your question, the Department is continuing to
17 process applications using the thought process of Senate
18 Bill 1338.

19 And, again, without that substitution form,
20 those denials have to continue to come. The Department
21 can't just make the assumption that you are going to
22 substitute one thing for another. The Department cannot
23 make the assumption that you are done with your work plan
24 unless we have that information. There is a lot of
25 information that we need to be able to process those

1 applications smoothly. And I think it is going to take a
2 while for the consultants, the owner-operators, to know
3 what we need and to give it to us upfront with the
4 applications so that we can process it without going
5 through the appeal process and having that issue.

6 And I don't know if that answers your question
7 or not, Hal.

8 MR. GILL: I guess the complaints that I'm
9 hearing deal with the substitution table and how, I
10 guess -- And I don't know if it is not an understanding of
11 how to use it accurately on the consultant's part because
12 I know that I've done some that I've had calls and had to
13 make changes.

14 But my understanding, I thought what you said in
15 the first presentation, is that if you had a -- the
16 problem is always semantics. That's why this big section
17 in the new rule is all description of new terms. But if
18 you have an activity that you perform that is not
19 specifically in the pre-approval work plan, the
20 substitution waiver form allows you to take another
21 activity that is in the work plan and substitute
22 technician time that you had -- I guess the easiest one is
23 the permitting.

24 In the pre-approval work plan, it has senior
25 staff and project level time or something like that. A

1 technician level person was used in -- as well as a senior
2 staff, or whatever, for the pre-approval. That's denied
3 because it wasn't in the pre-approval work plan. There
4 was not a slot for technician time.

5 I know, because it has been approved, that you
6 can substitute, okay, there is plenty of staff level time
7 left in the pre-approval so I would like to substitute the
8 technician -- the amount of hours that he used. I would
9 like to take that out of the staff level time. That
10 worked because it was still in permitting.

11 But my understanding of the way that the -- the
12 waiver form itself is, it is saying -- you are giving up
13 your rights to use this particular activity again. My
14 understanding on that is that would also allow you, if
15 there was no money left in permitting, to substitute three
16 hours of technician time from something in the
17 pre-approval work plan that you know is not going to be
18 used. And the waiver says you can't use it.

19 MS. NOWACK: Again, it is quite a lengthy
20 presentation to go through the whole thing. But Senate
21 Bill 1338 and the Department wants to make sure that the
22 objectives of the work plan are performed. And that's the
23 key issue. The waiver form actually -- And you used a
24 good example. The one that we like to use that we used on
25 the very first issue that we had was bins for barrels.

1 And if you are using bins instead of barrels and
2 you do the waiver form, it is accomplishing the same task
3 and you are not exceeding the pre-approved amount and you
4 are not exceeding the applicable cost ceiling, the waiver
5 form works perfect. Where it doesn't work perfect, if you
6 are trying -- and the agreement with stakeholders was that
7 we weren't going to take \$10 from here and \$10 from here
8 and \$5 from here to make \$100 to pay for something. If
9 those kind of issues were coming up, they would be paid at
10 the end of the accomplished pre-approval scope of work.

11 MR. GILL: I understand the \$10. That would
12 slow things way down. I do understand that. Are you
13 saying also that even with the new Senate bill language
14 you would not be able to use -- Well, bins isn't a good
15 one for that because it -- Well, let's say for some reason
16 that soil -- you ended up with contaminated soil when your
17 work plan was assuming you were not going to for whatever
18 reason. And you end up having to get drums. You couldn't
19 take drums -- the costs for the drums from some other item
20 as long as your -- because, again, if the work objective
21 is site characterization --

22 MS. NOWACK: If you can prove to the
23 Department -- And the issue is we don't want to make the
24 pre-approval and direct-pay process worse than it is. We
25 don't want to include more reasonable and necessary

1 evaluation than we already have for doing a direct-pay
2 application. And the more you do that kind of thing, the
3 less -- the more time it takes to review an application
4 and the more cumbersome it becomes.

5 So if you're within that activity, if you are
6 drilling wells and your scope of work says you are doing
7 site characterization and you are supposed to put in three
8 wells and you end up putting in four wells but using less
9 footage of the wells, that substitution form would work
10 for that kind of activity. There is several activities
11 like that, that it would easily work as long as you are
12 accomplishing the task, the scope of work -- the
13 objectives in the work plan are reasonable and necessary,
14 and so on.

15 So, again, I will make a presentation on the
16 5th. If you can't be there or you want me to make another
17 one to the Policy Commission, I would be more than happy
18 to do that. If you have an individual question, give me a
19 call.

20 MR. GILL: Mine worked but mine was simple,
21 but I had received questions from others.

22 MS. NOWACK: Have them call me. I'll walk
23 through it and tell them whether it will work or whatever
24 I need to do.

25 CHAIRMAN O'HARA: Anybody in the public have

1 a question on the ADEQ updates, like to make a comment?

2 Moving on to Item 5, discussion of letter
3 received from Jeff Trembly of Mogollon Environmental
4 Services related to the SAF co-pay and how that's being
5 treated. Is Jeff here?

6 MR. TREMBLY: I'm here.

7 CHAIRMAN O'HARA: I think your letter was
8 self-explanatory, and I could try to paraphrase it. Would
9 you like to just describe your issue to the Commission
10 members? Do you feel --

11 MR. TREMBLY: Yes. Jeff Trembly for
12 Mogollon Environmental Services. I guess the main issue I
13 have is whether or not from a legal perspective -- and I
14 have the language there in the letter -- whether or not
15 owners and operators are required to pay their co-pay and
16 is it lawful for them not to, for their consultants to
17 credit them that co-pay or in some way cover the co-pay
18 for them or even some portion of the co-pay.

19 There have been allegations of that sort of
20 practice going on since my time here at ADEQ in 1995. And
21 I believe -- I just believe it is an issue that needs to
22 be brought up and decided one way or the other. And then
23 everyone needs to be aware of how that particular law is
24 being interpreted. And everyone gets to -- needs to get
25 on board and practice it appropriately.

1 CHAIRMAN O'HARA: Great. Does everyone
2 understand the issue on the Commission? There is a co-pay
3 system that the owner is responsible for. It is 10
4 percent. It used to be a deductible, but now it is a
5 co-pay. And my understanding is there hasn't been no
6 legal interpretation, correct me if I'm wrong, from the
7 Department on this issue. It has never been an issue they
8 have asked for a legal opinion on.

9 MR. TREMBLY: Not that I'm aware of.

10 CHAIRMAN O'HARA: There is a question as to
11 whether or not it is legal.

12 MR. TREMBLY: Correct.

13 CHAIRMAN O'HARA: That's obviously not
14 something we can -- I think we should try to address. But
15 maybe the policy -- The propriety of whether or not it is
16 proper to have consultants crediting co-pays so the
17 owner-operator has no incentive to reduce costs is
18 something that this body should look at.

19 Do we have consensus on that or discussion?

20 Roger.

21 MR. BEAL: Well, in the past, grant monies
22 have been used to do the 10 percent deductible. I think
23 that same logic would apply at that point in time. Yet,
24 it was permitted to be done. That had nothing to do with
25 the contracting edge or not. That was just money for

1 people that didn't have it.

2 I have the observation to make, that things --
3 other than the consultant not requiring the 10 percent,
4 that 10 percent has been paid by people other than the
5 owner-operator in the past without question.

6 CHAIRMAN O'HARA: But they had to meet
7 certain financial hardships to qualify for that, right?
8 That was the reason they were given that money?

9 MR. BEAL: That's true. But that doesn't --
10 to me, that doesn't cloud the legality of doing it, the
11 fact that it was done. I think that the logic that the
12 legislation put it in there so that the consultants -- or
13 the owner-operator could rein in the consultant may not,
14 in fact, have been the case. But other than -- So it was
15 personal buy-in.

16 And I will go into that in the fact that,
17 certainly, this owner-operator does not have the expertise
18 to argue with a consultant about the appropriateness of an
19 action. And judging by the conflict between the
20 Department and consultants, it's a pretty involved issue
21 to argue the appropriateness of an action. I'm not sure
22 there would be a benefit were that the case. Those are
23 just two things that's happened.

24 CHAIRMAN O'HARA: Let me throw out an
25 analogy. Maybe, Jeff, you can correct me if it is not an

1 accurate analogy. It seems to me everybody is familiar
2 with insurance. If you had a car accident and went to a
3 company to get an estimate on what it would cost to fix,
4 and they said, Hey, it's going to cost \$2,000 and you got
5 a \$500 deductible. He says, We'll just beef it up to 2500
6 and that way you are not out of pocket, is that a similar
7 type of circumstance we are talking about, absorbing the
8 co-pay?

9 MR. BEAL: I'm not going to say it couldn't
10 go that way. But on the other hand, you may have your
11 windshield replaced, and under your insurance policy, the
12 company will buy you lunch to go to them. It is a
13 competitive technique. And if the firm is able to do that
14 out of volume, I mean, would you rather have 90,000 out of
15 100,000 or would you rather have none? That's a business
16 decision that you are going to have to make. And it
17 depends on what your back end is.

18 I think we are talking legality and not
19 necessarily business here. So I think we've done things
20 in the past. And for people that don't have a lot of
21 funding, they made -- might need to find somebody. I
22 mean, if you -- if you were asking me to pay \$50,000 on a
23 \$500,000 project, we better have a good discussion right
24 now.

25 CHAIRMAN O'HARA: And I think that's the

1 discussions that would not take place if you didn't have
2 to pay that 50,000. You would have an incentive to keep
3 those costs down if you did, indeed, incur 10 percent. I
4 think that's the purpose. Without the 10 percent, you can
5 charge whatever you want.

6 MR. BINGHAM: I don't think it equates.

7 MR. BEAL: That's what I'm trying to say.

8 It doesn't relate. I can't do it, period. Then what are
9 you going to do and who is going pay?

10 CHAIRMAN O'HARA: You've got to hire a
11 consultant. There is no question.

12 MR. BEAL: Yeah, there is. If I don't have
13 it, you can't get it.

14 CHAIRMAN O'HARA: Nancy, do you have a
15 comment?

16 MS. JAMISON: I think you are correct, that
17 there are two issues here, whether there is a legal
18 problem. I'm not prepared to comment one way or the other
19 on that. And it's interesting to hear Roger's perspective
20 on whether the legislature intended there to be some
21 element of competition. Certainly, if there were a
22 requirement that at least two bids be obtained, maybe that
23 would help with the competition and the owner-operator
24 would have some more clear idea because the bidders would
25 have to explain why they -- what they are proposing and

1 why they can do it for this amount of money and so forth.
2 I don't know if I'm following you or not.

3 MR. BEAL: Well, I've got to admit, it
4 sounds logical. But I can only go back to my own
5 experience where you don't know anything about the
6 business. You don't know anything about the consultant.
7 And you listen to a lot of promises that come through the
8 door with no guidance. You have to select a consultant
9 that can do it. And it is pretty easy to find somebody
10 who will low ball the cost. Particularly early on, it was
11 very easy to do that. To know whether or not somebody had
12 the wherewithal to complete the project is a decision that
13 you have --

14 MS. JAMISON: At this stage, we have a fair
15 amount of experience.

16 MR. BEAL: Not for somebody who is walking
17 through the door, you don't, because there is no track
18 records available.

19 MS. JAMISON: No?

20 MR. BEAL: And you have your own preference.
21 There could be lots of reasons for a consultant to say not
22 to worry about the 10 percent. They might want to just
23 handle the financing in-house without having to deal with
24 you and whatnot. It may be a competitive advantage that
25 you would have to have to take into it.

1 CHAIRMAN O'HARA: Jeff, go ahead.

2 MR. TREMBLY: If I may. I think Roger has
3 hit the nail on the head there. If I am going to compete,
4 let's say, for Roger's business and I believe it is
5 unlawful to pay the co-pay for him because I believe the
6 statute says he has to pay it, and I come to Roger and I
7 say, Well, you've got this job. I think I can do it for
8 you for \$45,000 but you are on the hook for \$4500, another
9 consultant who doesn't believe that 10 percent co-pay --
10 he believes he can pay it, he can come to Roger and say,
11 Don't worry about it. We can handle this job for \$80,000
12 and go out and do the wells or do whatever he wants to do.
13 Roger just signs the form. Not pointing at you, Roger,
14 just as an example. Sorry.

15 MR. BEAL: That's all right.

16 MR. TREMBLY: And then away he goes. The
17 cost to the taxpayer is the difference of 3950 versus
18 \$80,000. And that's the issue. It is what are the
19 taxpayers going to get stuck with here.

20 MR. BEAL: As an owner-operator -- And I
21 guess we kind of jumped into an example here. But that's
22 why Patricia is back there doing her job with cost
23 ceilings and looking at the work that was performed. Is
24 it required? Quite frankly, that's how I did my business.
25 I did do pre-approval, and I used the Department to

1 determine what was appropriate work because I had no idea
2 even if I was paying 10 percent or I wasn't am I doing the
3 right thing. I'm confident that we are, and we went ahead
4 that way.

5 That's still true today. If my consultant
6 loaded a request for money, they would be having denials
7 again. I had an advantage because I used the pre-approval
8 in that manner. If I were rich and famous and decided to
9 go hire a consultant and we would get the job done and
10 then I would ask for reimbursement and that gets denied,
11 then the dime is on me. But when it comes to the cost of
12 the taxpayer, the taxpayer is being well protected, at
13 least from my point of view. I don't think it's possible
14 for a consultant to do more than is --

15 MR. TREMBLY: I disagree.

16 CHAIRMAN O'HARA: You are saying the --
17 protection you are alluding to is the cost ceilings.

18 MR. BEAL: The cost ceilings and the
19 appropriateness of the actions. If you went back and
20 looked at things that were denied, if a work plan would
21 have been adequately covered with six borings and you put
22 in 18, somebody is going to be disappointed. Now, if you
23 are saying that consultants don't always do the right
24 thing and that that's a source of these denials, then,
25 perhaps, that's a different subject that we ought to be

1 looking at.

2 CHAIRMAN O'HARA: Let's assume for the
3 moment that both those consultants do the same level of
4 work, but let's assume one -- since there is no
5 competition, we have the cost ceilings, correct? And
6 there is no -- cost ceilings are the upper limit at which
7 they allow. One charges the cost ceiling, the limit, and
8 one would charge something less to be more competitive.
9 Then in that case, the one that says, I'll absorb your
10 co-pay, is the Fund being protected in that circumstance?

11 MR. BEAL: I don't think you can say -- It
12 may very well be the person that is going to absorb the
13 co-pay is the one with the lower costs. It could be --
14 they could be in a business position where in order to
15 keep their operation going, they'll take enough business
16 to keep everybody in-house but not make a lot of money off
17 of it. There is no profit in it for them. Certainly,
18 that 10 percent but everybody is there. Should more work
19 come along, they are in position to do that. They've made
20 that decision to go that way. Where somebody else may
21 have a different business philosophy that says, I'll get
22 as much as I can and in five years I'll retire.

23 It is just not -- I don't think it is
24 projectable. And I don't -- I think that certainly for
25 owners and operators that don't have a lot of financial

1 means, I would find the ability to absorb that 10 percent
2 incentive to go a particular way. It might be the only
3 way that the work is going to get done. Otherwise, it
4 becomes a state lead and they need to hold back anyhow.

5 CHAIRMAN O'HARA: Any other comments from
6 Commission members?

7 Dan, do you have a comment?

8 MR. KELLEY: Dan Kelley. To be honest, I
9 don't think -- I mean, Mr. Trembly's issue is a
10 competitive business issue. And I certainly can empathize
11 with it, but I don't see it being a legal issue or a
12 procedural issue for the Department.

13 I'll use numbers to make it easy for us to all
14 understand. If I go to a client -- new client and he
15 contracts me with the understanding that I'm going to pay
16 for his co-pay, eat his co-pay, whatever euphemism you
17 want to use, we've reached that agreement, then when I
18 prepare a \$100 invoice for him, he is only going to be
19 obligated to pay me \$90.

20 Then when I take that \$100 invoice and I present
21 it to the SAF for payment, along with a copy of my check
22 for \$90 demonstrating proof of payment that this invoice
23 was paid, the SAF by Mr. Trembly's citation right here
24 doesn't pay 90 percent of the \$100 invoice. They pay 90
25 percent of the \$90 check. That means I'm taking 81 cents

1 on the dollar. There is nothing incentivizing consultants
2 to do this.

3 If you have a very, very, very, very low
4 overhead and cost of business, you can take 81 cents on
5 the dollar and be profitable. There might be consultants
6 out there doing that. But, again, the State is not being
7 impacted. The State is getting a better deal because the
8 state is paying 90 percent of 90 percent versus 90 percent
9 of 100.

10 CHAIRMAN O'HARA: My understanding of this
11 issue would be on the direct-pay basis, you would see an
12 invoice for \$1. The State would pay 90 cents. That 10
13 percent was never absorbed by the consultant and never
14 paid.

15 MR. KELLEY: Either way, even on the
16 direct-pay basis, you have to certify proof of payment.

17 CHAIRMAN O'HARA: I don't think you do.

18 MS. NOWACK: If the owner-operator is
19 getting paid, you have to.

20 CHAIRMAN O'HARA: If the owner-operator is
21 getting paid. The direct pay is direct pay to the
22 consultant.

23 MS. NOWACK: Direct pay can be paid to
24 anyone.

25 CHAIRMAN O'HARA: But there is a standard

1 practice to the consultant.

2 MS. NOWACK: A direct pay can be paid to
3 anyone. So if it is getting paid to the owner-operator --

4 CHAIRMAN O'HARA: Then they have to show
5 proof.

6 MS. NOWACK: -- yes, we want proof of
7 payment. And yes, we only pay 90 percent for an
8 owner-operator of the approved costs.

9 CHAIRMAN O'HARA: And if it goes to the
10 consultant?

11 MS. NOWACK: We only pay 90 percent of the
12 approved costs.

13 CHAIRMAN O'HARA: But there was no proof of
14 payment?

15 MS. NOWACK: That's correct.

16 CHAIRMAN O'HARA: Are most direct pays to
17 owner-operators or consultants?

18 MS. NOWACK: It's mixed, Mike.

19 MR. KELLEY: I guess where I'm going is, it
20 is not -- it is a guerilla business practice, but it is a
21 business practice. It is not a legal issue. The
22 Department has very specifically covered itself and the
23 taxpayers. We are paying 90 percent of what was paid.
24 And if you paid 90 cents on the dollar, then we are only
25 paying 90 percent of 90 cents. Do you want to pay 50

1 cents on the dollar? We are only going to pay 90 percent
2 of 50 cents.

3 CHAIRMAN O'HARA: It sounds like a legal
4 issue, and the question is whether the law the legislators
5 came up with is saying the owner-operator should incur 10
6 percent of the costs is being appropriately interpreted.
7 It is not really -- seems to me -- Is there a policy issue
8 here that we want to address?

9 MS. JAMISON: It is a difficult one. I see
10 both sides of it. And, frankly, I'm not sure if there is
11 a legal issue, if the Commission or DEQ asked the Attorney
12 General's Office for an opinion, what the response would
13 be. Certainly, as -- I mean, policy matters are matters
14 for the legislature to look at.

15 And if there is a policy concern as to whether
16 taxpayers are being adversely affected by these practices,
17 then we might want to do some more investigating and ask
18 the legislature to take a look at whether they want to do
19 anything about it.

20 CHAIRMAN O'HARA: Barbara.

21 MS. PASHKOWSKI: Barbara Pashkowski with the
22 AG's office. I just want to throw out one other
23 observation that I think might be relevant to
24 owner-operators and volunteers. And it is an issue of,
25 Mr. Beal, if an owner-operator has essentially

1 relinquished control of the corrective actions to their
2 consultants, are the owners and operators and volunteers
3 out there aware of the maximum coverage limits, for
4 volunteers, \$500,000; for owner-operators, 500,000,
5 possibly a million?

6 And if you are not controlling what your
7 consultant is doing, it is possible that that maximum
8 coverage would be hit and the site would not be cleaned
9 up. And then the volunteers have a property that's not
10 clean. Owner-operators have a property that's not clean.
11 I think when you look at the -- I almost hate to say this.

12 The intent of the statute is to insure that
13 there is some control over the corrective action, not just
14 by the agency but by the person who owns the property or
15 the person that was responsible for the release. And I
16 think those mechanisms, the dollar amount -- the cap on
17 the dollar amount is in there for that purpose and the
18 10 percent co-pay is in there for that purpose. But I
19 think that is an interesting issue that should be
20 considered by owner-operators and volunteers.

21 MR. BEAL: That's a very good thing.
22 Control is not transferred to the consultant. Even in any
23 reply that comes from the Department, it is quite clear
24 who is responsible for the clean-up. And it is not the
25 consultant as much as it would be nice if it were. And

1 owners and operators are quite concerned that we are going
2 to accomplish the tasks with the money that's available
3 with or without the 10 percent.

4 I think that may have, in fact, been the part of
5 the 10 percent, to have a buy-in from the owner-operator.
6 I think that the legislators also with the evolution of
7 the grant fund addressed the need of people that didn't
8 have the 10 percent and admitted that at that point in
9 time, there would be times that the owner-operator would
10 take money out of their own pocket that they didn't have
11 to pay the 10 percent and the work would go forward.

12 And so I think that, yeah, there probably was a
13 10 percent buy-in in terms of interest. I think the
14 Department has never -- despite who paid the 10 percent,
15 whether you got the grant or not, didn't say the
16 consultant was responsible for the site. It has always
17 been the responsibility and remains so of the
18 owner-operator.

19 And I know I sure count the dollars and look at
20 the time and hope that the funding is there to complete
21 the project. I can't imagine anybody doing different than
22 that. I mean, just as we can say that some work might be
23 done that isn't required, as Mr. Trembly has said, I'm
24 sure that's also a fact of reality.

25 MS. PASHKOWSKI: I would be curious, though,

1 of the owner-operators out there and maybe more so from
2 the volunteers who -- as most people who practice in this
3 area know that there is no enforceability against a
4 volunteer if the site is not cleaned up. How many are
5 really aware of the dollar maximum and what will happen if
6 the \$500 -- \$500,000 maximum or million dollar maximum,
7 whatever might be appropriate, is reached and the site is
8 not cleaned up, how many people out there are really aware
9 of that issue?

10 It seems to me that the volunteer has less
11 incentive of overseeing the corrective actions at the site
12 because there is no enforcement. They are not required to
13 do the clean-up. And those are just, I thought, issues
14 that I think people ought to be aware of.

15 MR. BINGHAM: I would like to also add, I'm
16 a little -- I am having a little difficulty with your
17 relating the grant program to consultants waiving the
18 co-pay issue. The grant was set up to assist financially
19 needy owners and operators in meeting some of the
20 financial obligations that are imposed upon them in
21 Chapter 6. In my mind, I cannot see how you equate monies
22 to assist people in meeting their financial obligations to
23 a business practice.

24 MR. BEAL: The only equation that I'm trying
25 to make, and perhaps is not correct, is that the

1 10 percent came from somebody else's pocket. Now, what's
2 the difference whether the consultant pays it, a grant
3 pays it, or somebody off the street pays it? The 10
4 percent wasn't paid by an owner-operator or may not have
5 been paid directly by the owner-operator. And I think
6 that's the issue that we are talking about.

7 MR. BINGHAM: I still don't see how you
8 equate the two.

9 MR. BEAL: Okay. If it doesn't, then it
10 doesn't.

11 MR. BINGHAM: When you read 49-1017, which
12 sets forth the grant, you can't draw -- there is no nexus
13 there. I mean, that comparison, I don't think, is a valid
14 or fair comparison.

15 CHAIRMAN O'HARA: Mr. Trembly.

16 MR. TREMBLY: Jeff Trembly again. I guess
17 two things I would like to say. One would be I would like
18 to ask that the Policy Commission ask for a legal opinion
19 or the agency, whomever is most appropriate to do that,
20 because I would like to see a legal opinion just from my
21 perspective.

22 And Number 2, if the belief is that it's proper
23 or allowable to pay the 10 percent co-pay, then as a
24 competitive practice, can they offer 15 percent? In other
25 words, pay someone 5 percent of whatever I get from the

1 State Assurance Fund for the privilege of working on their
2 site. And I think that's taking it a step further. To me
3 that seems ludicrous. But if you can pay 10 percent, why
4 not 15?

5 CHAIRMAN O'HARA: I don't know what
6 authority we have to ask for legal opinions. But I would
7 ask if we have -- if the Department would like to get a
8 legal opinion, I would like to see it, to see if it is
9 legal. That would solve the issue for us. If it is
10 illegal, there is no sense in issuing a policy statement
11 or recommendation. It is just wrong.

12 I think part and parcel of this issue is the
13 cost ceilings themselves. And it seems to me that if a
14 consultant can absorb the 10 percent, wait 90 days or 180
15 days for their money, they could still be in business and
16 make a profit, then the cost ceilings might be a little
17 high. But I think that's a whole separate issue.

18 And the cost ceilings themselves eliminate
19 competition. There is no -- in some cases. There is no
20 competition to get rates down because there is a ceiling
21 that everybody seems to graduate to. So I think there may
22 be better ways to instill competition in this program.
23 And for one, I would like to see that on next meeting's
24 agenda. It would be my preference, look at that and look
25 at what other states are doing and see if there are other

1 things out there like three bids that states are doing to
2 bring competition back to this program.

3 Any other comments on Mr. Trembly's letter? I
4 think we'll discuss that, in part, when we get to the cost
5 ceilings. I think they are intertwined.

6 Like I said, if we can get some legal opinion.
7 I don't know if you can just let me know whether it is
8 appropriate or not. I would really like to see one from
9 the Commission standpoint, if we can ask for a legal
10 opinion.

11 MS. JAMISON: Mr. Chairman, if this body
12 can't ask for an opinion from the Attorney General, the
13 director of the Department can. And so you may wish to
14 discuss that issue with the deputy director.

15 CHAIRMAN O'HARA: That would be great. I
16 think maybe we'll have that on the agenda, if we can get a
17 vote from the Commission, a majority that wants to get an
18 opinion from the director. We can make that
19 recommendation.

20 MS. JAMISON: I understand we can't vote
21 today, right?

22 CHAIRMAN O'HARA: Right. Okay, thank you.

23 Item 6, discussion of agenda items for next
24 Commission's meeting. I brought up one. I don't know if
25 there is similar interest on this Commission to look at

1 cost ceilings. It was an idea actually brought forth from
2 a member of the public, I think, two meetings ago who
3 expressed concerned that the cost ceilings were, I think
4 he said, inflated. I would like to look at that issue
5 just to see what the cost ceilings -- what other
6 alternatives are out there.

7 We've had the cost ceilings since the beginning
8 of the program, I think. And we've never revisited them
9 to see if it is working, if it is a good process, if it is
10 accomplishing what it was put into statute to do. I would
11 like to look at it. I don't know if anybody else concurs.

12 Any comments?

13 MR. BEAL: How would we judge the
14 appropriateness? How are we going to look at it?

15 CHAIRMAN O'HARA: I think -- we could get
16 some comment from the Department. Patricia's head of the
17 State Fund Administrators, see what other states are
18 doing, get comments from owner-operators as to whether
19 they feel the cost ceilings are accomplishing the goal,
20 discussion on those things.

21 Patricia.

22 MS. NOWACK: Mr. Chair, I have presented
23 that information to the Policy Commission previously. The
24 State Fund Administrator conference is coming up in June.
25 It is the 15th through the 19th. I will be attending that

1 conference again, also chairing the task force again at
2 the conference. There will be a new State Fund Survey
3 that's presented at that conference. And I would be glad
4 to give that information in a future meeting to the Policy
5 Commission again. And I will make sure that the issue of
6 co-pay or three bids is included in my presentation.

7 CHAIRMAN O'HARA: Anybody want to see that
8 on the next agenda, like to discuss cost ceilings?

9 MR. GILL: You want to do that at the next
10 one or after Patricia has been to the --

11 MS. NOWACK: I think your next meeting is
12 scheduled while I'm at the conference. Isn't it on the
13 19th?

14 CHAIRMAN O'HARA: The survey is going to be
15 completed then?

16 MS. NOWACK: It will be presented at the
17 Monday meeting at the State Fund Administrators
18 Conference. So maybe the 16th.

19 CHAIRMAN O'HARA: Maybe the August meeting
20 would be appropriate for us?

21 MS. NOWACK: Right, because I won't --
22 again, I won't be here for the June meeting.

23 CHAIRMAN O'HARA: Great, thank you.

24 Any other agenda items? I know we've got a vote
25 on the corrective action guidance document. Any other

1 items?

2 This includes the public. Is there anyone in
3 the public that would like to see us take a look at some
4 issues?

5 MR. GILL: Just before we go on, I'd ask
6 Joe, is that the MTBE? MTBE wasn't in here. How about
7 the infamous 6.11.2A table?

8 MR. DROSENDAHL: That wasn't able to be
9 revised yet.

10 MR. GILL: I think that's an important
11 table, seeing how it has the reporting limits.

12 MR. DROSENDAHL: Those reporting limits were
13 given to DEQ by a group of laboratories. So it is just a
14 matter of putting those laboratory numbers on the table.

15 MR. GILL: If you want to hand the MTBE out
16 to everybody, then their documents are complete.

17 MR. GILL: Is there a P, an Appendix P?

18 MR. DROSENDAHL: P was those equations.

19 MR. GILL: Okay.

20 CHAIRMAN O'HARA: All right.

21 Number 7, general call to the public, any
22 members of the public like to make a comment on any issue?

23 Mr. Kelley.

24 MR. KELLEY: I just had one question. Ian,
25 you had said that your program had a move date. Can you

1 say that move date again?

2 MR. BINGHAM: I think Patricia is moving --
3 Patricia's group is moving the last week of June. I
4 believe we are slated to move the week of July 8th.

5 MR. KELLEY: Thank you.

6 CHAIRMAN O'HARA: Mr. Trembly.

7 MR. TREMBLY: Just to clarify, will a co-pay
8 issue be on the agenda again next month for a vote whether
9 or not to ask for a --

10 CHAIRMAN O'HARA: If we have a quorum, we'll
11 get input -- First, I am going to get with the Department
12 and see if we can get an informal opinion, if there is a
13 legal opinion. If we need to make a request of the
14 director, then we'll have to have a vote from the
15 Commission. In that case, it will be on the agenda. And
16 we'll recommend that the director get a legal opinion on
17 that issue, or we'll vote on that issue anyway.

18 MR. TREMBLY: Thank you very much.

19 CHAIRMAN O'HARA: Any other comments from
20 the public?

21 Okay. We have a meeting scheduled for
22 June 19th -- that is subject to change based upon the
23 outcome of Ian and Hal's discussions -- at Fennemore
24 Craig, not here.

25 If no other comments, the meeting is adjourned.

1 Thank you for attending.

2 (Whereupon, the proceedings adjourned at
3 11:34 o'clock a.m.)

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) SS.

2 STATE OF ARIZONA)

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