

UST POLICY COMMISSION MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

August 21, 2002

9:13 a.m.

UST POLICY COMMISSION

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Certified Court Reporter
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1 THE MEETING OF THE UST POLICY COMMISSION held
2 on August 21, 2002, at 9:13 a.m., at the Arizona
3 Department of Environmental Quality, 1110 West Washington
4 Street, Suite 205, Phoenix, Arizona, in the presence of:

5
6 Michael Denby, Vice Chairman

7 Roger Beal

8 Ian Bingham

9 Elijah Cardon

10 Theresa Foster

11 Harold Gill

12 Karen Holloway

13 Nancy Jamison

14 Myron Smith

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ABSENT MEMBERS:

Michael O'Hara, Chairman

Phoenix, Arizona

August 21, 2002

9:13 a.m.

P R O C E E D I N G S

VICE-CHAIRMAN DENBY: I'd like to call to order the August meeting of the UST Policy Commission. I guess we'll do a roll call along with the sign-in sheet. We'll go around the horn here.

MR. BINGHAM: Ian Bingham.

MR. SMITH: Myron Smith.

MR. GILL: Harold Gill.

MS. FOSTER: Theresa Foster.

VICE-CHAIRMAN DENBY: Michael Denby.

MR. BEAL: Roger Beal.

MS. JAMISON: Nancy Jamison.

MS. HOLLOWAY: Karen Holloway.

VICE-CHAIRMAN DENBY: Do we have eight or nine? So we have eight. Looks like we're okay.

Administrative issues. Oh, actually, I'm sorry, the introduction of -- I've never even met her myself, Judy. Why don't we start off with one at a time, Judy.

MS. NAVARRETE: Okay. I'm Judy Navarrete, and I'm the new section manager for the State Assurance Fund, and it's nice to be here this morning.

1 VICE-CHAIRMAN DENBY: And you are taking
2 the place of Patricia? Explain your role, your position.

3 MS. NAVARRETE: I'm a section manager.
4 Patricia has been reassigned, and it will be effective
5 August 29th.

6 VICE-CHAIRMAN DENBY: And you --

7 MS. NAVARRETE: I'm not in her position.

8 VICE-CHAIRMAN DENBY: Okay. Who is -- do
9 we have -- you're one above. You're in the new position
10 that was created?

11 MS. NAVARRETE: Right.

12 VICE-CHAIRMAN DENBY: Do you want to
13 explain that for two seconds? Because I'm obviously so
14 well versed on it.

15 MR. ROCHA: Good morning. My name is Bob
16 Rocha. I'll explain the organizational change. In the
17 organizational change, a new position was created in
18 which Patricia would be reporting to Judy. This was also
19 a suggestion, recommendations from the policy committee
20 members and stakeholders that we take some action in that
21 direction, and that's what we have done. The position is
22 again a section manager with the CRU unit or personnel
23 reporting to Arcelious. The SAF unit was reporting to
24 Patricia. We will find a replacement or an individual
25 that will be responsible for the SAF reporting directly

1 to Judy. The organizational structure is intended to
2 address as many of the issues as been put forth by this
3 Commission and the stakeholders, and we have been working
4 to that end trying to organize and find what we need to
5 do.

6 VICE-CHAIRMAN DENBY: Thank you for that.

7 Arcelious?

8 MR. STEPHENS: Good morning. I'm Arcelious
9 Stephens, the new manager of the claims review unit, and
10 he's explained what I'm doing.

11 MS. WOODALL: Also appearing on behalf of
12 the Commission, Laurie Ann Woodall, Assistant Attorney
13 General, counsel for the Commission.

14 VICE-CHAIRMAN DENBY: Administrative
15 issues. Approval of minutes from June 2002. Does
16 anybody even have the minutes? Any issues? Any
17 comments?

18 MR. BINGHAM: If we have typos, how do we
19 get that to the court reporter without wasting a lot of
20 time?

21 VICE-CHAIRMAN DENBY: Al?

22 MR. JOHNSON: If you'd like, you can
23 forward the suggestions or the typos, whatever, to me,
24 and I will forward them on to the court reporter, and
25 we'll see if we can't get those changes made and then get

1 a revised copy redistributed.

2 MR. BINGHAM: Because what I found was
3 nothing of substance, but name spellings.

4 VICE-CHAIRMAN DENBY: Anybody else? Do we
5 want to approve them contingent upon the typographical
6 changes, just make an amendment. Why don't we do that.
7 Is there a motion?

8 MS. HOLLOWAY: I so move.

9 MR. BEAL: I'll second.

10 VICE-CHAIRMAN DENBY: Okay. All those in
11 favor of approving the minutes as they are presently
12 written with the changes that Ian has, typographical
13 changes, say aye.

14 Those opposed? Ayes have it.

15 Okay. ADEQ updates. Update of organizational
16 changes at ADEQ regarding the claims review process.
17 Discussion of when the organizational charts for the UST
18 Corrective Action Section and the new SAF Section will be
19 available.

20 Do we have a point person for that?

21 MR. ROCHA: Again, the organizational
22 structure has been described to you. The paper of the
23 organizational change will be done and forwarded to you
24 before the next meeting.

25 VICE-CHAIRMAN DENBY: Update on when the

1 UST Corrective Action rules will go into effect.

2 MR. BINGHAM: I guess that's me. My
3 understanding is GRRRC will be filing them with the
4 Secretary of the State today.

5 VICE-CHAIRMAN DENBY: Okay.

6 MR. GILL: And then 60 days or something?

7 MR. BINGHAM: That's where it stands. We
8 might be done.

9 VICE-CHAIRMAN DENBY: Okay. Update on when
10 the final version of the UST Corrective Action Rule
11 Guidance document will be available.

12 MR. BINGHAM: We're making every effort to
13 have that available to the public in the beginning of
14 September. There's still grammatical things that I have
15 to go through and receive the assistance of what we
16 are -- the communications group to help make sure that
17 the forms of all the standards at the agency as set
18 forth. So we're going through that process right now and
19 anticipate the beginning of September they will be
20 available via the Internet and hard copies and so forth.

21 VICE-CHAIRMAN DENBY: Call to the public.
22 Any comments from the public regarding these issues?

23 MR. KELLEY: Mr. Denby, just to clarify --

24 MS. WOODALL: State your name, please, sir.

25 MR. KELLEY: Dan Kelley. Ian indicated the

1 Corrective Action Rules will be filed with the Secretary
2 of the State today and they're going to be effective
3 today?

4 MR. BINGHAM: That is correct.

5 MR. KELLEY: Thank you.

6 VICE-CHAIRMAN DENBY: Any other comments?

7 Moving on to the Technical Subcommittee update.
8 Discussion on scheduling Technical Subcommittee meetings
9 for reviewing the new leaking underground storage tank
10 release number assignment policy. I'll address that to
11 Hal?

12 MR. GILL: I'm just wondering when we might
13 be able to start scheduling meetings for the Technical
14 Subcommittee.

15 MR. BINGHAM: What we're shooting for is
16 having a draft policy to the Commission by the next
17 meeting, the September meeting, at which point in time,
18 Hal can start scheduling these meetings.

19 VICE-CHAIRMAN DENBY: Is that all right
20 with you, Hal?

21 MR. GILL: So you said you hope to have a
22 draft to the Policy Commission by next --

23 MR. BINGHAM: By the next meeting.

24 MS. JAMISON: Mr. Chairman, Ian, a
25 question: Does this mean that you are working on

1 preparing this new policy and are ready to have the
2 draft --

3 MR. BINGHAM: Yes, it is.

4 MS. JAMISON: -- to the subcommittee?

5 MR. BINGHAM: Yes, it is.

6 MS. JAMISON: That's something that we will
7 hear more detail about next month?

8 MR. BINGHAM: Right.

9 MS. JAMISON: Okay.

10 MR. GILL: Is there -- I know that we've
11 heard that there's a policy. Is there a written policy
12 that we can see?

13 MR. BINGHAM: Next month you'll get it at
14 the meeting.

15 VICE-CHAIRMAN DENBY: So probably there's
16 no written policy.

17 MR. BINGHAM: Well, there's an existing
18 policy that's been on the books for six or seven years
19 now. The changes made in the rules and some of the
20 issues with regard to the department will be ready for
21 the public distribution for comments and the review
22 process. Right now, we're looking at doing that in the
23 September meeting.

24 MR. GILL: All I would ask, if at all
25 possible, if we could get a draft prior to the meeting

1 just so we have something to discuss in the meeting.

2 VICE-CHAIRMAN DENBY: Okay. Call to the
3 public. No comments on this? Okay.

4 On to the next, Number Five, discussion of
5 letter from Hal Gill to Judy updated August 12, 2002. I
6 think that was made available to us. What I'd like to
7 do -- there is one, two -- three letters on here. Before
8 we get into a discussion of it, let me put one thing on
9 to the record here.

10 The position that I'd like to take as chairman
11 with regards to these three letters is to acknowledge
12 that they are -- because they are written by Policy
13 Commission members, they are the equivalent, in my mind
14 right now, of comments from the Policy Commission member
15 at this meeting. I don't think that there is any concern
16 about this, but I just want to make sure it's clear, but
17 that letters from the Policy Commission members
18 individually do not dictate directives to the Department,
19 and simply having a letter out there doesn't mean that
20 that is what's going to happen.

21 What I'd like to do is walk through the
22 comments or the questions or whatever is put in the
23 letters, put them out in front of the Commission members,
24 let the Commission members vote on them and decide
25 whether we think that we want ADEQ to provide us with X,

1 Q or Z or do whatever it may be that the letter is
2 asking, but I don't want anybody to get the misimpression
3 that an individual's letter is somehow a directive from
4 the Commission.

5 With that in mind, let's walk through the first
6 letter to Judy. Is there a difference between the Judy
7 and the Ian letter or are they the same things?

8 MR. GILL: No, they're different.

9 VICE-CHAIRMAN DENBY: They are different
10 letters. Good. Okay. If you would, Hal, walk through
11 it just to make it easier for everybody so we don't have
12 to read it in speed-demon fashion.

13 MR. GILL: All the letter to Judy says is
14 just asking for a continuation of the reporting that has
15 been going on for the last several months, and it
16 outlines it into four numbers, they're different types of
17 reports that we've been getting, and I was just asking if
18 we could continue getting those reports to see the status
19 of how well the program is working.

20 VICE-CHAIRMAN DENBY: And that's One
21 through Four that you've listed here are the four things
22 that are asking -- that you're asking of the new --

23 MR. GILL: Yeah. And basically I don't
24 know if everyone has a copy, but it basically says
25 that -- asking for monthly report on the total number of

1 applications, preapproval, direct payment or
2 reimbursement within the new SAF Section that have not
3 had an interim determination issued in response to the
4 application.

5 Number Two, total number of applications by
6 type including preapproval, direct payment and
7 reimbursement within the new SAF Section that have not
8 had an interim determination issued within 90 days of the
9 Department's receipt of the application.

10 Number Three, total number of applications by
11 type, preapproval, direct payment and reimbursement,
12 received by the Department during a reporting period
13 since the last UST Policy Commission meeting.

14 And Number Four, total number of applications
15 by type, preapproval, direct payment and reimbursement,
16 that the Department has issued an interim determination
17 during the reporting period since the last UST Policy
18 Commission meeting.

19 VICE-CHAIRMAN DENBY: Okay. I guess I'll
20 turn to the Department at this point in time. Is there
21 any issue with these four? They sound like what we've
22 asked for before, but I want to make sure.

23 MS. NAVARRETE: There's no issue, and I'll
24 provide that for you.

25 VICE-CHAIRMAN DENBY: Okay. Great. Do we

1 want to vote, then, on these four and say keep these four
2 alive?

3 MS. JAMISON: Mr. Chairman, I don't have
4 any particular objection to these parameters. I do
5 recall, I think at the last meeting, we had a little bit
6 of discussion as to whether these were the most useful
7 types of data that we could be reviewing, and I would
8 like to maybe just leave the door open for changes in
9 additions or subtractions as -- maybe we as Commission
10 members need to spend a little more time looking at what
11 we're doing with these numbers on a monthly basis and
12 whether there is some other type of information that
13 would be more useful to us in helping us meet our mission
14 of making policy recommendations.

15 VICE-CHAIRMAN DENBY: Okay.

16 MR. BEAL: Well, just an idea, but if the
17 data were presented in a continuing chart form so we
18 could have the previous months, so much of the numbers
19 wouldn't change in the numbers, that I think I would like
20 to look at and that would make every presentation be a
21 summary of history to know that we're working in the
22 right direction. Am I making myself clear?

23 MS. NAVARRETE: Would you like that to
24 start at the fiscal year from July 1st on to see the
25 numbers monthly or from meeting time to meeting time?

1 MR. BEAL: Well, on a month-to-month basis,
2 and where it would start -- I guess the more historical
3 data adds credibility to the numbers that you're
4 presenting today. So as far back as you can, but if you
5 go back a ways, then you can say, well, this number is
6 increasing steadily or this number is decreasing or we're
7 seeing a warp in the data that's showing that there's a
8 problem forming here. . If we have those numbers easily,
9 we have them in our notes, and I know they're out there,
10 but it just helps us compare instantaneously and with
11 each sheet you have that data right there to look at and
12 say we're seeing lots of improvements.

13 So rather than the data itself being something
14 that's presented to us, we can look at the trend and
15 understand that the goals that we're trying to obtain are
16 in fact being met. And I wouldn't presume to give you
17 the chart to do that on. That's just an idea that might
18 make it -- that each presentation would have a little bit
19 more merit to the number and everything has to go back to
20 this.

21 MS. NAVARRETE: Let me talk that over with
22 my staff and see what we can come up with.

23 MR. BEAL: I just wanted to put that out
24 for consideration.

25 VICE-CHAIRMAN DENBY: All right.

1 MR. SMITH: Michael, I have a question on
2 all three of these letters. Is this really a voting
3 issue or is it just a request to the Commission?

4 VICE-CHAIRMAN DENBY: What I think would be
5 nice to do is to give ADEQ a written -- written out here
6 nicely enough so that you can see them. You can give
7 them a written vote that yes, this is what we'd like to
8 see as of today. If next month we decide we want to
9 amend it somehow, you can always amend it. But it gives
10 them something they can look at and it gives us something
11 to look at just so that it's clear. I think it would be
12 good to vote on.

13 MS. FOSTER: Mr. Chairman, one thing that's
14 missing here is the number of total applications.

15 MS. NAVARRETE: We have that on here.

16 MS. FOSTER: On the letter?

17 MS. NAVARRETE: Not on the letter. I had
18 it on my sheet.

19 MS. FOSTER: The letter does not include
20 total number of applications, and I think that would be
21 beneficial to know if the number is increasing or
22 decreasing.

23 MR. GILL: Actually, in each case it's
24 total number of applications by type.

25 VICE-CHAIRMAN DENBY: Well, type but not

1 total.

2 MS. HOLLOWAY: I agree with Theresa. I
3 would like to see total numbers.

4 MS. FOSTER: Because with this, it talks
5 about not received an interim determination. Well, if I
6 have an application that's been there a year and a half
7 that's been sitting with an internal determination, it's
8 not going to be reported. So I'd like to see total
9 number of applications.

10 MS. WOODALL: Mr. Denby, since we're going
11 to be discussing three separate documents, a minor
12 housekeeping matter, it might be easier for the court
13 reporter and for clarity of our record if we could have
14 each of these letters marked with an exhibit number and
15 appended to the minutes. And if you would have no
16 objection, I would propose that the August 7th letter to
17 Ms. Judy Navarrete be labeled Exhibit 1, the August 8th
18 letter to Mr. Ian Bingham be Exhibit 2, and the August
19 12th letter to Mr. Robert Rocha be Exhibit 3. Then the
20 court reporter can include these with the minutes, and I
21 think it will help us to understand what the discussion
22 was referring to. So if that's okay with you, I would
23 propose that the court reporter do that.

24 VICE-CHAIRMAN DENBY: That's a great idea.
25 Thank you.

1 Other comments on Exhibit 1? Hal?

2 MR. GILL: I guess the only other thing I
3 wanted to say was for those in the audience that do not
4 have the letter, the main reason I was asking for this is
5 that, again, per our mandate to look at the program and
6 to try to see the overall effect of the Underground
7 Storage Tank Program is moving forward. That was the
8 main reason for asking for this, plus I think it's a good
9 tool for Judy to use to see exactly -- and that's why I
10 kind of broke it out the way I did -- so you could see
11 the different types, be able to actually track them. I
12 appreciate Roger's suggestions. That is the easiest way
13 to do it. It's kind of hard to look at a bunch of
14 numbers and try to vision exactly what is going on.

15 VICE-CHAIRMAN DENBY: Okay. Before we go
16 into -- why don't we just move on to Exhibit 2, then.

17 I'll do call to the public before we take a
18 vote on this and see if there are other pieces that they
19 think needs to be added as well?

20 Exhibit 2, which is the letter to Ian Bingham,
21 August 8th, 2002. Again, Hal, if you could explain the
22 three that's listed there.

23 (Whereupon, Mr. Cardon enters.)

24 MR. GILL: The main reason for the request
25 is that now with the reorganization, we feel that it

1 frees up the UST Section for reviewing the other
2 department -- the reports that come in. It's like the
3 release allocation, closure reports and corrective
4 action, and we've never really looked at those. We've
5 been zeroing in on the SAF reimbursement applications and
6 direct pay, so we really have no idea what the numbers
7 are. But I know that personally the firm that I work for
8 has any number of these reports outstanding for several
9 months at a time, and I really wanted to see what kind of
10 numbers that were out there for the entire industry and
11 owner/operators that are having this work done to see
12 exactly where the reports are in the CAPs and such.

13 And so basically I'm -- the request is for,
14 Number One, total number of reports by type, site
15 characterization reports, release allocation, closure
16 request and CAPs within the UST Section that have not had
17 an interim determination issued.

18 Number Two, total number of reports by type,
19 site characterization reports, release allocation,
20 closure requests and CAPs within the UST Section that
21 have not had an interim determination issued within 120
22 days of the Department's receipt of the report.

23 And Number Three, the percentage of interim
24 determinations issued by the UST Corrective Action
25 Section during the last year, which have had an informal

1 appeal filed within 30 days of receipt by the intended
2 party.

3 And the main purpose for that is that we've
4 heard in meetings in the past how well the program was
5 working as far as nothing getting to a formal appeal, but
6 our contingent was that, well, that's great but we have
7 literally hundreds of informal appeals, and that's what
8 takes all of our time and in all the ensuing meetings
9 that go around as formal appeals, such as the settlement
10 conferences and those kinds of things. So we really want
11 to get a feel on if the number of informal appeals that
12 are occurring and if those are going down as well the
13 report numbers. That's the basis for that.

14 VICE-CHAIRMAN DENBY: Let me make sure the
15 record reflects that Elijah Cardon has joined us. So
16 we're now nine strong.

17 That's the main pieces. Any comments to these
18 from the Department?

19 MR. BINGHAM: Well, what we went through --
20 I had to run a number just to see what they are anyway.
21 Several of these are actually Sunset performance
22 measures, and I'll let the Commission decide whether or
23 not this is for these meeting of the month. I have no
24 problems on it doing it. The total -- going back and
25 starting the report July 1, 2001, the total number of

1 SCRs that have had -- not had an interim determination
2 issued is 20. Through the end of July, there's now been
3 one release allocation request that an interim
4 determination has not been issued on. Total number of
5 closure is 17. Total number of CAPs is two. Of those,
6 which is not bigger given 120 days, of the 20 SCRs, 10.
7 Zero for release allocation. On the 17 closure, nine and
8 two CAPs, and the appeal rate between January 2001 and
9 the end of July 2002, of the 185 SCR interim
10 determination issued in that period, six were appealed.
11 Of 104 release allocations we issued, five was appealed.

12 You asked for percent. SCR works out to 3
13 percent, release allocation works out to 5 percent. Of
14 the closure of 218 closures, determinations we issued,
15 nine were appealed or 4 percent. Of 31 CAPs, five were
16 appealed for 15 percent. And the Commission needs to
17 tell me if that's bad, and you want to track it, I'll be
18 more than happy to do it.

19 MR. SMITH: I think that's great
20 information Ian, thank you. Just a little point of
21 clarification. For release allocation, does that mean
22 there were no releases in July?

23 MR. BINGHAM: Somebody called in a release
24 saying they have a confirmed release, which is this whole
25 issue of policy for it, and we issued a determination

1 issue. So no, it's not that zero were called in. All
2 those called in we've issued a determination on whether
3 we accepted. And I said we have issued 104
4 determinations regarding releases and, again, five of
5 them or roughly 5 percent were appealed.

6 VICE-CHAIRMAN DENBY: Any other comments
7 from Commission members?

8 MS. FOSTER: Mr. Chairman, I have a little
9 bit of concern during the Corrective Action Plan. If an
10 owner/operator has a Corrective Action Plan that's been
11 going on for a couple of years and they're now turning in
12 the third or the fourth Corrective Action Plan, there's
13 been a number of interim determination letters. Are we
14 saying that this is when the first one went out, the
15 second or the most recent?

16 MR. BINGHAM: First one. The first
17 submittal -- maybe Hal will clarify the question. I read
18 that to mean a brand-new CAP has come in with the
19 solicitor, and we reviewed that CAP and issued some
20 determination saying it's either needed or not needed.
21 It's my understanding that the issue that's has been
22 brought to me in the past is we submit these documents,
23 we never hear anything whether the agency likes it,
24 doesn't like it. So this doesn't incorporate multiple
25 revisions or what have you, but have we read the initial

1 document and put something in writing as to our
2 determination based on what was submitted. And Hal,
3 correct me if that's not what you're asking here.

4 MR. GILL: Yeah, that's true. We wanted to
5 know the time from the very first determination from the
6 time it was first turned in.

7 MS. FOSTER: Do you need to know a time
8 frame of when it was first turned in to when it was
9 finally approved? Hal, could that be beneficial,
10 especially if it's more than four years?

11 MR. BINGHAM: What does that tell whether
12 the agency or the -- what does that give you? Request to
13 CAP revisions a year and a half later before it comes in,
14 it comes down to we need to initiate an enforcement
15 action and then we respond.

16 MR. GILL: Well, it might be worthwhile to
17 find out why it is, and granted it could be on both
18 sides. We know that -- I'm sure that when interim
19 determinations are given and it's taking a long time for
20 the owner/operator or the consultant to get back, then
21 that's out of your control. But it might be worthwhile
22 to determine where -- you know, where and what the
23 problems are so you can be looking at how to make it a
24 more effective program. This doesn't really spell out
25 how to look at that.

1 MS. FOSTER: Maybe that should not be --

2 MR. BINGHAM: I don't want to waste my
3 staff's time tracking something that's not going to be
4 beneficial. To me, what percentage is appealed, when we
5 issue it and they disagree and it's appealed, five out of
6 31. I don't know what that tells me. 31 is not a huge
7 number of CAPs.

8 MR. GILL: I'm just wondering. I thought
9 these were pretty clear but, again, I don't know what the
10 numbers are, but I'm kind of concerned with these numbers
11 because CAPs -- I know that I have one out. So that's 50
12 percent of everything that's out there. I mean, and I
13 know from talking with others there's many more CAPs out
14 there. So I don't understand what -- I really don't
15 understand the numbers, and again, that's just the one.
16 I can't really say on reports and the other ones, but I'm
17 concerned with the CAPs, that's an extremely important
18 one, and I know that there's no more out there. So I
19 don't know where the confusion is in the way I've written
20 the request.

21 VICE-CHAIRMAN DENBY: We can always come
22 back next month and add it, clarify it, whatever you want
23 to do. So we don't need to kill ourselves right now to
24 make sure it's perfect, as long as it's doable with the
25 information that you can get.

1 MR. CARDON: Your comment just went to the
2 direction of what I wanted to ask, and would it be
3 possible to get a printout for the members of the
4 Commission of the figures that you've just shared with
5 us?

6 MR. BINGHAM: Sure. I can put that in a
7 form.

8 MR. CARDON: It would be great to have that
9 information.

10 VICE-CHAIRMAN DENBY: And that's what we're
11 going to get every month is basically that in a chart
12 form. That's where we're heading with this. You missed
13 the first side of this where we're walking through all
14 three of these letters, your letter and the two letters
15 from Hal, and we're basically putting together a laundry
16 list of what we'd like to see from the Department.

17 MR. CARDON: My only comment was, could we
18 get a copy of the figures?

19 VICE-CHAIRMAN DENBY: The current ones?

20 MR. CARDON: Yeah, that he just shared.

21 VICE-CHAIRMAN DENBY: Yeah. That's fine.
22 We'll make sure you get a copy. Just get them on break
23 or something.

24 Okay. Other question or comments from the
25 Commission members on the Ian Bingham letter? No. Okay.

1 Let's move on to Exhibit 3, which is the Elijah
2 Cardon letter dated August 12, 2002 to Robert Rocha.

3 Elijah, do you want to walk through this? It
4 looks like there's four main pieces that you're looking
5 for. And as I said, what we're trying to do with these
6 three letters is put together one long laundry list of
7 things so they can provide it to us monthly.

8 MR. CARDON: Well, in this letter, I simply
9 tried to incorporate concerns that had been expressed by
10 others, and I'm -- I don't believe that I have any
11 ability to specifically identify only those things that
12 we should address. So with that having been said, these
13 are four areas that we thought we might like to look at.

14 VICE-CHAIRMAN DENBY: Okay. Has the
15 Department had a chance to look at this letter? Do you
16 all have any comments? Does this information look like
17 something you could produce? Is there a problem?
18 Questions?

19 MR. ROCHA: Well, obviously, we've read
20 Elijah's letter and comments to the letter. Some of
21 these issues take a little longer than 15 days or so, and
22 we have just reorganized. Staff is getting acquainted.
23 We're looking at all the measures, performance measures,
24 but we're looking at the staff and how we can better
25 utilize the staff work efforts, determining what we can

1 process faster by a different utilization of our staff.

2 So there's a lot of different things that we
3 can get into, but again, in answering the letter, Item
4 Four, I think, can be covered through a couple other
5 letters, the measurable benchmarks. One of the efforts
6 that we'll do is we'll try to find from the other states
7 what are the benchmarks, and we'll also establish -- we
8 have some benchmarks right now, whether they're good or
9 not is an issue that we need to review and say are those
10 the correct benchmarks. Benchmarking is more of an art
11 than a science, and so in determining that, it is going
12 to be something that I hate to say this, but it's going
13 to be in the eyes of the beholder, you know, what is a
14 good benchmark. So therefore I suggest that this letter,
15 we cannot really respond on a month-to-month basis other
16 than Item Four until we establish some of these other
17 issues, and we are more than happy to come back and
18 discuss those other issues.

19 VICE-CHAIRMAN DENBY: If I could very
20 quickly here, Elijah, just clarify what these things are
21 after. It seems to be all based around an action plan.
22 It is requested that an action plan be put together that
23 will include the procedures for SAF open communications
24 concept, and then the monthly updates that you're asking
25 for here on Number Four seem to be a mix of the action

1 plan and some of the other things that's sort of like Hal
2 has asked in his letters. If that's what's happening,
3 what I'd like to do is sort of take this letter by itself
4 and let's talk about it without the monthly chart that
5 we're going to get from the Department, and let's talk
6 about the action plan aspect of it because it sounds like
7 a separate piece that you maybe want to put together. Is
8 that fair?

9 MR. CARDON: Well, just to simplify, this
10 letter is put together with input from others. This is
11 an attempt to put these specific ideas on the table for
12 the Committee's review and input. This is certainly
13 not -- once again, let me say that I don't see myself as
14 having the only answer to what this Committee ought to
15 look at, and perhaps with the input of the other
16 Committee members and input from the public at large,
17 there might be some meaningful touchstones that we could
18 identify that would be beneficial to the program.

19 VICE-CHAIRMAN DENBY: What I'd like to do,
20 then, at this point if we can, is let's back up to the
21 first two letters because I'd like to deal with Elijah's
22 letter separately. Let's talk about these two letters,
23 let's get input from the public on sort of a monthly
24 chart that we can get put together, and then we can step
25 back after we've voted on that and talk about an action

1 plan, which I think would be a separate piece altogether,
2 and talk about what we will see from that side of things.

3 So at this point in time, if there's more
4 comments from the Commission, by all means speak up for
5 the Judy Navarrete and Ian Bingham letters, and if not,
6 I'd like to open it up to the public to see if there's
7 any comments from the public on other performance
8 measures, I guess we're calling them.

9 No comments from anybody? That's fantastic.
10 Moving this meeting along.

11 What I'd like to do at this point in time,
12 then, is to get a motion that will incorporate these one,
13 two, three -- seven pieces between these two letters,
14 basically the seven bullet points with an addition, I
15 believe, of two things that I heard in the original
16 discussions. One was a total number of applications,
17 period, just all applications, and then a number -- also
18 Number Eight would be -- or Nine would be to put this in
19 a chart form with monthly updates so that it is in a
20 rolling chart or a continuous chart form or something.

21 MR. BEAL: Rolling database.

22 VICE-CHAIRMAN DENBY: A month-to-month
23 chart form, if that's possible.

24 MR. BEAL: Maybe for the year or past?

25 MS. NAVARRETE: We can do a backup of the

1 year, and then do the front page of just the current.

2 MR. BEAL: The past 12 months this is
3 what's happened so we can know each time what the trend
4 is.

5 MR. GILL: The only thing I would like to
6 add is that I will also be contacting Ian to clarify what
7 the request was in the letter to make sure we are asking
8 the right questions.

9 VICE-CHAIRMAN DENBY: Right. Okay. Is
10 there a motion from the Committee?

11 MS. FOSTER: Mr. Chairman, another
12 question. If Mr. Cardon has sections in his letter
13 dealing with total number of claims submitted and total
14 number of claims over 90 days, do we assume that these
15 two things are covered in the other two letters so that
16 we're not repeating ourself when we get into the
17 discussion?

18 VICE-CHAIRMAN DENBY: I'm not assuming
19 anything.

20 MR. BINGHAM: It seems to me they would be
21 covered by what was addressed.

22 MS. FOSTER: Mr. Cardon, would Item Four(b)
23 and Four(c) be covered in the other two letters that we
24 have received?

25 MR. CARDON: I'm sorry. I don't know the

1 exact -- I don't know the answer to that question.

2 MS. FOSTER: I think we've asked for total
3 number of claims submitted or total number of --

4 MR. BINGHAM: Ms. Navarrete has the numbers
5 so maybe looking at these might help answer that question
6 for you.

7 MS. NAVARRETE: You might see what's
8 missing.

9 MS. FOSTER: And then total number of
10 claims over 90 days, do you mean claims that have not
11 been processed or have not had an interim determination
12 or just all claims?

13 MR. CARDON: Well, I think any breakdown
14 would be helpful.

15 MR. GILL: I agree. It looks like it's
16 covered by my letters.

17 MR. CARDON: Kind of seems to me like they
18 are covered.

19 VICE-CHAIRMAN DENBY: Okay. So we're
20 comfortable, then, with the seven original and the two
21 additions, total number of applications and basically put
22 them in a chart form.

23 MR. GILL: I think actually Four(a) could
24 be put in a chart.

25 VICE-CHAIRMAN DENBY: But we're not talking

1 about Elijah's letter. We're just talking back to these
2 two letters, back to your letters. If everybody is
3 comfortable with that, I'd like a motion to move this
4 forward.

5 MR. SMITH: I move that the two letters
6 we've been discussing be approved.

7 VICE-CHAIRMAN DENBY: With the changes?

8 MR. SMITH: With the changes.

9 MS. JAMISON: I second the motion.

10 VICE-CHAIRMAN DENBY: Okay. The motion on
11 the table is that the letter -- two letters be approved,
12 but I'd like to caveat that is that they be approved
13 pursuant to what we discussed here in terms of the nine
14 aspects of what we're asking. Okay.

15 MS. WOODALL: Mr. Denby, may I inquire? Is
16 the motion on the floor the request for approval of the
17 letters to be construed as a request by the Commission
18 that this information that's set forth in Exhibits 1 and
19 2 in fact be provided to the Commission on a monthly
20 basis?

21 VICE-CHAIRMAN DENBY: Right. This motion
22 would be a request that the Department provide these
23 bullet points basically to the Commission on a monthly
24 basis. All those in favor say aye.

25 Those opposed? Okay. So moved. Those two

1 letters will be included as such.

2 Exhibit 3. We want to talk in a little more
3 detail about this. It seems like it's a much broader
4 request than just data. It is an action plan. So you're
5 wanting the Department to put something into writing in
6 terms of a written plan versus just some data. Any
7 discussion on this issue? Comments to it?

8 MR. CARDON: One of the predominant
9 thoughts that occurred while putting this letter together
10 was that it would be good to have input to the Commission
11 from the Department on the internal direction that the
12 Department is taking, the changes that are being made.
13 Essentially allowing us to comment on policies and
14 procedures as we have -- as our directive is, as we have
15 wanted to do in the past.

16 I must admit to a very personal desire to see
17 that there is some kind of established procedure for
18 verbal communication between a person who may be checking
19 an application and the applicant, some kind of very
20 perhaps informal, initial communication by phone or
21 e-mail or some other way that can tend to resolve
22 misunderstandings and foster communication between the
23 Department and the applicants. That was just a comment,
24 I believe, on Item Number Two.

25 VICE-CHAIRMAN DENBY: Okay. Let's -- is it

1 possible to have Item Number 1 addressed as sort of these
2 monthly updates from the Department where the Department
3 gets up and tells where they're going, what's happening,
4 the process of policies and development sort of not all
5 that, unlike what they do normally, which is stand up
6 where are we, where is the SAF rule package and things
7 like that.

8 MR. BEAL: I'm sorry, I'd like to -- just
9 another thought here, but it seems like Mr. Rocha said it
10 the best, the benchmarks are in the eye of the beholder,
11 and we being the beholder here perhaps need to ask the
12 Department or determine for ourselves what we would
13 consider benchmarks to be. We've looked at data for a
14 reason. We're asking for these numbers not because we
15 like to look at numbers, but there's a reason behind
16 that, and that tends to go to a benchmark of success in
17 some particular area.

18 I've heard you talk about a frustration or at
19 least a desire to have communications between the
20 applicant and the Department in a very informal way, and
21 that would be a mark of success in your book certainly.
22 Perhaps there's many things that we have here, the
23 adequacy of the protection of the environment somehow
24 seems to have slipped away. What's the groundwater study
25 showing? Are we getting the job done? Adequacy of

1 closure, what does that mean? I mean, there's certain
2 things that we've never ever discussed to judge the
3 success of the program, and not just an action that the
4 Department is taking or what they're saying is that they
5 have to do it because of their direction. Maybe we need
6 to have subcommittee meetings to determine what our
7 benchmarks might be and what that would add.

8 VICE-CHAIRMAN DENBY: One comment on
9 benchmarks. I think benchmarks for this Commission also
10 need to be parallel to our statutory directives, which is
11 what do we have? What's our purpose? And certainly
12 benchmarks help us -- other benchmarks will help us meet
13 those benchmarks. You can create your own benchmarks,
14 but at the same time our overall benchmark is what the
15 statute requires of us.

16 MR. BEAL: But I guess I'm saying by
17 establishing benchmarks, then we're able to come up with
18 an idea of what a successful program is and determine
19 whether or not the actions by the Department are meeting
20 that goal. And we're diverse enough to come up with
21 benchmarks that would protect the essence of the program,
22 and it seems to me that the Department is more or less
23 regulated to certain actions, and we're trying to say
24 those make sense or not. I think our charge is a little
25 more than that.

1 MR. CARDON: Two comments. I would hasten
2 to add that there are certain members of the regulating
3 community that would want to have specific input into
4 these specific items that would want to give, and
5 those -- that input has probably had enough gestation
6 period. It is probably pretty well defined in many
7 people's minds. I would like to suggest that we maybe
8 put this for an action item or a vote item or some kind
9 of formulation item for our next meeting and invite input
10 from the regulated community to be particularly given to
11 the Committee, and we could give our own specific input,
12 and then we could discuss it and take some form of action
13 in our next meeting.

14 VICE-CHAIRMAN DENBY: That's fine with me.
15 If you want to more or less table it and leave it as an
16 action item for next time since everybody is aware of it.

17 MR. CARDON: Well, I would think that we
18 would have -- instead of being a very general kind of a
19 thing, we could maybe have more specific input, and it
20 would be more meaningful and more helpful, and I don't
21 think we have to put it off for a long time, for a long
22 period of study. I'm saying that I would think that
23 within the coming month that people could have the input
24 that they would want, and we could take action on it at
25 the next meeting.

1 VICE-CHAIRMAN DENBY: Why don't we put this
2 on the agenda, then, for September's meeting. Is there
3 any comment on that? Okay.

4 MS. FOSTER: Mr. Chairman, it would be nice
5 to know what DEQ's benchmark policies are at this point.
6 Maybe that would be a good starting point to see what
7 their long-term plans are for this program, and if they
8 have any projections of where they want the program to go
9 so we don't create a different action plan.

10 MS. JAMISON: Mr. Chairman, looking at this
11 letter again for the third or fourth time, it occurs to
12 me that Item Number 1 in Mr. Cardon's letter asks for an
13 action plan specifically related to delays in SAF
14 applications, and that's a pretty narrow issue, I think,
15 and also very much an internal management type of issue.
16 So I'm not certain at this moment what it is that we're
17 tabling for next month and how we want to go about
18 turning this into something that may lead us to looking
19 at broader issues as opposed to how do we speed up the
20 application process.

21 VICE-CHAIRMAN DENBY: I appreciate your
22 comments, but what I'd like to do at this point is I'd
23 like to take Elijah's lead, since it is his letter, and
24 put it on the agenda for next time. I would like to
25 leave the letter as is and bring it up for discussion

1 next time when people have had a chance to further
2 describe or expand on what they want to see out of this,
3 and the Department has had a better chance to digest what
4 it can provide now that it's heard the discussions.

5 MR. CARDON: Mr. Chairman, as we know,
6 there have already been many meaningful and helpful
7 suggestions made to the Department and some actions in
8 the most recent past have been taken, and there will be
9 undoubtedly be other suggestions that will be helpful
10 that we should allow the public to make.

11 VICE-CHAIRMAN DENBY: I agree, and I think
12 that is the process that's been going on. Okay. We will
13 move on then. That will resolve the discussion Item
14 Five, Six, Seven. If there's a general call to public at
15 that point on these, I'd be glad to hear or take interest
16 in what you have to say, but at the same time, if there's
17 comments that you want to hold until next time, that will
18 be fine with me. Any comments from the general public?

19 Okay. Moving on to Number Eight. Discussion
20 on reimbursing volunteers for cost of SAF application
21 preparation. Once, again, I think this was an issue that
22 somebody asked to be put on the agenda so that we could
23 discuss it. So at this point in time, it is just merely
24 an open issue to discuss. It is not directly to the
25 Department at this point. Any comments on this issue?

1 Anybody know what this issue was actually talking about?
2 Is there somebody who is in the audience?

3 Yes, please, Brian.

4 MR. BECK: Brian Beck. I brought this up
5 two meetings ago and also the last meeting. Basically,
6 the Department has taken the stance that under a UST
7 volunteer, which under statute is supposed to get 100
8 percent reimbursement for all their expenses incurred
9 that are approved by the agency, that the preparation
10 cost, which is part of the cost ceilings, is denied
11 actually to the UST volunteer. They're saying it's a
12 co-pay and since there's no co-pay they can't pay it, and
13 they won't pay the co-pay issue, even under statute,
14 under UST volunteer, it's the owner/operator or whoever
15 the person was that was assessed with the original
16 release, that the co-pay issue was supposed to go back
17 and be recovered by the Department. So we don't
18 understand why the Department has consistently denied
19 reimbursing the cost of preparing an application that's
20 required by the Department, and it's part of the cost
21 ceilings for the UST volunteer.

22 VICE-CHAIRMAN DENBY: Before I ask for any
23 comment from the Department on that, I want to make
24 certain again that we don't get into a question of
25 resolving personal issues here. I have no idea what's

1 on -- Mr. Beck's ideas are along these issues, but I want
2 to make sure that we don't get down to a site-descriptive
3 level here. If there's a general policy issue that's
4 going on that the Department has regarding SAF volunteer
5 applications, I'd love to hear it and be interested in
6 hearing a response as a general matter to what Mr. Beck
7 had to say. Anybody from the Department ready, willing
8 and able?

9 MR. BINGHAM: Actually, I've heard Mr. Beck
10 raise this issue, and with what's gone on with the
11 organizational change, I'm not quite sure the agency has
12 actually sat down to look at this particular issue. And
13 I guess what I would ask is to give us some time to be
14 able to come back and make a report to the Commission.

15 VICE-CHAIRMAN DENBY: Okay. This would be
16 a perfect Patricia issue, in other words? No.

17 MR. BINGHAM: Next week is her last day.
18 We'll have to go look at this because, until Mr. Beck had
19 brought it up, I personally was not even aware of the
20 subject matter.

21 MS. JAMISON: Mr. Chairman, it appears to
22 me that it may be a legal interpretation issue that the
23 Department and its attorneys should take a look at since
24 volunteer reimbursement and other issues are creatures of
25 statute and may be further dealt with in the rules. I

1 think we need to first find out just what the position is
2 on this issue.

3 VICE-CHAIRMAN DENBY: I would caution that
4 I don't want to get into any discussion -- obviously I
5 probably won't be the chairman next month, but I don't
6 want to get into any discussion about the legal aspects
7 of this and the legal application of it. If there is a
8 policy out there that is interpreted, the Department has
9 written or unwritten, I think we need to talk about it,
10 if that's the issue. I do not want this Commission to
11 get into a discussion of whether it is legal or illegal
12 or whether the Department has complied or not complied
13 with the section because I think we're way beyond our
14 authority, and we're starting to get into that issue of
15 now we're stepping into the Office of Administrative
16 Hearings rule.

17 MS. FOSTER: Mr. Chairman, I think we can't
18 resolve policies. We have to go back and look at the
19 statute itself. If the statute says that the 10 percent
20 fee has to be applied against the deductible, there's
21 nothing else we can do. We can't say that the law allows
22 that 10 percent to be paid by the Fund. So I think it
23 has to go back to the law, not to policy of the
24 Department.

25 MS. JAMISON: I was really suggesting that

1 we perhaps needed to be more educated along those lines.

2 VICE-CHAIRMAN DENBY: And I -- it does go
3 to the law, that the law is the final element of it, but
4 the Department's interpretation of that or policies that
5 may impact that statute is at best the total that we can
6 discuss. I don't want to get into a discussion about the
7 law itself and whether 10 percent, what it means by 10
8 percent or shall pay 100 percent.

9 MR. CARDON: So are we to understand,
10 Mr. Vice-Chairman, that this will be an agenda item for
11 next month?

12 VICE-CHAIRMAN DENBY: Yes. When -- we'll
13 get to that in Number 10. I think at this point we'd
14 like to put it off for at least a month.

15 MR. GILL: I guess I'm kind of back to the
16 issue of what we can and cannot discuss. Is it not part
17 of our mandate to look at rule or statute and make
18 recommendations? Obviously, we can't do anything about
19 it because we can't make recommendations based on
20 information we've discussed or that we think this needs
21 to be looked at by the appropriate agency to see if it
22 should be changed.

23 VICE-CHAIRMAN DENBY: I think that in that
24 narrow scope, yes, this Commission has the ability to say
25 we think this would be a great thing for the Department

1 to do to change this or take this position, but to take
2 the position that their current interpretation of a rule
3 is wrong is beyond because it adds some level of credence
4 to that decision or that determination when in fact with
5 all due respect it shouldn't. Because the most we could
6 do is recommend to the Department what we think is a
7 logical course they should take.

8 MR. ROCHA: I guess I am unclear as to what
9 the Commission is expecting on this issue to bring it up
10 next month. What is the expectation? What are we
11 expecting to discuss next month?

12 VICE-CHAIRMAN DENBY: I think the
13 expectation --

14 MR. ROCHA: Can you clarify that?

15 VICE-CHAIRMAN DENBY: Sure. Let's talk a
16 little bit about the expectation, then. I think the
17 expectation would be sort of a greater discussion as to
18 what the issue really is or the Department's perspective.
19 You've heard the outside perspective. What is the
20 Department's perspective? Is there a policy in play here
21 that is the sheer statutory interpretation and whether
22 the Department thinks that what -- what the Department
23 thinks that its interpretation is subject to review or if
24 it's a legal issue that is only going to be set between
25 you guys and the Attorney General's office and then take

1 it OAH.

2 MR. ROCHA: Basically, from a Department
3 standpoint, we want to make sure, like you, that we're
4 following the statute and that we contain the flexibility
5 of interpretation to that statute and policy and
6 procedure, and therefore, you know, we will address it in
7 that form and fashion.

8 VICE-CHAIRMAN DENBY: And just describe to
9 us what your policy is, what the reasoning is from your
10 side.

11 Okay. We're going to go to break for about
12 five minutes, please.

13 (Whereupon, a recess ensued at 10:15 a.m.)

14 VICE-CHAIRMAN DENBY: Let's go back on the
15 record. To start, Elijah would like to --

16 MR. CARDON: During the break, a suggestion
17 was put forward that perhaps Hal as the chairman of the
18 Technical Subcommittee may like to look at this
19 question -- the questions that have been addressed in my
20 letter and be placed on the agenda for next meeting to
21 address some of those thoughts.

22 VICE-CHAIRMAN DENBY: The general comment
23 to that -- I'm not sure if Hal was even involved in that
24 discussion -- the general comment was basically what to
25 be put on Hal's agenda and Hal's agenda is controlled by

1 the Technical Subcommittee, so to the extent that the
2 Technical Subcommittee wishes to review and comment on
3 the August 12th letter from Elijah Cardon to Robert
4 Rocha, that's perfectly acceptable, and if they decide on
5 an interpretation of the letter or whatever additional
6 pieces they want to add, then that would be part of the
7 Technical Subcommittee discussions, at which point in
8 time they would come back to this Committee next month as
9 the Technical Subcommittee points. It would be discussed
10 in an open forum before it would be voted on or action
11 taken.

12 MR. GILL: Yeah, and I had asked at the
13 break if somebody -- I have no problem with that, and I
14 guess we could discuss at least One and Two and Three on
15 Mr. Cardon's letter, and I have no problem doing that.

16 VICE-CHAIRMAN DENBY: Okay. Item Number
17 Nine, discussion of ADEQ policy of assigning and
18 reassigning prioritization points for risk on SAF claims.
19 Is there anybody who can elaborate on this agenda item?

20 MS. NAVARRETE: Ian was going to address
21 that.

22 VICE-CHAIRMAN DENBY: Okay. We can skip
23 over that. Let's move to Number 10 to start with, then
24 we'll come back to Number Nine when Ian comes back.

25 MR. BECK: Can we go back to Number Eight

1 real quick? Because there was some confusion that was
2 brought in by Theresa. Brian Beck again.

3 Under 49-1052(i), it says very specifically, "A
4 person who undertakes -- basically, "a person is not an
5 owner/operator, a person who undertakes to meet
6 requirements and who is not an owner/operator is eligible
7 for 100 percent coverage under the State Assurance Fund."
8 What the point of confusion comes up to, yes, there is a
9 10 percent co-pay that is deducted from the overall
10 payable amount. The statute says that a person who
11 undertakes a volunteer remediation and that ADEQ actually
12 has a form, they go through a process where they are
13 selected -- not selected but they are approved by the
14 Department as a UST volunteer qualify for 100 percent
15 reimbursement. So in other words, a person, an innocent
16 landowner, doesn't have to come up with money to pay for
17 something someone else has done. At ADEQ, the Department
18 has been penalizing these people for portions that by
19 statute is supposed to get 100 reimbursement for.

20 VICE-CHAIRMAN DENBY: This item has been
21 tabled until next month. I appreciate the additional
22 comments. The Department is going to next month give us
23 their position on the volunteer program and how that
24 plays out in their minds.

25 Agenda Item Number 10, discussion of agenda

1 items for September's meeting. First is a discussion of
2 the funding of UST compliance and inspection program and
3 what information the Commission needs to address and vote
4 on this issue. Is there a proponent of this agenda item?

5 MR. SMITH: I'll start. This has been a
6 long-standing issue for quite some time with funding and
7 how the Department is funded. What this relates to is a
8 preventative program catching and stopping leaks before
9 they became very costly items to repair and clean up, and
10 the funding for the UST compliance and inspection program
11 has been dwindling steadily, and it is becoming apparent
12 that we are going to wind up spending more dollars
13 cleaning up, which we could have spent less inspecting on
14 a more often basis to prevent those leaks. So I think
15 what Ron Kern is going to talk about is looking for
16 support from the Commission to hopefully go to people
17 that control the money and look at convincing them to
18 find ways to increase funding for this part of the UST
19 program. Ron?

20 MR. KERN: Ron Kern with DEQ, and actually
21 I'm not going to say too much today, but I will say at
22 this point that in terms of the discussion items, I would
23 welcome any requests from the Commission for information
24 that might be pertinent to the issue just brought
25 forward. I gave kind of a long-winded sort of update of

1 it at the last Commission meeting, and I am gathering the
2 information right now that I consider to be fairly
3 pertinent to this issue. I've still got to go through
4 the corrective plan and get approval. If there are
5 specific sorts of items that you think might be
6 pertinent, you'd like to see that would help you with
7 this discussion, please let me know and we'll consider
8 those.

9 MR. SMITH: Ron, would you just restate
10 some of the things you're researching that we asked you
11 to do last time, some of the numbers.

12 MR. KERN: Basically, let's see if I can
13 remember some of it. Some of the factual information is
14 that we're looking at numbers of releases that have been
15 reported over time, and I believe in FY '96 -- FY 1996 we
16 had our high of LUSTs reported and that was about 978
17 reported, and in FY 2001, it is down to 108, and I
18 believe in FY 2002, which just ended June 30th, was down
19 to 101. We kind of equate those reductions or that
20 decrease in the number of LUSTs reported annually with
21 our compliance program.

22 Pretty much so, in fact, because it is a leak
23 detection program, we're equating the lower numbers of
24 LUSTs with compliance with it and our owner/operators out
25 there, our regulating public, are really going to bat in

1 this. So we really want to encourage that, and we also
2 feel that we need a fairly strong or adequately strong
3 leak prevention and compliance program to basically
4 oversee and assure that there is good compliance with
5 leak detection requirements.

6 It's not unusual -- I mean, basically Myron
7 alluded to the funding issue, and I did printout some
8 numbers last time. Basically, the funding I get is
9 pretty much the regulatory account per year per tank and
10 our numbers of tanks are slowly decreasing, not
11 necessarily our number of facilities being spent, but the
12 number of tanks. So our funding base is kind of going
13 away. So that's some of the issues that I'd like to
14 bring to you once I get approval from the director so we
15 can discuss this. At an appropriate later date, I'll
16 commit various graphs to give you, hopefully, a visual on
17 this and pertinent tables of information. So any comment
18 would be welcome.

19 VICE-CHAIRMAN DENBY: Elijah?

20 MR. CARDON: One would hope that the
21 inspection program has had a positive effect on the
22 amount of releases. However, I do believe that there
23 would be a broad understanding in the regulated community
24 that the decrease in number of releases is not
25 necessarily connected to the inspection program but

1 rather to the better equipment and different insulation
2 methods and different materials that are used. It would
3 be -- and there are many that believe that that is in
4 fact a fact of life. It would be helpful to have the
5 figures on the money that has been spent on regulation
6 over the last four or five years and what has been
7 accomplished by that money being spent; that is, how many
8 inspections have been made, how many are currently being
9 made, how many people are in the inspection program,
10 et cetera. In other words, if we are to comment on the
11 Commission on this matter, we should have the facts
12 available to make a competent decision.

13 MS. HOLLOWAY: I would add that we would
14 also like to know what you're finding. I mean, what
15 problems are discovered in their inspection program over
16 time and where that's changed.

17 MR. KERN: Yeah. That would be part of the
18 information we provide.

19 MS. FOSTER: Mr. Chairman, I think the
20 inspection program is very important, and I think we
21 should continue with it. A couple things I'd like to
22 comment on. Mr. Cardon's suggestion that the reduction
23 of spills that have been reported since 1998 to 2002 are
24 not dependent on the inspection program. I know as an
25 owner/operator, having removed hundreds of tanks during

1 this time period, my numbers of open cases went up
2 because of the December 27, 1998 deadline. I had to
3 replace tanks, and once I pulled them out of the ground,
4 that's when I found out I had a problem, even though I
5 couldn't detect them in any manner.

6 I would suggest that DEQ look at this program
7 to make sure that it's -- that it pays for itself. Maybe
8 the \$100 fee for the inspection should be increased to
9 cover all the costs. That way it's not a burden to the
10 State. It's more a burden to the owner/operators.
11 Owner/operators might not want to hear this, but other
12 agencies, other organizations are becoming more cost
13 effective by terms of whatever it cost them to put on the
14 program, they charge it back to their customers, that
15 type of thing. So I'd suggest the State look at that.

16 One other item. My opinion is that when I last
17 asked when this item came forward how many cases have
18 been open due to the inspection done by DEQ, the answer
19 was zero. What I'm hearing is that most of the problems
20 were based on paperwork issues, when was the last time
21 the tank was tested or inventory reconciliation. I don't
22 know of a case that's been open due to the inspection
23 program. Has there been?

24 MR. BINGHAM: Yeah.

25 MS. FOSTER: The last time I asked it was

1 zero.

2 MR. BINGHAM: But to comment on that, I
3 think the Commission needs to keep in the back of their
4 mind with respect to increasing needs, that requires a
5 two-thirds vote in the legislature, and that's something
6 we need to keep in mind if that's the direction we're
7 going to make. Getting two-thirds to vote for an
8 increase in anything is very difficult.

9 VICE-CHAIRMAN DENBY: Except State
10 salaries, right?

11 MR. BINGHAM: Oh, yeah. They always get
12 raises.

13 MR. BEAL: As long as you're getting
14 numbers, I think that the inspection program for me would
15 represent the ability to know how the new upgrades are
16 holding up, and in fact, are they functioning, when they
17 begin to fail, how soon does the animal go away when he's
18 not having that protection, when your automatic systems
19 that you haven't placed a monitor didn't fail. The
20 inspections will show that otherwise the owner/operator
21 may not even know to maintain it in an effective manner.
22 Those are the kinds of things that I'm concerned about,
23 and the frequency of your inspection visits, are they
24 within the national average of projected preferred rate
25 or is something substantially lower than that?

1 MR. KERN: We'll compile some of that
2 information. Some of it's beyond our authority and some
3 of it is more of a national scene. I will certainly,
4 after I get approval through the director, try to provide
5 you with as much of this information which you consider
6 to be pertinent as I can.

7 MR. CARDON: Another question that should
8 be put before the Commission, it would seem, is how
9 effective is a government inspection program versus a
10 required specific maintenance program in the private
11 sector? There would seem to be two ways to approach such
12 a thing, and you probably ought to at least take a look
13 at both.

14 VICE-CHAIRMAN DENBY: Okay. Thank you,
15 Ron.

16 Let's see if we can finish off Ten here and
17 then we'll go back to Nine, which we were waiting for Ian
18 to do.

19 Number 10(b), discussion of the issues related
20 to the Commission's mandates, e.g., SAF phase-out and
21 that the Commission may wish to study and make
22 recommendations on before year end. That doesn't make
23 sense. Is there a proponent to this agenda item,
24 suggested agenda item? Nobody.

25 MR. PEARCE: I couldn't hear you. Is there

1 a what?

2 VICE-CHAIRMAN DENBY: Proponent? Somebody
3 that's supporting this agenda item?

4 MR. PEARCE: Well, do you want a call to
5 the public?

6 VICE-CHAIRMAN DENBY: Sure.

7 MR. PEARCE: Well, I'd support --

8 MS. WOODALL: Please state your name, sir,
9 for the record.

10 MR. PEARCE: My name is John Pearce. I
11 would support an analysis on this issue. I think a lot
12 of the stakeholders would like to look at it. I'll just
13 state that when this came up a couple years ago, it
14 didn't get off the ground primarily because there was a
15 lot of stakeholder sentiment that there was inadequate
16 justification for the increase in the fees that were
17 proposed because there wasn't enough information about
18 why the fees that were in place now weren't adequate to
19 cover the bill.

20 I don't know, Ron, if that's what you remember,
21 but that's what I recall. So I would urge the Department
22 to come up with sort of a full accounting of where the
23 money is going and why it's not enough to cover the tab
24 now as part of the process if the end game is to look at
25 a tank fee increase. But it's been a long time since the

1 tank fee was increased.

2 VICE-CHAIRMAN DENBY: We're on to Item B,
3 which is the discussion of the issues related to the
4 Commission's mandates, e.g., SAF phaseout that the
5 Commission may wish to study and make recommendations on
6 before year end.

7 MR. PEARCE: I'm sorry. It is really hard
8 to hear back here. So I didn't miss -- I guess I missed
9 the transition from A to B. So if my comments will be
10 noted for the record as A, I would appreciate it.

11 VICE-CHAIRMAN DENBY: Very good. Is there
12 a proponent to agenda Item 10(b)? Elijah?

13 MR. CARDON: With respect to the wording in
14 Item 10(b), I think that there are two very different
15 items. One would be the phaseout or the discontinuation
16 of eligibility, and then the second would be the
17 cessation of the whole program in general, and it might
18 be helpful to know which one of those we're talking
19 about.

20 MR. SMITH: Mike, maybe I can make some
21 clarification. When the actuarial study came out and we
22 reviewed and had presentations and we made our
23 recommendations, which I believe was the first of the
24 year when we had that, we said we would relook at this as
25 the corrective action rules and the guidance and other

1 things that were in the pipeline were becoming final,
2 that we would relook at this item, especially the SAF
3 phaseout towards the end of the summer, first of fall, to
4 see if we could come up with any new recommendations for
5 the new legislative session. I think that's what that
6 was intending to be.

7 VICE-CHAIRMAN DENBY: Okay. Any other
8 comments on that?

9 MR. CARDON: Well, I would simply repeat,
10 and may I ask a question, were your comments addressing
11 both of those issues or just the first or the second?
12 Those issues being the phaseout of eligibility or the
13 phase out of the whole program, period.

14 MR. SMITH: Well, I think what Item B is
15 saying is issues related to our mandate. I think we all
16 need to get back and look at the mandates that the
17 legislature gave to us back in '98 to make sure we're
18 doing those, and I think what -- they just threw out an
19 example that the SAF phaseout is one of those items. So
20 I don't think it's either/or. I think it's just the
21 entire what was mandated for this Commission to look at
22 is what we're -- whoever asked this to be on is just kind
23 of --

24 MR. CARDON: So this item would include
25 other mandates other than a concept of phaseout.

1 MR. SMITH: Yes. I think what it's saying
2 is all the mandates we've been charged with.

3 MR. CARDON: And so I would want to
4 certainly include for the record that when we get around
5 to phaseout that we ought to break that number down into
6 two.

7 VICE-CHAIRMAN DENBY: Okay. All right.
8 That seems logical enough. It is part of what we do.
9 It's good to have our mandates re-read occasionally so we
10 understand what we're here for.

11 In addition to these two, there are two other
12 pieces that will be on the agenda next month, and that
13 is, one is the reimbursement of volunteer corrective
14 actions, and that will be on the agenda to the extent
15 that the Department is able to provide us some
16 information on their position on that process, and then
17 we can, from that, we can have a broader discussion on
18 what is going on there. But again, I would caution to
19 stay away from the legal conclusion that the Department
20 is in violation of statutes or something of that nature.
21 It's not for us.

22 And the second is the August 12th letter from
23 Elijah Cardon to Robert Rocha, which is our understanding
24 will be on the Technical Subcommittee. That will most
25 likely re-appear next month on the agenda to discuss the

1 four points that Ian put forth there.

2 MR. GILL: Mr. Chairman, I'd like to put
3 one more issue for the agenda. In discussion with
4 Michael O'Hara, I actually thought it was going to be on
5 the agenda this time, he had said that he was hearing a
6 lot of concern, especially now that the new corrective
7 action rule goes into effect today with review of RBCA,
8 application Tier One, Tier Two investigations. And so
9 what I would like and ask is that the new section that
10 was developed for RBCA, and I don't even know what it's
11 called, it has an unusual name, I wondered if the section
12 manager of that group could come to the next meeting and
13 give us a discussion on how her section is developing,
14 how it's going as far as -- because I know right now
15 there's only one individual that is going to be reviewing
16 RBCA reports as they come in, and that was part of the
17 concern is that with all the commotion coming in, how are
18 we going to move this program forward. And I'd like to
19 know what the status of what's going on.

20 VICE-CHAIRMAN DENBY: So sort of an update
21 on the RBCA program?

22 MR. GILL: Well, that, but it's primarily
23 an update on the new section that's been put in place to
24 address that because this section -- I don't know if it's
25 a section or unit -- is basically in place to review risk

1 assessments from all the departments, all programs within
2 DEQ. It's not just UST, and so I would just be
3 interested to know what is -- how it's organized, who is
4 going to be doing what and how and what's the status of
5 the new hires that are supposed to be taking place.

6 MR. CARDON: Mr. Chairman, was your
7 statement of what would occur on the next -- in the next
8 meeting allow us as a Committee the latitude of voting on
9 certain recommendations for these items?

10 VICE-CHAIRMAN DENBY: I'm not sure I
11 understand the question.

12 MR. CARDON: Can we make recommendations
13 and vote to support those recommendations as a Committee
14 in our next meeting?

15 VICE-CHAIRMAN DENBY: Sure. It's all the
16 way the agenda will be drafted next month, but yes, if
17 you have a voting item, although it does give a general
18 comment, specifically if you want to vote on something it
19 needs to be put in there.

20 VICE-CHAIRMAN DENBY: Does the Department
21 have any input on the RBCA request from Hal? Is that
22 something that you would be willing to do, able to do?

23 MR. BINGHAM: I will talk to the section
24 manager. I do not know their status on that.

25 VICE-CHAIRMAN DENBY: Okay. At this point,

1 I'll do a general call to public on agenda items for next
2 month.

3 MR. KELLEY: Dan Kelley. Mr. Chairman, if
4 I can go back to 10(b), which was the item -- no, I'm
5 sorry. It's not even on there. Hal's point -- Hal's
6 agenda item that he was asking be included on the next
7 agenda meeting. I also thought it was going to be on
8 this meeting because I think I was in the daisy chain of
9 phone calls that Mike O'Hara made the day he spoke with
10 Hal about this issue, and so the issue is really two
11 parts.

12 The reason that Mike -- the concern that Mike
13 O'Hara had and what he voiced to me rests in the new
14 corrective action rules 263-01(a) versus 263-01(d). In
15 (a), an owner/operator may perform a Tier Two assessment.
16 In (d), the rules state that an owner/operator shall
17 submit a Tier Two assessment. And so that's the crux of
18 the question, and I think Ian, we brought this up in the
19 corrective action rule meeting, and the way I understood
20 it then was no, that's not the Department's intent. That
21 everyone has to do a Tier Two assessment, but it appears
22 in a strict literal reading of the rule language that
23 every owner/operator is compelled to do a Tier Two risk
24 assessment at their site. So that's the first question.

25 And then if that's true, then how is the second

1 part, which Hal said, how is this new section going to be
2 handling all of these Tier Two risk assessments that are
3 coming in. So it's the chicken and the egg thing. Do we
4 really need a Tier Two assessment at every site, and if
5 so, how are we going to handle all of this? If we don't
6 need it, then we don't care how you're going to be
7 handling all this because you're not going to be getting
8 a loan at every site. . We'd like to get a Department
9 position on that interpretation of 263-01(a) versus (d),
10 and if so, then how the is the Department going to handle
11 those? I'll coordinate with O'Hara to give him some
12 specific items for an agenda item next time.

13 VICE-CHAIRMAN DENBY: And coordinate with
14 ADEQ to make sure that's something they can discuss and
15 have the right forum to discuss it.

16 Any other call to the public discussion items
17 for the agenda for next month? Hearing none, let's move
18 back up to issue number -- or agenda Item Number Nine,
19 discussion of ADEQ's policy of assigning and reassigning
20 prioritization points for risk on SAF claims.

21 Ian, we were told in your absence you're the
22 man to respond to this.

23 MR. BINGHAM: Well, I'm not quite sure who
24 put it on here. It certainly wasn't me. I know in years
25 past we've had several stakeholder meetings on this very

1 issue, and it was decided and the agency has been
2 implementing for years that in terms of prioritization
3 points SAF applications of points obtained once the site
4 has been completely characterized. As release -- as a
5 release is reported, they give general information over
6 the phone in their 24-hour reports followed by a 14-day
7 report, in which much of the information that we're
8 looking for is unknown to the owner/operator and/or the
9 consultant within two days of discovery of the release.
10 Our prioritization scheme if it's unknown is a
11 conservative approach and assign numbers because you
12 don't know what's there. And as you get to the point of
13 site characterization, now you know exactly the
14 contamination that is your risk point that is then
15 carried over to the SAF. We have ran into situations
16 where, as they remediated, they sent in additional data
17 now remediation should be reducing the risk. Their
18 points were going down, and therefore they were being --
19 in the stakeholder's point of view, need to concur,
20 penalize, and move forward with the corrective actions
21 because you're losing points, and that's when the
22 stakeholder and the Department came to the agreement.
23 Once the site is characterized, one of the risk points
24 that is determined at that point in time stays with that
25 site for SAF purposes. So moving towards closure does

1 not cause them to lose their place in line when it comes
2 to getting aid, and that's been in place for years,
3 unless somebody has an issue.

4 VICE-CHAIRMAN DENBY: I guess I will open
5 it up to the call to the public on this issue. Is there
6 any comment from the public on this issue? Apparently
7 not.

8 Then I don't see any action to be taken on
9 Number Nine. If it shows up that it needs to later on,
10 it can be put back on another agenda in the coming
11 months.

12 Okay. General call to the public? Gripes?
13 Compliments? We'd love to hear them all. John?

14 MR. PEARCE: John Pearce. Kind of in
15 connection with what Mr. Kelley was saying, we've got
16 rules that are apparently going to go into effect as soon
17 as today or tomorrow, the corrective action rules; is
18 that right?

19 VICE-CHAIRMAN DENBY: Yes, today
20 supposedly.

21 MR. PEARCE: I've been getting messages and
22 so forth from sophisticated owner/operators with
23 sophisticated consultants about some aspects of the
24 rules, primarily the risk-base process, similar to
25 questions that Mr. Kelley raised but from different

1 sources. And it just occurs to me that there's a real
2 need from outreach by the Department to stakeholders on a
3 couple of facets of the rules. Number one, that the
4 rules are effective and that they will apply to the
5 following kinds of situations, the retroactivity issue
6 being discussed in that context so that people are clear
7 whether they're subject to the rules or not. And I know
8 that a lot of these points I'm raising may perhaps be
9 touched on somewhere in this voluminous rule, but you
10 just cannot expect a lot of average folks out there that
11 are subject to the requirements of this program to read
12 the entire rule and glean the bits and pieces that may
13 exist in there about who is subject and what exactly
14 they're supposed to do.

15 So number one, I would suggest that an outreach
16 be made in some sort of widely distributed and short,
17 concise statement that the rules are in effect. Number
18 two, what kind of sites are subject to the rules and what
19 kind of sites are not, what phases of the site are
20 subject to the rules, how that works in the retroactivity
21 based on phases. I understand that approach in the
22 rules.

23 Third, I would hope that there would be some
24 intention given either in that circular or in some sort
25 of other more detailed paper that can be prepared, if it

1 hasn't been prepared already, that steers away from a lot
2 of the really technical aspects of the risk-base process
3 and just tries to outline in layman's terms what's
4 expected and what isn't by way of the use of the Tier
5 One, Tier Two process, when it's required, when it's not.
6 What happens if you follow, what happens if you don't.
7 Those are going to be really common questions that I
8 think it would be a good idea to try to head off by a
9 proactive publication rather than waiting for a ton of
10 comments to come in and then deciding it would be a good
11 idea to publish that.

12 Finally, I would really highlight in this
13 circular anything new, and there are some new reports
14 that are required, possibly new time frame or two so that
15 people are aware of those and the Department doesn't get
16 hit with a bunch of complaints about that on the
17 backside.

18 VICE-CHAIRMAN DENBY: Thank you. Is there
19 any other comment or other comments?

20 Okay. I guess that takes care of the agenda
21 items.

22 Number 12, announcements. Next meeting is
23 scheduled for September 18th, 2002, and then on to 13,
24 which is the vote to convene executive session.
25 Executive session is requested to discuss the request of

1 a legal opinion from the Attorney General's office
2 regarding the legality of SAF applicants not paying the
3 10 percent co-pay. If the vote is approved, the
4 Commission will go into executive session.

5 I guess this is a broader discussion in terms
6 of my mind of what's going on here is the question of
7 does the Commission have the authority to request a legal
8 opinion from the Attorney General's office regarding
9 basically an SAF application or in fact regarding a
10 Department interpretation of law or whether the
11 Department should be doing something according to the law
12 or not.

13 My own personal comments on that and sitting as
14 a member of the Policy Commission is that I don't think
15 we have the authority to do that. If we want to ask the
16 Attorney General's office to clarify our mandates or to
17 do something under the law that is our requirements,
18 that's perfectly acceptable in my mind to have the
19 Attorney General give us that comment, but to request
20 that the Attorney General's office provide us a legal
21 opinion regarding the co-pay issue is basically asking --
22 or is getting into ADEQ's arena of operation. It is
23 ADEQ's counsel, and ADEQ's counsel should be counseling
24 ADEQ and not the Commission.

25 So I think it's a dangerous area. We should

1 not be playing around in that. If we want to talk about
2 the 10 percent co-pay, that's perfectly fine to me, but I
3 think the idea of asking for a legal opinion on that is
4 overreaching.

5 Any other comments on that? Do we want to --
6 obviously it was talking about a vote. Do we want to
7 vote to go into executive session to talk about this? Is
8 there a motion one way or the other?

9 MR. SMITH: Mr. Chairman, I'm just a little
10 foggy of just what we're here to discuss about this.
11 Does it go back to the earlier agenda Item Eight?

12 VICE-CHAIRMAN DENBY: No, it's not that.
13 It's not -- the 10 percent co-pay, apparently, my
14 understanding of this issue is that there are consultants
15 out there who will basically do their work and not
16 require that the owner/operator actually take the 10
17 percent reduction, and they basically bill that 10
18 percent into their bid. And there are other consultants
19 out there in the business and other people on the outside
20 who see that as sort of foul play, and the Department
21 should be requiring that that 10 percent actually be a
22 hit to the owner/operator, not that the consultants are
23 able to, for lack of a better word, finesse it somehow to
24 control that 10 percent hit so the owner/operator doesn't
25 see that.

1 I think it's an issue. I don't disagree that
2 that's out there, there's a 10 percent question. It does
3 show up in the statute. It does require it. The
4 question here is that there were apparently someone who
5 walked into the Attorney General's office to give us an
6 opinion as to whether the Department has to require that
7 10 percent be an actual hit to the owner/operator versus
8 somehow a pass-through. And so basically the question
9 before us right here with this issue is, are we going to
10 ask the Attorney General's office to provide us a legal
11 opinion, and the subissue to the whole thing is: What's
12 going on with the 10 percent co-pay?

13 MS. JAMISON: Mr. Chairman, if I may, the
14 question that was posed was should we go into an
15 executive session so that the Commission's legal counsel
16 who is here today could advise us with respect to the
17 parameters of our responsibility and how we might respond
18 to the request that has been made of us. I would
19 recommend that we do go into an executive session for
20 that purpose only, so that all of the members of the
21 Commission have the benefit of that legal advice and the
22 opportunity to ask our legal counsel any questions we may
23 have.

24 VICE-CHAIRMAN DENBY: My comments to that
25 would be, I'm not sure that an executive session is

1 necessary for that. If we feel that we need legal
2 counsel, I'm not sure we need to do it behind closed
3 doors. If we think there's a threshold and the Attorney
4 General's office wants to explain to us what that
5 threshold is, that's fine. I think the executive session
6 would have been what the actual opinion on the 10 percent
7 would have been.

8 MR. CARDON: Obviously not being trained as
9 an attorney, I don't have any basis to make a decision or
10 speak definitively on this. However, if there were some
11 people who were paying the 10 percent and some people are
12 not paying 10 percent, as a layman, I would think that
13 that would be something that it would fall within the
14 policies and procedures mandated this Commission, and I
15 would certainly agree that we at least ought -- to know
16 have a legal opinion as to whether we should be
17 addressing it.

18 VICE-CHAIRMAN DENBY: I think you're right
19 on almost both of those points, but let me clarify them a
20 little bit. The question of the 10 percent co-pay, is it
21 right, is it wrong, what's going on out there, I think
22 this Commission stands as a very strong body to be able
23 to put our opinion forward, which is, I think the
24 Department should do X. It shouldn't ignore it or it
25 should say yes, we should take this seriously.

1 To the extent that there is a legal opinion
2 being asked for about the legality of what's going on
3 with the SAF, that's beyond our scope. That takes it one
4 step beyond it. If we want to sit and say as a
5 recommendation of the Department that they take this
6 seriously and that they look into it and they see what
7 they can do to control the 10 percent co-pay, that's
8 fine, that's a recommendation to the Department. But the
9 second we go asking the Attorney General's office for a
10 legal opinion as to whether that is appropriate or not,
11 the 10 percent co-pay issue, then you're basically
12 stepping on ADEQ's toes and trying to determine whether
13 the law -- whether their interpretation of the law is
14 correct or incorrect.

15 MR. CARDON: Well, I for one would like to
16 have that. I mean, it does seem appropriate. It's been
17 a concern to someone. It ought to be addressed.

18 VICE-CHAIRMAN DENBY: Well, let's do this:
19 Let's start off by acknowledging whether we want to vote
20 to go into executive session, and executive session would
21 just be an executive session of us and the Attorney
22 General's office counsel to us, and we can talk this
23 issue through in very candid terms there if you want, or
24 if we decide not to go into executive session, we can
25 still ask the Attorney General's office to explain to us

1 what she thinks our authority is to request a legal
2 opinion regarding this SAF application issue.

3 MR. BINGHAM: Are you looking for a motion
4 or just discussion?

5 VICE-CHAIRMAN DENBY: I'm looking for a
6 motion, first, so we can clear the agenda because that's
7 the agenda item.

8 MR. BINGHAM: Then I make a motion that we
9 go into executive session.

10 MR. SMITH: Before you finish that
11 statement, should we ask our counsel whether we should do
12 this in executive session? Can we ask that?

13 VICE-CHAIRMAN DENBY: Are you comfortable
14 addressing that?

15 MS. WOODALL: Yes, I am. The advantages to
16 having consultation for legal advice within the confines
17 of an executive session is you do preserve
18 attorney/client privilege, and I always think that that's
19 a good idea to do that, but I'm more than prepared to
20 outline the issue of the appropriateness of this body
21 requesting a formal attorney general opinion concerning
22 that 10 percent topic. It's up to you.

23 VICE-CHAIRMAN DENBY: I'd like to see it
24 out in the public where everyone can hear what this is so
25 they know what we're being told is our limits of

1 authority as well, versus us going behind doors. If this
2 agenda item came from the outside, which it appears to
3 have come, it gives them a good idea of what we've heard
4 today.

5 MR. BINGHAM: It's my understanding that
6 when we come out of executive session we can discuss it
7 with the public, end the executive session and go home or
8 am I misunderstanding that?

9 MS. WOODALL: The way the agenda is
10 currently drafted, if you went into executive session,
11 you do not have an agenda item to take any action, and so
12 at the conclusion of the executive session, you would go
13 back into open session for purposes of adjournment only.

14 MR. SMITH: Or to set an agenda item for
15 the next meeting?

16 MS. WOODALL: Yeah. I think you could do
17 that.

18 MS. FOSTER: Mr. Chairman, don't we have
19 another option and that is for the Commission to
20 recommend DEQ that, since it's their responsibility for
21 the interpretation of law, that we suggest that DEQ go to
22 the Attorney General's office and work out this issue?

23 MS. WOODALL: You could put that on the
24 agenda for next time.

25 VICE-CHAIRMAN DENBY: That's not what

1 Number 13 is saying, but that's a good solution to it.

2 MR. BEAL: I would like to second Ian's
3 motion for an executive session. I would know like to
4 know what the attorney thinks we're doing.

5 VICE-CHAIRMAN DENBY: Okay. There's a
6 motion on the table for executive session. Any further
7 discussion? All those in favor say aye.

8 Those opposed?

9 (Whereupon, Mr. Denby and Ms. Foster
10 voted.)

11 VICE-CHAIRMAN DENBY: Two opposed. Looks
12 like we're going into executive session.

13 MS. WOODALL: At this time, all members of
14 the public are asked to leave the room.

15 (Whereupon, the UST Policy Commission
16 convened in executive session at 11:12 a.m.)

17 (Whereupon, the UST Policy Commission
18 reconvened public session at 11:45 a.m.)

19 VICE-CHAIRMAN DENBY: Do we want to talk
20 about this as a discussion item for an agenda for next
21 month or do we just simply want to adjourn?

22 MR. BINGHAM: Do we want to putt it on the
23 agenda?

24 VICE-CHAIRMAN DENBY: That's the idea. Do
25 we want to put it on the agenda for next month or do we

1 simply want to just adjourn and deal with it in the
2 interim?

3 MR. BINGHAM: It doesn't matter to me.

4 MR. CARDON: It ought to be an agenda item.

5 VICE-CHAIRMAN DENBY: So agenda item to
6 discuss what we'll do with it. Okay. Very good. Other
7 than that, I think that's it. So we are adjourned.

8 (Whereupon, the proceedings were concluded
9 at 11:46 a.m.)

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1 COUNTY OF MARICOPA)
) SS.

2 STATE OF ARIZONA)

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4 I, MARISA L. MONTINI, Certified Court Reporter,
5 Certificate Number 50176, State of Arizona, do hereby
6 certify that the foregoing pages, numbered from 1 to 74,
7 inclusive, constitute a full, true, and accurate
8 transcript of all proceedings had in the foregoing
9 matter, all done to the best of my skill and ability.

10 WITNESS my hand and seal the ____ day of
11 _____, 2002.

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MARISA L. MONTINI, RPR
Certified Court Reporter
Certificate Number 50176

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