

UST POLICY COMMISSION MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

October 23, 2002

9:14 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 October 23, 2002, at 9:14 o'clock a.m., at the Industrial  
3 Commission of Arizona, 800 W. Washington, Auditorium,  
4 Phoenix, Arizona, in the presence of:

5  
6 Michael O'Hara, Chairman

7 Roger Beal

8 Elijah Cardon

9 Shannon Davis

10 Theresa Foster

11 Harold Gill

12 Nancy Jamison

13 Myron Smith

14 ABSENT MEMBERS:

15 Michael Denby, Vice Chairman

16 Karen Holloway

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1 Phoenix, Arizona

October 23, 2002

2 9:14 o'clock a.m.

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4 P R O C E E D I N G S

5 CHAIRMAN O'HARA: I want to call this  
6 meeting to order. I want to thank you all for attending  
7 the November meeting of the UST Policy Commission --  
8 excuse me, October. I'm a month off.

9 First order of business is a roll-call starting  
10 on my left. Elijah.

11 MR. CARDON: Elijah, here.

12 MS. FOSTER: Theresa Foster.

13 MR. GILL: Hal Gill.

14 MR. BEAL: Roger Beal.

15 CHAIRMAN O'HARA: Mike O'Hara.

16 MR. SMITH: Myron Smith.

17 MS. DAVIS: Shannon Davis.

18 MS. JAMISON: Nancy Jamison.

19 CHAIRMAN O'HARA: And before we jump into  
20 the agenda, I would like to make a couple of comments.  
21 There is one mistake on the agenda, and that's Item No. 7  
22 which we had discussed in previous meetings regarding the  
23 10 percent co-pay. And I think we reached resolution at  
24 the last meeting, so we are not going to discuss that  
25 issue. I hope no one is in attendance who came to discuss

1 that.

2 We have a very full agenda so we are going to  
3 try to move through it rather quickly. Also, you may have  
4 noticed we have a change in membership of the board. Rick  
5 Tobin, acting director, has appointed Shannon Davis,  
6 director of the waste programs, to replace Ian Bingham.  
7 And I want to join Mr. Tobin and, I'm sure, my fellow  
8 colleagues in thanking Ian for his efforts and his  
9 dedication over the last couple years. And you will be  
10 sorely missed. We really appreciate your efforts. And  
11 Welcome, Shannon. Look forward to working with her.

12 And moving on to Item 2, administrative issues,  
13 we have approval of minutes from the August 2002 and  
14 September 2002 meetings. We didn't have a quorum at the  
15 last meeting. So at this time, I would like to take  
16 comments on the minutes. Any proposed changes?

17 MR. SMITH: I move that the minutes for  
18 August and September be accepted as written.

19 MR. BEAL: I'll second.

20 MR. CARDON: Second.

21 CHAIRMAN O'HARA: All those in favor of  
22 accepting the minutes for both August and September say  
23 aye. Opposed? The minutes are accepted.

24 Moving on to Item 3, ADEQ updates. Item No. 1  
25 is a discussion of the 2003 State Assurance Fund cost

1 ceilings. And I think we had a small presentation on that  
2 last meeting. They prepared definitions and presented  
3 those to us. And I believe they were going to survey at  
4 that point, but there may have been some changes. Would  
5 somebody from the Department like to make a comment on  
6 that?

7 MS. ROSIE: It is my understanding from the  
8 technical subcommittee, we are preparing based on the  
9 previous technical subcommittee meeting over the cost  
10 ceilings, we're updating descriptions and the general  
11 notes. And we are hoping to have those available for  
12 everybody the first part of November, so that everyone  
13 gets a chance to review them before the next Policy  
14 Commission meeting.

15 CHAIRMAN O'HARA: Okay, great. They are  
16 going to definitely be presented at the next meeting?

17 MS. ROSIE: Prior to the next meeting.

18 CHAIRMAN O'HARA: And the technical  
19 subcommittee --

20 MS. ROSIE: I don't know if we are going to  
21 have another technical subcommittee meeting. I think we  
22 were just going to make them available to everybody who  
23 had been involved in the subcommittee plus the Policy  
24 Commission members.

25 CHAIRMAN O'HARA: And then we will try to

1 have those on the agenda for the next meeting to approve?

2 MS. ROSIE: Correct.

3 CHAIRMAN O'HARA: Any comments on the 2003  
4 cost ceilings?

5 MR. GILL: I would just like to say we had a  
6 very good meeting. And as Tara said, we went through  
7 basically all of the cost ceiling -- 2000 cost ceiling  
8 item descriptions and determined which ones could stay  
9 as-is. And if there was one that had lots of concerns  
10 over the last three years, those were eliminated. We were  
11 doing those on a time-and-materials basis. But there was  
12 a large turnout and real good discussion. And we had  
13 consensus we would move forward with the 2000 item  
14 descriptions as they presented them.

15 Tara, did you say -- I'm zoning out here. Did  
16 you say that you are going to present the document to us  
17 before the next meeting so we can --

18 MS. ROSIE: Yes, as soon as we can.

19 MR. GILL: Okay.

20 CHAIRMAN O'HARA: Any other comments? Okay.

21 Moving on to Item B, presentation and discussion  
22 of the new SAF section.

23 MS. NAVARRETE: I just have a couple of  
24 things this morning. First of all, I just wanted to let  
25 everybody know our org chart and a couple of status

1 reports are in the back here.

2 CHAIRMAN O'HARA: Excuse me, Judy. Could  
3 you just identify yourself for the record.

4 MS. NAVARRETE: Judy Navarrete.

5 CHAIRMAN O'HARA: Thank you.

6 MS. NAVARRETE: And, secondly, I wanted to  
7 introduce Susan Padilla. She is the new unit manager for  
8 the application review, which is our administrative part  
9 of SAF. And that's about all I have this morning. But  
10 Tara is going -- Tara is going to address a couple of  
11 updates we've done in the section to make things a little  
12 easier.

13 CHAIRMAN O'HARA: Great.

14 MS. ROSIE: Do you want them now?

15 CHAIRMAN O'HARA: That would be great.

16 MS. ROSIE: Tara Rosie, DEQ. There are  
17 several forms in the back. One of them you have seen  
18 before, which is the substitution request waiver. We've  
19 had a lot of success with this. And more and more  
20 applicants are actually providing this on the initial  
21 application submittal, which is helping to facilitate  
22 processing these direct pays against the pre-approvals and  
23 helping us stay out of appeal. We are updating this  
24 document. It is in the back. Do you want me to get you  
25 copies? Did you not get some?

1 MR. GILL: Is it in what you handed out,  
2 Judy?

3 MS. NAVARRETE: No, it is not what I handed  
4 out. There are copies.

5 MS. ROSIE: We are in the process of  
6 updating this. Part of the reason for the update is, of  
7 course, Senate Bill 1338, which is now in statute. We are  
8 also adding a section that clarifies a description on the  
9 electronic reimbursement and the electronic reimbursement  
10 process because that's been kind of confusing for  
11 everybody. Like I said, that's in the final draft stages  
12 right now. We can probably have that, I'm hoping, by the  
13 next Policy Commission meeting. If it is prior to that,  
14 then we'll let everybody know.

15 MS. NAVARRETE: Send it out for review.

16 MS. ROSIE: Yeah, that's going to be  
17 available.

18 MR. GILL: Can we have a presentation on  
19 that at the next meeting?

20 MS. ROSIE: I think that would be an  
21 excellent idea, Hal.

22 CHAIRMAN O'HARA: I'm sorry, Hal.  
23 Presentation on?

24 MS. ROSIE: On the substitution request  
25 waiver and the electronic reimbursement process.

1 MR. GILL: It's difficult.

2 MS. ROSIE: Yeah, it is kind of tricky.

3 MR. GILL: But it is important.

4 MS. ROSIE: It is.

5 And so for right now, we are getting these, like  
6 I said, on the initial submittals of the direct pays. For  
7 everybody who is using that, thank you very much. It  
8 helps. We are making phone calls if we need  
9 clarification. I fax several of these out just on cost  
10 reviews, so people can -- hopefully we can get these  
11 issues addressed actually prior to making a determination.

12 I'm also noticing on informal appeals, we are  
13 getting these attached to the informal appeal requests.  
14 And that helps immensely because then everything we need  
15 to process, it's right there in front. So I think this  
16 has helped immensely, and hopefully the new form will make  
17 everything even easier to use.

18 MR. GILL: Mike, does everyone on the  
19 Commission know what she's talking about?

20 MS. ROSIE: No? Patricia gave a  
21 presentation about this a year or so ago. What it is, is  
22 it's a form that allows -- As everybody recalls, we had  
23 many discussions about the problems with pre-approvals and  
24 direct-pay conformance due to the pre-approvals. What  
25 this does is it allows the Department to review the work

1 that's submitted on the direct pay against the  
2 pre-approval. And if, for example, you had to do  
3 something in the field that accomplished the same work but  
4 you had to do it in a little different way than the  
5 pre-approval, it allows us to take that item that was  
6 pre-approved and the costs that were pre-approved and  
7 apply them to what you actually had to do in the field.  
8 And that way it allows us to approve those on direct pay  
9 and get that out of the way.

10 MR. GILL: Tara, could you -- I might ask  
11 when you give your presentation, could you also include in  
12 that the items that do not -- that you cannot -- that do  
13 not fall within this -- have to go over to a  
14 reimbursement?

15 MS. ROSIE: Excellent, excellent, yes.

16 MS. NOWACK: Is my presentation still there?

17 MS. ROSIE: Yes, it is.

18 The other form, which I think we brought up in  
19 the subcommittee meeting, is a corrective action contract  
20 date form with the previous SAF applications. I think --  
21 We don't have that either? Go grab some.

22 MR. GILL: That one is in this packet.

23 MS. ROSIE: You got that one? Okay. With  
24 the previous SAF application package, it appears ambiguous  
25 when you are completing the application as to whether you

1 are supposed to use the contract date or a date work  
2 performed. It appears to be an option, which it isn't.  
3 At least it's not for the Department as far as payment  
4 goes according to 49-1054(c).

5           And we got in -- we have numerous -- Everybody  
6 has been real good about trying to help us through this  
7 process and providing us copies of contracts. We don't  
8 really want to have a lot of copies of contracts because  
9 we don't know what to do with them either. And what we  
10 are hoping is that this will be something that is much  
11 easier for everybody to use with the application. It can  
12 be submitted with the application itself. Or if we don't  
13 see that that issue is addressed, we'll fax it out to you  
14 to have completed.

15           It's simply a one-page form that allows you to  
16 indicate whether you have a contract for the work that's  
17 in the application; if you do, what the date that contract  
18 was entered into is because that determines the cost  
19 schedule we evaluate the claim under. It also allows you  
20 to indicate if there is no contract for the work, in which  
21 case the date work performed is appropriate for us to  
22 value the costs against.

23           We included a little table in case your  
24 application covers multiple contracts. In some cases, I  
25 think people submitted applications where part of the work

1 is under a '99 contract, part would be under a 2000 or  
2 2001. And this allows you to document it all in one area.  
3 If you need to attach something, that would certainly be  
4 acceptable. But hopefully this will alleviate some of the  
5 issues we've had with the contracts. And I believe what  
6 we are hoping to do is implement this as of November 1st.

7 And, Al, we are going to try to get you to put  
8 it on the Web for us. .

9 I think that's all I've got.

10 CHAIRMAN O'HARA: Thank you.

11 MS. ROSIE: I don't see Arcelious here. And  
12 technical review and cost review have been working  
13 together very closely since he's come into the SAF  
14 section. I think it's very positive.

15 CHAIRMAN O'HARA: Thank you. Any comments  
16 or questions on the new SAF section or forms?

17 Moving on to Item C, presentation and discussion  
18 of the new LUST number assignment policy. This comes from  
19 a couple meetings ago. I think we're expecting to have a  
20 draft of the new policy for assigning LUST numbers. I  
21 don't know if anyone's got a copy of that new policy yet.

22 MS. DAVIS: Mr. Chairman, we discussed this  
23 in a premeeting the other day. And what I have asked is  
24 that that draft -- I would like a draft policy to go  
25 through upper management and get approval internally so

1 it's consistent before it comes here. And we can have  
2 that to you at the next Commission meeting.

3 CHAIRMAN O'HARA: Next meeting?

4 MS. DAVIS: Yes. Sorry for the delay on  
5 that.

6 CHAIRMAN O'HARA: No problem.

7 Any comments or questions?

8 Item D is discussion of methods for notifying  
9 UST stakeholders of items of interest about the UST  
10 program. Who wanted a response to that?

11 Hal, was that yours?

12 MR. GILL: Actually, Al and I had a  
13 discussion earlier this week, which probably not too many  
14 of you know, a document was found by one of the  
15 consultants on the Capacity Development, their section of  
16 the Web page which basically was frequently asked  
17 questions about the new UST corrective action rule.

18 And the issue as raised is that I don't know  
19 probably five people that know this exists, and it is a  
20 very important document. And so it raised the issue again  
21 that many, many people have no idea how to find anything  
22 on the DEQ Web page. And even people that know how to use  
23 it have problems finding things because there is no rhyme  
24 or reason to it as to why certain sections have these  
25 updates or whatever.

1           And so in our discussions -- my discussion with  
2 Al, we put this on the agenda so Al could give us an idea  
3 of what he is trying to do to make it easier for the  
4 regulated public to find new guidance rules, whatever,  
5 that are put on the Web page. I'll let Al address that.

6           MR. JOHNSON: Al Johnson with DEQ. Hal and  
7 I were talking because -- even while we were talking, I  
8 was trying to find something on the Web and I was having  
9 difficulty too. And so I'm going to be working with  
10 Cynthia Miller as well as Stacy Ralph who is our Web  
11 mistress. And we are going to come up with some new ideas  
12 on design to make it easier to find things on the Web  
13 about UST. We are going to try to make it a more logical  
14 progression of links.

15           So it's going to be connected to the "What's  
16 New" page. So if you click on "What's New," that's going  
17 to take you to "In UST." It will probably have a list of  
18 different programs. But you can go on UST -- "What's New  
19 In UST" and everything should be there. And if there are  
20 other programs that we're sort of sharing things, like the  
21 RBCA process is shared between programs, there will be  
22 links there as well.

23           So it's going to be an effort with Cynthia and  
24 myself and Stacy. But we are hoping to have something  
25 done fairly quickly.

1 MS. DAVIS: Mr. Chairman, I'd just like to  
2 say that the navigational ease on the Web site is an issue  
3 for the whole agency. And our Web site is being looked at  
4 for the use of the entire agency and outside as well. It  
5 is not an issue that's specific, certainly, to this  
6 program. And it's high on the leadership screen to make  
7 it more user friendly because internally we are  
8 frustrated. We can imagine what it's like on the outside.

9 CHAIRMAN O'HARA: Thank you. Other  
10 comments, questions?

11 Moving on to Item E, discussion of ADEQ Capacity  
12 Development section's new risk assessment unit.

13 Hal, do you have some comments?

14 MR. GILL: Well, no. Just that we've had  
15 this on there for a couple of months now, and I just was  
16 wondering -- I know there is lots of interest not only in  
17 UST but outside UST on what this new section is going to  
18 be doing. And I just -- I don't know anything more about  
19 it than anyone else, so that's why we had it on the  
20 agenda.

21 MS. DAVIS: I'm happy to take that up,  
22 Mr. Chairman. Probably as most of you know in the  
23 environmental field, risk-based assessment and  
24 prioritization is the way that we are beginning to do  
25 business more and more across all of our programs. And in

1 order to accommodate that, I have centralized the  
2 resources in Capacity Development. Jeanene Hanley has  
3 worked with the UST program for a long time.

4 I think an important distinction to share is  
5 that between risk management and risk assessment. And we  
6 have other stakeholders that we're working with in the  
7 WQARF program and their desire is for staff at ADHS to do  
8 the actual risk assessment, which is taking the  
9 information and assigning numbers to go through the  
10 screening to actually assess the risk. And then once  
11 those assessments are done, they come back to our agency  
12 where we actually -- our part of it is more risk  
13 management. That's where Jeanene is. Then we review the  
14 assessments which are done by the people at ADHS.

15 And right now specifically with UST, I know that  
16 we're in a procurement process to get software for RBCA so  
17 that everyone can use -- in the UST program can utilize  
18 the software if they want to go through RBCA closure. I  
19 guess I'm more interested if there are specific questions  
20 around the program, what needs you see.

21 MR. GILL: Well, the big concern, as has  
22 been expressed in a number of Policy Commission meetings  
23 and I think even in GRRC and elsewhere, is the -- we  
24 expect with the RBCA program in place and the rule in  
25 place that there could be a huge influx of Tier 2 and

1 primarily RBCA closure requests come in or at least the  
2 risk assessments.

3           And what this really meant -- And I know that  
4 you are new to this agenda. But this was really meant to  
5 be -- what we were real interested in seeing is basically  
6 a plan of how the Department is going to address this  
7 influx primarily because as you mentioned, this new  
8 section is for the entire DEQ. It is not just UST,  
9 although we feel that's probably where most of the risk  
10 assessment is going to come from. We really wanted to see  
11 how was this section going to review all the work that's  
12 going to come in as well as WQARF and wherever else it's  
13 coming from. That was one question. That's really one of  
14 the main reasons this was on there. We wanted to see what  
15 was the make-up of the section, what was the plan for  
16 handling what I just discussed.

17           And, also, I just know in meetings we had  
18 yesterday, there's real concern outside of UST with the  
19 review from this section of DHS risk assessments. And we  
20 just heard that yesterday. So I know that's going to be  
21 an issue too. So I'm sure that's going to be -- Again, I  
22 don't want to say it will not affect us because, again,  
23 anything that's being reviewed by this section is going to  
24 affect the UST ones that are trying to go through. So it  
25 is all involved. But I know there's big concern outside

1 of UST of having this new section review DHS risk  
2 assessments.

3 MS. DAVIS: Mr. Chairman, Mr. Gill, if I  
4 understand your points, one is the concern from the  
5 outside in reviewing those and, two, the strategy in the  
6 agency for risk assessment and how are we going to  
7 approach that. Organizationally, just establishing a risk  
8 assessment unit was our first step in acknowledging that  
9 risk assessments will become more a part of our business  
10 than before. Jeanene Hanley now has a supervisor that can  
11 help her with administrative managerial kinds of things  
12 that she didn't necessarily have before. My hope is that  
13 Jeanene will have more time to actually do the review.

14 I'm also looking at outside resources to help  
15 develop our program. I think the most consistent thing  
16 that I need as a division director is to make sure that  
17 risk assessments are standardized. I think the software  
18 that everyone will have access to will be a big thing.  
19 But it is also really important from an agency point of  
20 view that risk assessments are all based on the same kinds  
21 of standards and criteria, so that risks to human health  
22 and environment are assessed the same across all programs  
23 because it just is logical that that should be the case.

24 So, one, the management of that unit is looking  
25 into that. I just requested and received an inventory, if

1 you will, of risk assessments. I have asked that those be  
2 prioritized and asked how the workload is going to occur.  
3 We do have some ramp-up time before the software becomes  
4 available to the customers to use. And we do have a  
5 vacancy that we are looking to fill to add to that risk  
6 assessment unit. And then, you know, we are just going to  
7 have to take it step by step to see how many more  
8 resources we do have. .

9 We can anticipate a rush of RBCA applications,  
10 but I also think we need to see just how many come in  
11 before we assign any more resources than we already have.  
12 And I think it's also a good idea that not necessarily on  
13 a monthly basis but maybe quarterly that the agency report  
14 back as to how the risk assessment unit and the management  
15 of those cases are going.

16 MR. GILL: Thank you.

17 CHAIRMAN O'HARA: Thank you. Any other  
18 comments or discussion on this topic? Theresa.

19 MS. FOSTER: Mr. Chairman, risk assessments  
20 have been around for a number of years. I know a number  
21 of owner-operators who have submitted them. I'm a little  
22 bit concerned on the number of risk assessments that are  
23 already sitting there waiting to be looked at and the age  
24 of them. With RBCA coming through, what are the chances  
25 that those risk assessments will now have to be rewritten

1 to meet the new standard? That bothers me a little bit  
2 for the number of dollars already spent and dollars that  
3 will have to be spent in the future.

4 You said you did an inventory. How many risk  
5 assessments are there right now?

6 MS. DAVIS: You know, I couldn't answer that  
7 off the top of my head. There is a couple of pages worth.  
8 And also, if there is specific ones that are sitting that  
9 you're concerned about, if you'll give me those, I will  
10 certainly have those looked into.

11 MS. FOSTER: What is a normal turnaround  
12 time? Is two years too long or too short?

13 MS. DAVIS: Two years is too long, yes.

14 CHAIRMAN O'HARA: Any other comments?

15 MS. DAVIS: Mr. Chairman, one thing, risk  
16 assessments have been around for a long time. I don't  
17 think there has been a focus put on a risk assessment  
18 program like we are now. And I know that historically  
19 some of the risk assessments that are in the agency, one  
20 of the things is they don't all contain the same data.  
21 And one of the things we are going to be requesting is  
22 standardized data so we can review each one. I don't  
23 think that's happened necessarily in the past, so...

24 MR. GILL: Mr. Chairman, before we move on  
25 to call to the public, if that's what you were going to

1 move on, there was one thing I forgot to mention in A, in  
2 the cost ceilings. Question just came up with -- And I'm  
3 not sure that that document that I mentioned, which we are  
4 going to put on the agenda for next time, the frequently  
5 asked questions, I am not sure it addressed this. But  
6 if -- this process for the corrective action rule has been  
7 going on for a long time. During that process and towards  
8 the end of it, there were site characterization reports  
9 and CAPs being completed that may have been 90 percent  
10 done when the corrective action rule went in place.

11 The question for the cost ceilings is now that  
12 the rules are in place, do these site characterization  
13 reports and CAPs need to meet the new rule? And if they  
14 do, that means going back and making some changes that  
15 would extend the cost past what the 2000 cost ceilings  
16 would be. And is that going to be paid?

17 CHAIRMAN O'HARA: Anyone have an answer to  
18 that question?

19 MR. DROSENDAHL: Yeah. My name is Joe  
20 Drosendahl. And the rule talks about that kind of  
21 situation. Basically, the rule is only effective for  
22 those activities that weren't initiated at the time of the  
23 rule. So if you were almost done with site  
24 characterization, basically you already initiated the site  
25 characterization. So the site characterization report

1 would not be a part of the rule. Once you get approval of  
2 the SCR, then you would jump into the report. The same  
3 with the CAP.

4 MR. GILL: Evidently that needs to be  
5 clarified because someone at DEQ is telling people the  
6 other, the opposite, or that they have to redo their CAPs.

7 MR. BEAL: I have a question. I'm sure that  
8 somebody can enlighten me. It seems we were concerned  
9 about Jeanene being able to handle the risk assessments  
10 because of the quality of education and training that's  
11 needed to do this. How is having the DHS do the risk  
12 assessments alleviating that concern?

13 MS. DAVIS: Mr. Chairman, Mr. Beal, there  
14 are people who have some training in ADHS to already plug  
15 in the numbers, if you will, to look at the data and plug  
16 them into the assessment that goes into getting results,  
17 if you will. And then those come back. And Jeanene is  
18 responsible for reviewing those, so Jeanene isn't doing  
19 all the risk assessments. But she needs to review some of  
20 the work -- or most of the work that actually is done  
21 outside the agency.

22 And it was a request from our WQARF Advisory  
23 Board -- That's the other advisory board that we have in  
24 waste programs. And the stakeholders there had a  
25 strong -- issued strong guidance to us that they would

1 like to see the assessment done under one agency and then  
2 review of the management of that done in another so that  
3 essentially there was a fire wall, if you will, or a  
4 distinction between who looked at the raw data and then  
5 who used it for a management tool. So we have resources  
6 at ADHS to actually go through those risk assessments and  
7 evaluate those. And then those evaluations, in turn, get  
8 sent to our agency. Am I answering your question?

9 MR. BEAL: Yeah. Again, I have in the back  
10 of my head Dr. Paul Johnson did a lot of algorithms for  
11 the risk assessment program himself saying that's not  
12 necessarily the best way to approach it. And I'm also  
13 concerned about the individuality of the sites needing  
14 specific expertise in determining the data for such a  
15 program. And I'm still just a little puzzled about how  
16 efficiently it's going to work and how accurately it's  
17 going to work. I know that it would appear to be fast.  
18 But I'm not real sure that it's the best. And that's -- I  
19 just want to learn.

20 MS. DAVIS: Sure.

21 MR. GILL: I could just add one point. Not  
22 to address your initial -- the question, but DHS has had  
23 people on staff that have been reviewing full-blown risk  
24 assessments for mining and WQARF sites for years. So they  
25 definitely have experience for it.

1           CHAIRMAN O'HARA: Okay. Moving on to Item F  
2 is call to the public. Does anyone from the public have a  
3 comment that they would like to make on any of the above  
4 comments from ADEQ updates? Mr. Beck.

5           MR. BECK: Brian Beck. I have three  
6 different comments. What's missing from the ADEQ updates,  
7 we were supposed to have the Appendix B from the RBCA  
8 guidance document done on this particular date. I haven't  
9 seen it anywhere. That's the Tier 1 level that was  
10 supposed to be included. That's the first item.

11           Second item is the line-item substitution forms  
12 that are here on the tables are the exact same thing we  
13 saw before back in December 2001 except that there are no  
14 clarifications made. ADEQ has been saying that the line  
15 numbers that they want to see from the pre-approval  
16 applications on their form is actually from the  
17 pre-approval letter, not the actual pre-approval  
18 applications. That has to be changed over so we know what  
19 numbers to submit our claim with.

20           The second thing is this form was under the old  
21 1054(c), which has been changed in law. We requested from  
22 the agency clarification on the changes in 1054(c) and how  
23 it would affect this and other portions, and we have seen  
24 nothing on that. Again, it's the same wording. There is  
25 no changes here whatsoever on how it's going to be

1 affected or how it's going to be played. So we need to  
2 see from the agency how 1054(c), the changes in the law,  
3 is going to affect this particular substitution form. It  
4 makes a great difference on how we are going to be  
5 submitting applications.

6 CHAIRMAN O'HARA: Any other comments?

7 MS. ROSIE: I think we already discussed  
8 that fact that this was the same and that we are currently  
9 in the final draft of a revised version that we are going  
10 to present at the next Policy Commission meeting.

11 CHAIRMAN O'HARA: Thank you. Any other  
12 comments?

13 MS. KELLEY: Ona Kelley. I am sorry. I got  
14 in late. Maybe this was answered. But we were going to  
15 receive copies of the general notes on the 2003 cost  
16 ceilings. I guess you made that commitment in the  
17 technical --

18 MR. KENNEDY: November 1.

19 MS. KELLEY: All right.

20 CHAIRMAN O'HARA: Any other comments?

21 Mr. Kelley.

22 MR. KELLEY: Dan Kelley. Thank you,  
23 Mr. Chairman. I just have one question. I am sorry. I  
24 showed up late. And maybe Tara discussed this when she  
25 presented the State Assurance Fund section 2002

1 information. And I guess if I could direct the question  
2 directly to Tara, might be the best person. There is a  
3 column here that has interim determinations and a total of  
4 50 interim determinations. That's 50 interim  
5 determinations issued in September of 2002; is that  
6 correct? Is that the way we are reading this?

7 And then of those 50 interim determinations, 27  
8 were appealed?

9 MS. ROSIE: No. There were 27 additional  
10 determinations that were made on appeals. So there were a  
11 total of 77 determinations not counting final  
12 determinations that were issued in the month of September.

13 MS. NOWACK: Was that information presented?  
14 This information was not presented yet.

15 MR. KELLEY: I'm sorry.

16 CHAIRMAN O'HARA: It contains an  
17 organization chart which, I assume, is under that topic of  
18 the new SAF section. Is it supposed to be separated?

19 MR. GILL: I think that's when this was  
20 supposed to be presented, it wasn't presented, because I  
21 don't see that it comes up again.

22 MS. NAVARRETE: I just said that we had two  
23 reports available on status.

24 CHAIRMAN O'HARA: Are there any questions on  
25 the report? You weren't planning to present the data.

1 This is exemplary, okay. Any comments on the data?

2 MS. NAVARRETE: Except in written form.

3 MR. GILL: You might just mention for the  
4 record what was provided because we've asked previously  
5 for the org chart and we've received it. We just haven't  
6 discussed any. We might mention what we did receive.

7 CHAIRMAN O'HARA: Judy, do you want to real  
8 quickly just explain what forms we have. It looks like we  
9 have two org charts. We have a form that says "State  
10 Assurance Fund Section September 2002." It looks like  
11 numbers of determinations, active applications, et cetera.  
12 I think this is the data we were requesting in the last  
13 meeting.

14 MS. NAVARRETE: Right. It is two of the  
15 reports that the technical subcommittee had requested and  
16 recommended that we give the Policy Commission. And the  
17 first one is just the State Assurance Fund. It is just a  
18 status update of generally where everything is at. And  
19 then the second one is -- breaks it down to what statuses  
20 all the claims are sitting in, what stages.

21 CHAIRMAN O'HARA: My understanding, we will  
22 get this data on a monthly basis and also Roger wanted  
23 some type of graphs going forward.

24 MS. ROSIE: Right.

25 CHAIRMAN O'HARA: Thank you. Any comments,

1 Commission members, on the data presented? Any more  
2 comments from the members of the public on any of the ADEQ  
3 updates? State your name for the record.

4 MR. VANNAIS: Leon Vannais. Going back to  
5 the substitution form, I assumed the intent is to go -- is  
6 to adhere to 1338 that went into effect.

7 MS. ROSIE: Correct.

8 MR. VANNAIS: There seems to be some  
9 misunderstanding between the regulated community and the  
10 Department as to the interpretation of the statute that's  
11 gone into effect. Besides just the form, it would be  
12 worth everybody's time, I think, to have a presentation of  
13 what it is that the ADEQ determines to be a work item  
14 within the statute. We've had previous agreements by  
15 Shannon Davis and Bob Rocha as to what a work item  
16 entails, what an objective is within a work plan, and how  
17 those costs may or may not be substituted. That  
18 apparently is not being considered anymore.

19 We would like an opportunity, if this is a  
20 policy that's going to be implemented because of a change  
21 in statute, that this issue be brought before the Policy  
22 Commission.

23 MS. ROSIE: It was my understanding that  
24 that's what Hal had requested previously, was a  
25 presentation.

1 CHAIRMAN O'HARA: Next meeting, right?

2 MS. ROSIE: Right.

3 CHAIRMAN O'HARA: We are going to have a  
4 presentation on that.

5 Any other comments, members of the public?

6 Okay. Thank you.

7 Moving on to Item No. 4 on the agenda, the  
8 technical subcommittee, I believe. And I will turn this  
9 over to Hal Gill who is the chairman of our technical  
10 subcommittee.

11 MR. GILL: Thank you, Mike. Before I start  
12 going through the recommendations and we have discussion  
13 on them, if it is needed, I just wanted to say that we  
14 had -- in this last month, we've had two meetings of the  
15 technical subcommittee with the SAF personnel that were --  
16 they were very good meetings. There was a large turn-out  
17 of owner-operators and stakeholders, and DEQ were all  
18 there as well. And I think we had real good discussion.  
19 We came up with a number of recommendations. I'm sure  
20 there is still discussion that will be remaining on the  
21 recommendations.

22 But I also just wanted to state that I think  
23 that the -- it appears that we are -- the regulated public  
24 and DEQ are back in a mode of communication which was  
25 extremely important and, unfortunately, had stopped for a

1 while. And these recommendations are still very  
2 aggressive. And what I wanted to explain basically to the  
3 Commission and to DEQ as well is that although we're  
4 hearing a lot of good talk from DEQ and many others want  
5 to believe it, it was obvious in the last meetings that  
6 there are still a number of stakeholders that have a hard  
7 time believing what the DEQ is saying.

8           And as I said, even though there are many of us  
9 that are believing it and hoping that it does, indeed,  
10 come to pass, that DEQ can and will do everything that  
11 they are discussing. The recommendations are basically  
12 geared for the worst-case. And I would say that once the  
13 DEQ has the opportunity to show that they are, indeed,  
14 moving forward with what has been discussed and the  
15 recommendations, then many of these may be eliminated or  
16 will be altered to where -- to meet the status at that  
17 time.

18           But I just wanted to pass it on before we got  
19 into the recommendations because I do believe that the SAF  
20 is, indeed, going to be working very hard to meet the  
21 recommendations and all the items that we discussed in  
22 these -- the last two meetings.

23           Now I'll go into the recommendations. And I  
24 think everybody should have a copy. We made quite a few  
25 copies. Well, I don't know if the audience had any copies

1 last time. And I don't know how the Commission wants to  
2 address this. We can go to each discussion point, and I  
3 can give you an outline and see if there is any discussion  
4 on it.

5 How best do you want to handle that, Mike?

6 CHAIRMAN O'HARA: How many different  
7 sections do you have, Hal?

8 MR. GILL: Well, it goes through H, A  
9 through H.

10 CHAIRMAN O'HARA: With each section having  
11 multiple recommendations, correct?

12 MR. GILL: Yes.

13 CHAIRMAN O'HARA: Have these recommendations  
14 changed substantially from what we read into the record  
15 last meeting?

16 MR. GILL: Not a whole lot, I don't think.  
17 I mean, there is some that are new because we had not  
18 gotten through the entire agenda by last meeting. But  
19 we've had a lot of discussion. And the DEQ and regulated  
20 public may, indeed, want to have further discussion on  
21 them before we -- and the Commission may want to have  
22 discussion, too, before we vote on them.

23 CHAIRMAN O'HARA: Any comments from the  
24 Commission members regarding how to proceed? I don't  
25 think it's -- You don't want to take the whole document

1 and just make a recommendation. We probably need to go  
2 through these in some level of detail.

3 MR. GILL: To allow discussion, if there is  
4 anything.

5 CHAIRMAN O'HARA: I don't know any other way  
6 than to kind of go through it and present the  
7 recommendations and then get discussion. And then if we  
8 get a motion, we can go ahead and vote.

9 MR. GILL: I'll try to be brief. 1A,  
10 basically this was brought up last meeting. And as Roger  
11 pointed out, the problem was not stated in the last  
12 recommendations. And I guess I assumed everybody knew  
13 what I was talking about. When you are so close to these,  
14 you forget that everybody else isn't understanding.

15 But basically, I think the issue that I  
16 mentioned that Al is going to be working on for the Web  
17 page is an example of what No. 1 is, is that we have been  
18 asking for a long time for documents such as this  
19 "Frequently Asked Questions" to be presented that would --  
20 that the regulated public and the DEQ could look at to  
21 know what the guidance and the -- or policy for a specific  
22 issue has been. So we -- that is really the gist of 1A,  
23 is that in all of our stakeholder meetings that we have,  
24 whether it is an informal appeal or internal discussions  
25 within DEQ or internal documents that are written, we've

1 had a real problem in the last couple years getting those  
2 out to the regulated public. And it always ends up in an  
3 appeal. If it isn't word of mouth within the regulated  
4 community, no one seems to hear about them. And so many,  
5 many of these issues were coming up in appeal.

6 And so this is -- this set of recommendations is  
7 basically set up to try and come up with a process to  
8 combine or document -- and we are calling it a  
9 determination log, for lack of a better term -- document  
10 what the DEQ and the regulated community feels are issues  
11 that are wide ranging. And as I mentioned in here and I  
12 made it more clear this time, these are not supposed to be  
13 site-specific issues. If a site-specific determination is  
14 made that doesn't affect a wide range of owner-operators  
15 and stakeholders, then that's not what we are looking at.

16 We are looking at determinations and decisions  
17 that are made in meetings within internal discussions with  
18 the Department or any other kind of meetings or documents  
19 that have a wide array of consequences for the regulated  
20 public. And so this is a process of trying to figure out  
21 how to compile that, how to bring it forward to the  
22 technical subcommittee for an open discussion with DEQ and  
23 the stakeholders and then bring it forward to the Policy  
24 Commission for a vote.

25 And basically, what I put in here -- what the

1 vote will entail is the Policy Commission, their  
2 determination is to look at that and determine whether or  
3 not they truly believe that it is a wide-ranging issue.  
4 Then once it's voted on, then we have a document that  
5 everybody is aware of that everybody can go to when they  
6 have questions about an activity.

7           And, then, also I recommended that -- And this  
8 goes along with what Al was discussing earlier. There has  
9 to be some format to send that out to the regulated public  
10 in a mass-communication form of some kind.

11           And I'd also -- the last recommendation which  
12 was new I added, that once this is -- if it is voted on  
13 and approved, then we need to set up meetings immediately  
14 to come up with the process because that is -- it isn't as  
15 easy as it sounds discussing it. There needs to be a  
16 process put in place to how do we set up this document  
17 because it really -- what I'm recommending here is not  
18 just SAF. It's UST wide because there is obviously two  
19 components in the UST and the new Capacity Development  
20 section as well that will have issues that ultimately can  
21 be appealed. So that's the gist of 1A.

22           CHAIRMAN O'HARA: Any discussion on the  
23 recommendations?

24           MS. JAMISON: Mr. Chairman.

25           CHAIRMAN O'HARA: Nancy.

1 MS. JAMISON: Mr. Gill, how do you see such  
2 a determination log being developed and how do you see it  
3 as being useful to the overall SAF process? It seems to  
4 me that what you are talking about is a series of  
5 decisions that are of necessity site-specific decisions.  
6 The recommendation talks about decisions made in meetings  
7 such as informal appeal meetings, internal discussions  
8 within the Department. One of my concerns is that we are  
9 recommending that the Department spend a lot of time  
10 coming up with some sort of document that takes resources  
11 away from getting the business of making the  
12 determinations and getting payments out.

13 MR. GILL: I would be glad to respond. I  
14 think this is probably the most important issue that the  
15 Department and the regulated public deals with. I mean,  
16 this -- when you are talking about taking time, if this is  
17 what makes everything go to appeal and if we are not  
18 spending a lot of time in appeals, then that is a huge  
19 savings right there.

20 To answer your question at the beginning, I have  
21 just a general idea, which I basically put down in the  
22 recommendations, as to how I see it progressing. But  
23 that's why I mentioned in my last bullet for  
24 recommendations, is we really do need to meet with DEQ and  
25 SAF to come up with a process to do it best. But it's

1 very simple in my mind, and other people may think  
2 different. To me it is very simple to determine what's a  
3 site-specific issue or not.

4           And my original idea was that in the informal  
5 appeals or if at the end of an informal appeal, you write  
6 down all your meeting notes and if there is an issue in  
7 there that is identified by the stakeholder or the  
8 owner-operator -- and this is just a real simple  
9 example -- that would touch a wide array of  
10 owner-operators -- As a matter of fact, the question I  
11 asked that Joe responded to just a minute ago is a perfect  
12 example.

13           This isn't -- it is in the rule, but very, very  
14 few of the owner-operators are going to read that rule  
15 and try and find that one sentence that mentions what Joe  
16 said, that if your process was started prior to the rule  
17 going into effect, then all these issues are handled  
18 basically based on the old process. That's the kind of  
19 thing we are talking about. That's something that we're  
20 hearing. And both sides need to hear this because someone  
21 in DEQ is telling owner-operators new rules are in place,  
22 you have got to follow the requirements for a CAP. And  
23 that CAP may be 90 percent done. That's -- it will end  
24 up -- if they end up going and doing that and then denied  
25 the costs, now we are in an appeal. If they don't -- And

1 they have already called DEQ, and they have gotten  
2 misleading information.

3           These are the kind of issues we are talking  
4 about. I see it being invaluable. It isn't -- I don't  
5 know that it's a simple process. That's why I said we  
6 need to sit down and talk about it. But this has been an  
7 issue every single year that I have been working in UST,  
8 that the regulated public does not -- does not know  
9 exactly what the process is from day-to-day. And when new  
10 determinations are made that are not given out to all  
11 regulated public, then it ends up in appeal.

12           MS. JAMISON: Mr. Chairman, Mr. Gill, I'm  
13 having a little bit of difficulty because it seems to me  
14 what you describe was exactly a case-by-case determination  
15 which has to be made based on the facts of a particular  
16 application or site review. And if it is in the rule,  
17 then that's the authority, isn't it? We can't be making  
18 determinations that are in the rule?

19           CHAIRMAN O'HARA: I just want to point out,  
20 as part of your recommendation, Hal, there is a sentence  
21 in there that distinguishes issues which will go into that  
22 log and issues which won't go into that log. And I think  
23 it is the second line of Recommendation 1, it says,  
24 "Determinations are not to be for site-specific issues but  
25 should be broad-based issues that ultimately affect a wide

1 range of stakeholders."

2 I think there is a line that needs to be drawn  
3 on determinations on each decision as to whether it is an  
4 individual case circumstance or whether this is, indeed,  
5 an application of a policy that will apply to everybody.  
6 Only those that rise to that level, I think, my  
7 understanding of the recommendation, would be in this log.  
8 Maybe a determination log is not the right phrase, but it  
9 is a policy log.

10 Mr. Cardon.

11 MR. CARDON: Mr. Chairman, this particular  
12 item is an attempt to begin to use the great communication  
13 that is currently occurring between stakeholders and the  
14 Department and set in some kind of -- I don't know if  
15 "policy" is the right word, procedure where there can be  
16 broad-based items brought before this Policy Commission  
17 that would be worthy of the Commission's review.

18 And that procedure has to start someplace, and  
19 it has seemed that that would be at the grass-root basic  
20 level. And this is in no way an attempt in anybody's mind  
21 to scrutinize each tiny, individual decision that the  
22 Department may be making but, rather, to -- a sifting  
23 process that would allow these considerations to be  
24 brought before the Commission.

25 And it's important to point out that we have not

1 had an agreed-upon approach for doing that since the  
2 inception of this Commission. And this represents, as I  
3 understand it, a joint effort between the Department and  
4 stakeholders to attempt to put something in place to bring  
5 issues that deal with policy, procedure, et cetera, before  
6 this Commission. So this consideration is long overdue  
7 and something that we should welcome with open arms.

8 CHAIRMAN O'HARA: Any other comments?

9 Ms. Foster.

10 MS. FOSTER: Mr. Chairman, we ought to go  
11 back and look at the history of what the Department has  
12 done in the past relating to this. About eight years ago,  
13 there was a whole series of decisions made by a consultant  
14 working on SAF applications that was very useful to an  
15 owner-operator. Instead of 10 or 12 owner-operators  
16 forming -- filing an informal appeal, we knew that there  
17 was a document that said tank pulls are not covered after  
18 this date or tank pulls are covered under that date. It  
19 was very beneficial.

20 We didn't waste a lot of people's time and  
21 energy by all filing informal appeals when we knew that  
22 there was a document that we could go back, review, and  
23 state what DEQ's opinion is of a regulation because, yes,  
24 the regulation is the main issue here. We have to comply  
25 with them. But how it is interpreted is another issue.

1 So I like the idea.

2 MR. GILL: The reason I put in the  
3 recommendation to have the determinations or decisions  
4 come to the technical subcommittee, that basically allows  
5 a forum for the stakeholders to come in and say, Well, now  
6 this is what happened to me and for DEQ to say, That was a  
7 misunderstanding. And so either it is resolved right  
8 there and it does not go forward, or it is decided that  
9 this does need to go forward. That's really what happens  
10 all the time, is that some stakeholder in some meeting or  
11 discussion hears a determination and they proceed along  
12 those lines. And they may or may not get it out to all  
13 the other stakeholders.

14 But either there is a misunderstanding, which  
15 very well could have happened with the issue I was talking  
16 to Joe about or something like that. But that is really  
17 the issue, that we need to get these determinations,  
18 decisions, and/or misunderstandings to a discussion so we  
19 can determine whether it is something that is going to,  
20 indeed, go forward from this point on and that it is  
21 something that will affect all stakeholders.

22 CHAIRMAN O'HARA: Mr. Smith.

23 MR. SMITH: Mr. Chairman, I'm also in favor  
24 of having some type of decision log, or whatever we  
25 ultimately call it. I think, and I hope, with the new

1 rules that are out with all the work that was spent on the  
2 time with the new rules and the guidance, that this  
3 decision log, or whatever we call it, will be very small  
4 and issues that come up to the Policy Commission will be  
5 very few because it is really the ultimate responsibility  
6 of the owner-operator to read the rules and follow the  
7 rules.

8           If there is gray areas or whatnot, hopefully  
9 that can be worked out. I think ultimately with all the  
10 time that has been spent on the new rules and guidance,  
11 that there will be very few of these that actually do come  
12 up.

13           CHAIRMAN O'HARA: Any other comments from  
14 the Commission?

15           Anyone in the public like to make a comment on  
16 the proposed Recommendation No. 1 to have a decision log?  
17 Mr. Beck.

18           MR. BECK: Yeah. Mr. Chairman, Brian Beck.  
19 During the technical subcommittee hearings, the two that  
20 were done, we presented a substantial amount of  
21 information to document major changes by the Department as  
22 far as their undocumented policies, procedures, decisions,  
23 or whatever, and how they have been affecting at least  
24 four different sites.

25           We showed that the -- basically the time frame

1 of just the application review before January '01 were  
2 less than 90 days typically. In fact, everything that we  
3 had was under 90 days. After January '01, at least up  
4 until September, they had increased to 125 days on an  
5 average. Since September, we've actually gone beyond  
6 that. We are averaging close to 140 days now on a  
7 direct-pay application. That's an increase of  
8 145 percent. And it's because of all the appeals and  
9 things that went on.

10 The other thing, too, because of the  
11 undocumented policies, procedures, and decisions made by  
12 the Department that have not been progressed out, we've  
13 had denials go from 10 percent on the average prior to  
14 January '01 to an average of 35 percent after January '01.

15 Now, in our appeal processes that we have gone  
16 through prior to January '01, our recovery rate was  
17 88 percent on the appeals. The dollar amounts that we  
18 were looking at were generally just in the hundreds of  
19 dollars. After January '01, our appeal rate wins have  
20 been 99 percent on the average. So our increases have  
21 gone up tremendously as far as recovery time.

22 As far as the time spent before January '01, we  
23 were spending an average consultant-wise of about ten  
24 hours. The majority of the time that we were spending was  
25 on the phone to the ADEQ contractor getting things

1 resolved. We really didn't have any meetings done. There  
2 were very few meetings we went to. In fact, prior to  
3 January '01 out of 47 applications, we only had one formal  
4 appeal. Now, after January '01, we basically have formal  
5 appeals on every single application. We have a  
6 100 percent appeal rate after January '01.

7           On the 23 applications that we have gone through  
8 and actually received determinations, in the October 9th  
9 letter that went to the director of ADEQ, we pointed this  
10 out. Using the actuarial study from ADEQ, they said they  
11 spend an average of \$38,500 to go from informal all the  
12 way through the formal appeal process. If you take half  
13 of that amount with the 23 informal appeals that we had  
14 filed, that means ADEQ spent \$442,750 just to do the  
15 informal appeal process on their side on this particular  
16 activity.

17           We had 17 formal appeals that did not go to the  
18 ALJ. You take half that amount again. That's \$9,625.  
19 That means in the formal appeal process, the state spent  
20 another \$163,000. The total comes up to just what we have  
21 done so far over \$600,000 ADEQ has spent in monies  
22 processing these particular appeals where we have a  
23 99 percent recovery rate.

24           If you take the actuarial study average amount  
25 at \$44 an hour for the average burden of ADEQ staff, that

1 means 13,000 man-hours were spent by ADEQ since  
2 January '01 on 23 different applications. That boils down  
3 to, for our particular case, \$4600 was spent by ADEQ for  
4 every dollar denied. We've got an average of \$130 for  
5 applications denied.

6 CHAIRMAN O'HARA: Brian, one more minute,  
7 please.

8 MR. BECK: Basically, when ADEQ took over  
9 the CRU/SAF function from its contractor, the statement  
10 was made that ADEQ would do the same job for less and  
11 maintain the same time of process. That has not been  
12 done. ADEQ has failed. That's it.

13 CHAIRMAN O'HARA: I'm going to ask --

14 MR. SMITH: Let me be clear, Brian. Is your  
15 point that having the determination log will clear up all  
16 of this?

17 MR. BECK: Ninety percent of what we are  
18 dealing with is just undocumented policies and procedures,  
19 things we filed applications on that we had no knowledge  
20 of whatsoever. When we went into the appeal process, it  
21 was resolved. And it has been consistent all the way  
22 through. Just no reason to go through the process.

23 MR. SMITH: Thank you.

24 CHAIRMAN O'HARA: Thank you. I want to  
25 try -- We have a very large agenda and a lot of issues to

1 go through. I'm going to try to limit public comment to  
2 three minutes. If you can stay concise, it would be --  
3 three to five. Thank you.

4 Any other comments from the public? Patricia  
5 Nowack.

6 MS. NOWACK: Thank you, Mr. Chairman,  
7 members of the Commission. For the record, my name is  
8 Patricia Nowack; and I work for a private consulting firm.  
9 And I just want to make sure that everybody on the  
10 Commission knows what the original decision log was for.  
11 It was a means of documenting decisions that DEQ made so  
12 that the contractor who was doing SAF reviews could apply  
13 that decision consistently throughout the applications  
14 that were processed.

15 In my previous position as the State Assurance  
16 Fund administrator, I abolished the decision log because  
17 it began to be a log that was used to document decisions  
18 that didn't affect a range -- a large range of issues.  
19 And so I would just encourage the Commission to -- if they  
20 do implement something like a decision log, determination  
21 log, or whatever you want to call it, that they make sure  
22 that the decisions that are documented through this  
23 process, whatever it is -- I look at it as a way of  
24 communicating to the public of how the Department's going  
25 to implement something or process something, that the

1 Commission keep in mind that whatever things are  
2 documented through this process absolutely affect a wide  
3 range of people, issues, applications, whatever it would  
4 be.

5 CHAIRMAN O'HARA: Thank you. Any other  
6 comments?

7 Hal, do you want to read your recommendation as  
8 a motion?

9 MR. GILL: Recommendation No. 1 --

10 CHAIRMAN O'HARA: Are you moving these?

11 MR. GILL: I see, you want me to do each  
12 one?

13 CHAIRMAN O'HARA: Do you want to make a  
14 motion to accept these?

15 MR. GILL: Do you want to do it as reading  
16 each recommendation or just as 1A?

17 MR. SMITH: Just as written as you have it.

18 CHAIRMAN O'HARA: And there is how many  
19 recommendations under 1A?

20 MR. GILL: There's two.

21 CHAIRMAN O'HARA: Any changes, comments from  
22 the Commission on the recommendations as written? Okay.

23 MR. GILL: I would move that the Commission  
24 accept the recommendations for the determination log issue  
25 as written.

1 MR. CARDON: I second.

2 CHAIRMAN O'HARA: We have a motion made and  
3 seconded to accept the recommendations. All those in  
4 favor say aye. Opposed.

5 MS. JAMISON: Aye.

6 CHAIRMAN O'HARA: Abstain. Seven in favor,  
7 one opposed. Is that correct? This motion passes.

8 Let's go on to Item B, Hal.

9 MR. GILL: This is a complicated one, but  
10 I'll try to go through it rapidly. Basically, the new SAF  
11 section has inherited a backlog in excess of 1100 direct  
12 pay, reimbursement, and pre-approval applications. And  
13 that may not be absolutely accurate based on their new  
14 numbers here, but it is a large number.

15 And the backlog was, as developed primarily in  
16 the past, due to a lack of technical expertise in the  
17 sections tasked with review of the work plans. This is  
18 not to say that they were not intelligent people, just  
19 they did not have the expertise that's required to do the  
20 job that they were tasked to do. And there was a  
21 management philosophy that dictated denying costs for work  
22 that was performed than approved.

23 It was pointed out actually in the last Policy  
24 Commission, there was some documents handed out with  
25 charts and stuff showing how -- and in the first of the

1 two technical subcommittee meetings we've had since then,  
2 pointing out how this really did affect the -- this lack  
3 of expertise and the management philosophy, how it did,  
4 indeed, affect the backlog and it increased drastically.

5 The recommendations that -- so basically the  
6 problem was looking at the technical expertise and the  
7 management philosophy that had existed within the  
8 Department creating the backlog. The recommendations  
9 basically deal with one, and Recommendation No. 1 is  
10 recommend that in all future personnel actions, the SAF  
11 section adhere to the original design approved by DEQ and  
12 the state legislature for hydrologist positions that were  
13 made.

14 And this was a document that was also submitted  
15 at the last meeting which showed that during the initial  
16 development of what came to be called the CRU, it was -- a  
17 huge point was made in that document that was presented to  
18 the legislature that the technical experience was critical  
19 because the only way that this could work was so the  
20 people reviewing the applications know what they are  
21 doing, understand the applications and the work that  
22 they're being tasked to review and approve.

23 And so the recommendation here is that -- We're  
24 not saying go out and fire everybody. We are saying in  
25 the future, you've got -- the DEQ to the best of their

1 ability is to adhere to those original designs and hire  
2 individuals with technical expertise. And the technical  
3 expertise was two or three years of field experience in  
4 soil and groundwater corrective action projects and at  
5 least an earth science degree.

6           And then the second recommendation was that the  
7 SAF return to the original UST claims review unit  
8 philosophy which defined the legal means to pay for  
9 corrective action work that was reasonable, necessary,  
10 actually performed, and eligible instead of the philosophy  
11 as I mentioned before.

12           And Recommendation No. 3 was something that has  
13 been asked for a number of times and is occurring more  
14 now. Basically is to recommend that the SAF program  
15 development a communication regimen to provide for better  
16 up-front communication between SAF applicants and the  
17 reviewers. This is basically happening more and more,  
18 that when the reviewers run into a question, pick up the  
19 phone and call the owner-operator or the consultant or  
20 whoever the individual is that can answer that question  
21 rather than just denying it and sending out the letter.  
22 It's happening more. It happened in the past. And it  
23 worked well in the past. This is something that we think  
24 is extremely important to get going again.

25           And then No. 4 was recommend that the SAF and

1 USTCAS develop a program to increase the baseline  
2 technical expertise of current and future employees of the  
3 section. The bullets under that, which were in the last  
4 recommendation, are implement seminars and training  
5 provided by different consultants, ASU personnel, or other  
6 experts in UST investigation, remediation, to increase the  
7 technical expertise in the TRU and DEQ USTCAS personnel.

8           And this raised some issues with the way this  
9 was worded in the past, raised some issues with DEQ.  
10 Basically, we're recommending that the DEQ develop a  
11 technical competency test for prospective employees of  
12 SAF, TRU, and USTCAS that be administered during the  
13 interview process. This was the way it was done early on  
14 when the CRU was first established, that during the  
15 interview they were asked specific questions that showed  
16 they did, indeed, understand the process and how the work  
17 was actually done in the field. And that's how there was  
18 a number of individuals initially hired that had some very  
19 good experience in the corrective actions. And they,  
20 indeed, were able to review the claim documents with much  
21 less of a problem. That's the general discussion, and  
22 then the recommendations for item -- Recommendation B.

23           CHAIRMAN O'HARA: Any comments from  
24 Commission members? Myron.

25           MR. SMITH: Hal, you discussed in No. 4,

1 second bullet, a technical competency test. I think --  
2 I'm not sure if test is the right way to go. How do you  
3 develop the questions? Who grades it? What are the  
4 correct answers? I think you made mention in your verbal  
5 discussion that there was a set of questions by the  
6 interviewer of the interviewee. That might be a better  
7 way to go to determine a person's experience than an  
8 actual sit-down test. I think it would be very difficult  
9 to develop that. I think that word "test" should be  
10 changed to "discussion" or some other word in there.

11 MR. GILL: I agree. But the idea was we  
12 have to develop -- I think something should be developed  
13 that will, indeed, test the competency of the individual  
14 if they are hired because I have worked in state  
15 government before in Utah. And I've interviewed  
16 prospective employees that were sent to me by the --  
17 whatever section they called that then. It's unfortunate  
18 some of the people that are allowed to interview. But  
19 that's why we feel something needs to be done.

20 I have no problem with changing that. But I  
21 reiterate that there needs to be some -- there needs to be  
22 a list of questions devised or developed that need to be  
23 asked. And the issue there being -- I do know that in the  
24 initial CRU, you had someone managing it that had almost  
25 30 years' experience so they knew the questions to ask.

1 I'm -- I do not know that that's the case now. There is  
2 people in DEQ that could develop those questions. That's  
3 a rather -- I agree it does not need to be a test. But  
4 there has to be a list of questions developed that would,  
5 indeed, test their capabilities or their experience.

6 MR. SMITH: Would you be amenable to  
7 changing "test" to "questions" or "discussion"?

8 MR. GILL: How about develop a list of  
9 technical questions?

10 MS. KELLEY: How about technical interview?

11 MR. CARDON: Are we talking about a  
12 technical review procedure?

13 MR. SMITH: No.

14 MR. GILL: During the interview process when  
15 they are interviewing the prospective employee, in the  
16 past, they asked them questions that they were able to  
17 exhibit their experience. It is basically -- it says,  
18 "Develop a list of technical questions for prospective  
19 employees of the SAF, TRU, and USTCAS to be administered  
20 during the interview process."

21 CHAIRMAN O'HARA: Roger.

22 MR. BEAL: I would like to have just a  
23 little clarification. When we are passing on these  
24 recommendations, are we also in some way including the  
25 problem? From my point of view, the technical

1 subcommittee has put into words areas that need  
2 improvement in the operation of the entire program and  
3 made recommendations that may have impact on the problem.  
4 And to me the strongest thing that has been completed here  
5 is the definition of the problem.

6           The recommendations all or in part are just  
7 recommendations and may or may not be implemented.  
8 However, the problem stated is not necessarily a  
9 recommendation but an identification of things that are  
10 causing trouble. So I would like to know when we say --  
11 propose the recommendations or pass what is going to be  
12 presented is the end result here.

13           CHAIRMAN O'HARA: I think it is the  
14 intention -- at least my intention, in the recommendation  
15 to the director to include the problem as part of the  
16 recommendation, state the problem. Almost include this  
17 document in its entirety unless there is other comments to  
18 the contrary. Therefore, if there are specific issues  
19 with the way the problem is stated, it's probably best  
20 that we also discuss those and make some recommendations  
21 or changes to them where the problem is defined.

22           MR. BEAL: I ask that only in the light of  
23 if we are trying to solve the problem, whether it is a  
24 test or an interview, I mean, that is something that is  
25 recommended or identified as the process that may solve

1 the problem. But the Department could have a lot of  
2 latitude in determining how to solve that issue. These  
3 are just recommendations from the Commission as to how to  
4 do it. Not trying to make a perfect document.

5 CHAIRMAN O'HARA: Any comments? Ms. Foster.

6 MS. FOSTER: Mr. Chairman, I'm opposed to  
7 sections of these recommendations. I do not believe that  
8 it's this Commission's requirement to step into the  
9 operations of DEQ and tell them how to run their  
10 day-to-day operation. I have a hard time saying you need  
11 to develop a competency test or evaluation when they could  
12 point the finger at this Commission and ask the same  
13 thing. I don't believe it's the intent of one -- it is  
14 not one of our objectives to get into the operational  
15 day-to-day procedures that DEQ does to hire people and to  
16 fire people.

17 MR. GILL: I'll respond to that, Theresa. I  
18 agree, the last thing I think the Commission wants to do  
19 and I want to do is try to manage the way DEQ does things.  
20 But these are just recommendations based on what we've  
21 seen occur, primarily the backlog but other things as  
22 well, over the last couple years. And we've pointed out,  
23 I think, by graphs and charts and everything else and just  
24 by experience that the real reason for all of these  
25 problems was the two as listed here.

1           And so these are just recommendations that --  
2   and, again, the director doesn't have to take any of our  
3   recommendations. But we put these down -- I think -- And  
4   I do know that the DEQ, they would really love to hire a  
5   bunch of technically experienced people. I think this  
6   just makes it clearer how important that is. That was  
7   really the point of all the discussions and all of the  
8   data that we showed how it did, indeed, create a problem.

9           As I said, I'm sure DEQ would love to hire a  
10   bunch of 10-, 15-year experienced -- field experienced  
11   people. We also know that's probably not going to happen.  
12   At least this gives them some kind of format they can use,  
13   if they choose to, to try and hire experienced people.

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

16           MS. JAMISON: Yes, Mr. Chairman. I echo  
17   Theresa's comments. And I am rather troubled by what  
18   seems to me a highly judgmental and conclusive statement  
19   of the problem. I'm not sure that I can subscribe to that  
20   statement as a problem. I don't believe that we've had  
21   enough information presented to us so that I'm comfortable  
22   stating that these things are true. I am particularly  
23   opposed to the first and second of the recommendations  
24   under B for the reasons that Ms. Foster stated, that I  
25   think they are in the nature of micromanaging --

1 attempting to micromanage DEQ.

2 CHAIRMAN O'HARA: Mr. Cardon.

3 MR. CARDON: Mr. Chairman, I think it's  
4 helpful to keep in front of us that the technical  
5 subcommittee was well represented by both the Department  
6 and stakeholders and that these items were discussed at  
7 great length. And if there needed to be further  
8 discussion from members of the Department here before this  
9 Commission, it would probably be appropriate to hear that.

10 Having said that, there was a broad-based  
11 consensus that these items should go forward for  
12 recommendation. In other words, this is not a unilateral  
13 effort on the part of the regulated community to impose  
14 something on the Department. It was my understanding  
15 that, generally speaking, the Department was in favor of  
16 working towards these specific points and would appreciate  
17 a recommendation in that regard. If I have misunderstood  
18 that, there is certainly plenty of people here that can  
19 speak to that point.

20 In addition, I would also hasten to add that  
21 these items under this recommendation are very diverse.  
22 And I would like to call the Commission's particular  
23 attention to Item No. 3 which was -- which was very warmly  
24 received by everyone in the technical subcommittee  
25 discussion. And everyone wanted to see more work done on

1 that particular point.

2 MS. JAMISON: Mr. Chairman, I did not state  
3 any opposition to Item 3 under B. However, if you look at  
4 Recommendation No. 2, I doubt very much that the  
5 Department agrees that its current philosophy was to deny  
6 as many costs for work performed as possible. So if  
7 that's a consensus statement, it surprises me.

8 CHAIRMAN O'HARA: I'd say I would agree in  
9 general with Mr. Cardon's comments. I was at the  
10 subcommittee meetings. On this particular section, I  
11 recall the Department, particularly Mr. Rocha, describing  
12 some of the difficulties in establishing some of these  
13 recommendations. He is under constraints as to financial  
14 hiring policies and practices he has to follow. And I'm  
15 sure he would love to hire the most experienced person  
16 possible.

17 On that particular point, I don't think it was  
18 necessarily consensus. In general, I would agree with  
19 Mr. Cardon. I tend to echo your comments, I don't know  
20 that we are supposed to micromanage the Department at this  
21 Commission. This may be crossing the line in that  
22 respect. But I think there is some good recommendations  
23 in here. Particularly 3, I think, is a consensus  
24 recommendation and possibly 4. But I also agree 1 and 2  
25 are a little difficult.

1           MR. GILL: Again, these are not -- I fail to  
2 see it as micromanaging. These are recommendations. And  
3 I think the key point is, as I stated, you have to have  
4 been at the meetings to see the data that's presented. We  
5 did present data that showed when you do not hire  
6 technically experienced people, bad things happen. And  
7 that was really obvious from the data. And I don't  
8 think -- and I would think many people in this room would  
9 be hard-pressed to show that didn't happen.

10           But the point is we did provide -- the data was  
11 provided that showed that this is a real problem. And as  
12 I said, when I presented personally this design to the  
13 legislature, I made a huge point that these have to be  
14 technical people; otherwise, we are going to have  
15 problems.

16           Again, these are recommendations that I don't  
17 see that they're necessarily going to be jumped on  
18 immediately. As Mike said, I'm sure the Department would  
19 love to do -- number one is just basically saying this is  
20 what we recommend as the technical expertise for these  
21 individuals. If they could meet that, fine. And  
22 Mr. Rocha did say in the meetings they would, indeed, try  
23 to move in that direction. As Mike said, I think anyone  
24 at DEQ would say that.

25           But the issue is -- the reason I think these are

1 important to have in there as recommendations is that if  
2 they are, indeed, not taken at all and the program still  
3 fails, then what's going to be their argument? Again,  
4 these do not have to be taken by DEQ. They are  
5 recommendations of the technical subcommittee. I had a  
6 suggestion we might be able to change some of these to  
7 recommend a possible solution, if "recommend" is the  
8 problem.

9 I still don't see that we are micromanaging  
10 because we can't require this be done. It is just a  
11 recommended or a possible solution. But it is out there  
12 saying that data shows that this was a problem. Try your  
13 best to meet these requirements. And if we can, it gets  
14 better, great.

15 MR. BEAL: I think the term "possible  
16 solutions" are -- may be a little bit more gentle rather  
17 than "recommendation." We've got experts -- we've got  
18 people here that can see ways through the problem. I  
19 think it is the technical subcommittee's duty to present  
20 possible solutions to what they're perceiving is problems.  
21 Now, whether they are implemented or can be implemented is  
22 something that the Department is going to have to decide  
23 and the benefit from doing that. There is more evaluation  
24 to be made to these problems, but at least we have  
25 something down to say these are areas that concern us.

1                   CHAIRMAN O'HARA: I think we have some  
2 flexibility instead of giving a very specific  
3 recommendation, tie them into one solution. Two to three  
4 years' experience, that's one possible solution. But give  
5 them some flexibility.

6                   MR. BEAL: There is nothing that ties the  
7 Department to anything here.

8                   CHAIRMAN O'HARA: Correct.

9                   MR. BEAL: These are just simple  
10 recommendations from professional people as to how to  
11 accomplish the task of removing the problem. And that's  
12 all that it is. It's significant. I don't want to make  
13 light of it. It is a lot of good work, but something  
14 needs to go forward.

15                  CHAIRMAN O'HARA: Mr. Cardon.

16                  MR. CARDON: Mr. Chairman, I think that the  
17 recommendations here that have just been reviewed were  
18 generally agreed to by the personnel of the Department  
19 that were in attendance at the technical subcommittee.  
20 And we have heard from members of the Commission, and it  
21 would be well to hear from them as well.

22                  CHAIRMAN O'HARA: From the Department?

23                  MR. CARDON: Yes.

24                  CHAIRMAN O'HARA: Any comments from the  
25 Department?

1 MS. DAVIS: Mr. Chairman, Judy, would you  
2 like to address these. I notice that Bob had to step out  
3 of the room. But if you could go through and address  
4 which ones you believe the Department agreed to.

5 MS. NAVARRETE: I think Bob made a statement  
6 at that meeting that there are certain rules and policies  
7 that we have to follow in our hiring procedures, and we  
8 cannot go outside of those. And that has to do with  
9 wages. That has to do with qualifications for certain  
10 types of positions. I know that these are  
11 recommendations, but we also have state guidelines that we  
12 have to go by when we are hiring our personnel.

13 MR. CARDON: Mr. Chairman.

14 CHAIRMAN O'HARA: Mr. Cardon.

15 MR. CARDON: It was also mentioned that --  
16 generally speaking, that these recommendations would fall  
17 within those broad guidelines. And that was not my  
18 interpretation, certainly not. It was a general  
19 discussion. And certainly these recommendations would not  
20 be meant to go outside any particular policies with  
21 respect to hiring.

22 The point of the matter is, this was not a  
23 controversial matter as I perceived it in the discussion  
24 of the technical subcommittee. Everyone was anxious to  
25 see these kinds of efforts made.

1 MS. DAVIS: Mr. Chairman.

2 CHAIRMAN O'HARA: Shannon.

3 MS. DAVIS: A couple things. The Commission  
4 has the right to forward any recommendations it wants to  
5 to the director of the agency. Whatever is passed out of  
6 the body is whatever the body wants to pass out. I  
7 believe I'm representing the agency fairly here in that  
8 the agency is committed to hiring, recruiting, and  
9 training qualified, competent technical people. And I  
10 would say that both Mr. Rocha and I are committed to that,  
11 and we are committed to that.

12 I have not heard Bob either in the meetings or  
13 outside of the meetings commit -- in fact, I have heard  
14 the opposite -- when it comes to administrative and  
15 technical competency tests. Our hands are tied in terms  
16 of what we can actually do. I think somebody raised that  
17 here.

18 The other thing I want to go on record strongly  
19 on is No. 2 where it implies what the current philosophy  
20 is. There has never been an acknowledgment or acceptance  
21 or discussion of what that philosophy is. I strongly  
22 oppose any association with No. 2 whatsoever. I think  
23 what's germane here is that there is a backlog that  
24 absolutely needs to be addressed, and that the agency  
25 needs to provide the best that it can in terms of

1 competent technical people. And that's the spirit of what  
2 I will support here today.

3 CHAIRMAN O'HARA: Any other comments?

4 MS. DAVIS: Excuse me, Mr. Chairman. One  
5 more thing. This was echoed through all the  
6 recommendations. The idea of communication, No. 3, I  
7 think we all do agree on that through all these  
8 recommendations.

9 CHAIRMAN O'HARA: Any other comments?

10 MR. GILL: I did hear Mr. Rocha's comment  
11 before on the technical competency test. But as I  
12 stated -- And, again, maybe the language may be better for  
13 a list of technical questions, but this was already done.  
14 He wasn't aware of that because he wasn't aware at the  
15 time. But this had been done. So evidently it is  
16 something the DEQ can do, and we just think that's a good  
17 way to make sure that the individuals you are hiring truly  
18 know what they are talking about.

19 As I said, I have worked with state government  
20 before, and I know that if you know the key words and  
21 those are on your application, you are the one that gets  
22 the interview. That's the way it works. You may not know  
23 beans about what you're doing, but you can get that  
24 interview if you know the key words to put down. I have  
25 interviewed them.

1           So if you do not know the questions to ask, if  
2 you don't have a list of questions to determine that these  
3 people truly will help me in my job and be able to do what  
4 they are going to be required to do, then pass. But  
5 that's what that deals with. Neither -- And, again, we  
6 are not -- We can't say you've got to do this. That's a  
7 recommendation or a possible solution, however you want to  
8 call it. This would be something I would look at. It has  
9 been done in the past and it worked.

10           That was the point of all this. In the very  
11 first meeting, we had the head of the CRU back when during  
12 this process and got -- people were hired at that time  
13 that had experience and the process was working well as  
14 far as being able to review technically the applications.  
15 And that's why this is put in, not trying to micromanage.  
16 But this is a good suggestion. This is a way to get  
17 around the problems that you have with people that are  
18 sent to you for interviews. I know that's a huge problem.

19           Every stakeholder meeting, every task force,  
20 whatever they call them, that I have been on for I don't  
21 know how many years this issue has come up over and over  
22 again, whether it was WQARF or whatever. Everybody agrees  
23 we need the most technically experienced people we can  
24 get.

25           CHAIRMAN O'HARA: Hal, you might have

1 consensus on the concepts that are contained in each of  
2 the recommendations, and you may have differences over the  
3 bullet points that you expressed. Let me make a point.

4           The first item deals with hiring qualified  
5 personnel. I don't think anybody disagrees with that  
6 concept. Item 2 deals with the philosophy, the philosophy  
7 that's expressed below of finding the legal means to pay  
8 for corrective action work that's reasonable, necessary,  
9 actually performed, and eligible. I think that's a  
10 consensus statement.

11           The third is communication. And no arguments on  
12 the need to communicate or develop a communication  
13 regimen. In fact, I think the wording of that one is  
14 fine. And the fourth one is dealing with training. I  
15 have heard from both Shannon and members of the Commission  
16 that there is a need to train and ongoing training and  
17 maintain competency. So I think we can get complete  
18 consensus on the concepts if we could just do a little  
19 wordsmithing to the recommendation themselves.

20           For instance, No. 2, I would say recommend that  
21 the SAF have the philosophy of finding legal means that  
22 are expressed there and cut the section out instead of the  
23 current philosophy. That's just one suggestion. Maybe on  
24 this recommendation, we could take a break and sit down,  
25 maybe rewordsmith and come back with a consensus.

1 MR. GILL: That's fine.

2 CHAIRMAN O'HARA: Any other comments?  
3 Before we go to break, I would like to take public  
4 comment.

5 MS. KELLEY: Ona Kelley. I have a question  
6 for Ms. Davis. Ms. Davis, you strongly object to No. 2  
7 and to No. 4. We, the regulated community, have not had a  
8 chance to put the question to you, somebody at your  
9 management level. What is your perception of the cause of  
10 the backlog? If it's not this, then maybe we should be  
11 addressing something else.

12 CHAIRMAN O'HARA: Any other comments from  
13 members of the public?

14 MR. VANNAIS: Leon Vannais. Two quick  
15 comments. We are speaking to Item No. 1 which talks about  
16 the experience of the technical reviewers. And I was also  
17 present during technical subcommittee meetings. And there  
18 was valid concern expressed by the Department as far as  
19 the Arizona Department of Administration of rules for  
20 qualifications of a Hydrologist 3. But part of the most  
21 critical, most difficult part of the technical reviewer's  
22 job responsibility is to require in statute how to  
23 determine what a reasonable corrective action is. And  
24 that definition of "reasonable" is also required in  
25 statute as to the facts and the law that's being -- that

1 are in the field at the time the corrective action is  
2 being performed.

3 We are not saying -- The regulated community  
4 recognizes that the people that have Hydrologist 3  
5 positions that are reviewing the claims are very qualified  
6 to be Hydrologist 3s. They may not be qualified enough to  
7 put themselves in the position of that person in the field  
8 doing the work at the time it was performed because they  
9 just don't have practical experience to draw from.

10 And, number two, during these technical  
11 subcommittee meetings, we heard voiced from the section  
12 manager of the claims review unit within ADEQ expressing  
13 his philosophy was, indeed, to find a legal means to pay  
14 for the corrective action that was reasonable, necessary,  
15 cost effective, and actually performed. And so I would  
16 recommend to the Commission, if possible, that that term  
17 stay in there because that is, in fact, from personal  
18 experience myself as a claim reviewer and from information  
19 provided to us by management of the claim review unit,  
20 that that was the philosophy at the time. It has changed  
21 as we have documentation to show. What it has changed to,  
22 I don't think we can necessarily comment on because it  
23 hasn't been put forth in any kind of public communication.  
24 But it is a return. It is not a new. Thank you.

25 CHAIRMAN O'HARA: Any other comments? State

1 your name for the record.

2 MR. WELCH: Dennis Welch. I would just make  
3 the comment on this section that it would appear as though  
4 a lot of this has to do with focusing in on technical  
5 issues. And my one comment would be how many technical  
6 problems are we looking at? Maybe it's just a function of  
7 language and communication. When you look at the  
8 organizational chart, the technical review unit, it would  
9 appear to me, simply by the names, what we may be thinking  
10 is incompetency or lack of technical expertise may simply  
11 be a language and communication function.

12 Second of all, I need to address this to the  
13 entire SAF personnel. This problem that I think that we  
14 are addressing here simply addresses -- the  
15 recommendations here simply address the technical review  
16 unit. It is only one component of this entire process.  
17 And I will tell you from the most recent experience, I  
18 think SAF personnel need to go back and totally review the  
19 entire process because I have received an application the  
20 other day that went from the highest levels in this  
21 Department or this section; and it is a laughable  
22 application that I got back.

23 In fact, they paid me. And I'm going to take  
24 the money and put it in my bank account. And you guys are  
25 going to have a hard time getting it. You guys paid me

1 more than \$9,000 more than I should have been paid on an  
2 application. And this is a function of the application  
3 review unit every time I call down there. This was an  
4 application for direct pay that was over 150 days in the  
5 process. And every time I would call down there, people  
6 would tell me it's in the review process, it is in the QC  
7 process.

8 Well, folks, I have to tell you, I don't see  
9 much of a process because when you can get an application  
10 and it's so laughable as the one I received just the other  
11 day, I don't think people are doing -- I think there is a  
12 problem with if we want to call it incompetency or  
13 whatever through the entire process. So my recommendation  
14 would be let's not focus in on technical competency.  
15 Let's focus in on everybody through the three problems  
16 here, application review, cost review, and technical  
17 review doing their job properly.

18 CHAIRMAN O'HARA: Thank you. Any other  
19 comments? State your name for the record.

20 MR. VIEREGG: I'm Jim Vieregg. And I am a  
21 business member of the WQARF Advisory Board. And one  
22 thing I want to say about micromanagement. It has been my  
23 philosophy for three or four years serving on the board,  
24 that the WQARF Advisory Board should not try to  
25 micromanage implementation of the WQARF program as

1 administered by DEQ. It is something I firmly believe in.

2 Our job is to give advice. And it is the  
3 Department's option all the way up to the director's level  
4 to accept or reject that advice. I think for the most  
5 part the Department has accepted the advice of the WQARF  
6 Advisory Board.

7 What I don't want to see happen here today is  
8 your recommendations go into a black hole. The Department  
9 is certainly free to voice through written documentation  
10 its acceptance of your recommendations, alteration of your  
11 recommendations, or rejection of your recommendations with  
12 its own reasons. Shannon Davis is the person to do that.  
13 And if she has the time and desire to provide a written  
14 response, if the Commission doesn't like the response, you  
15 have the option of taking it up with the acting director.  
16 That's your prerogative. What the acting director will do  
17 or won't do, I don't know.

18 I do have one comment about the statement in  
19 problem B, page 2, the statement "a management philosophy  
20 that dictated the reviewers deny as many costs as possible  
21 for work that had been performed." The problem I see with  
22 this language is "management philosophy." My question is:  
23 Who are you talking about? Are you talking about the  
24 acting director? Are you talking about the waste  
25 director? Who are you talking about? And if you have

1 evidence to support that statement which equates to bias,  
2 that's what it means. If you have evidence to support  
3 that claim, you have the option of bringing that evidence  
4 to the director and to Ms. Davis. And if the director and  
5 Ms. Davis agree with your position as proven, then it's  
6 their responsibility to take appropriate personnel action.  
7 But it's not the responsibility of a board or a Commission  
8 to do that. That decision rests with the Department.  
9 Those are my comments in general on the recommendations  
10 and on one particular matter.

11 CHAIRMAN O'HARA: Thank you. Any other  
12 comments? Mr. Kelley.

13 MR. KELLEY: Dan Kelley. Thank you,  
14 Mr. Chairman. Two comments regarding what we call B  
15 Recommendation 1 and B Recommendation 4. These are being  
16 completely mischaracterized. These recommendations are  
17 being completely mischaracterized here today. These  
18 recommendations are nothing more than recommend to the  
19 director to go back and adhere to the deal that you cut  
20 with the legislature in 1997 to get these positions  
21 funded.

22 And now what Ms. Davis is saying is in a  
23 roundabout way, No, we're not going to adhere to that deal  
24 anymore. Well, then state it outright. This  
25 recommendation came out of the technical subcommittee that

1 met for more than 15 hours combined. To have that  
2 recommendation brought into this body and now completely  
3 mischaracterized, you are doing yourselves as a body  
4 disservice. You are marginalizing yourselves. You are  
5 marginalizing the technical subcommittee.

6           The Department had the ample opportunity, 15  
7 hours of public discussion, to wade into those technical  
8 subcommittees and say, No, we are not going to adhere to  
9 the deal we cut with the legislature in 1997, two to three  
10 years' technical experience, an earth science degree.  
11 They had the opportunity to wade in there and say, We're  
12 not going to do that anymore. They will not state that  
13 outright. Put that on the record or adhere to your  
14 original deal.

15           This isn't a new idea we are putting forward  
16 here. This isn't anything new. And neither is anything  
17 new under Item 4. There are many people sitting in this  
18 room who were hired by the DEQ using the process outlined  
19 in Item 4. So obviously this works. This Commission  
20 needs to think very carefully about adopting things like  
21 possible solutions instead of recommendations. What are  
22 we going to do here? Are we going to marginalize  
23 ourselves completely into nonexistence? Or are we going  
24 to make a recommendation and see where the Department  
25 stands on it? Thank you.

1           CHAIRMAN O'HARA: Any other comments from  
2 public? Okay. We are going to take a ten-minute break.

3           (Whereupon, a recess was taken from 10:59  
4 o'clock p.m. to 11:17 o'clock a.m.)

5           CHAIRMAN O'HARA: Welcome back. We are  
6 going to call the meeting to order and continue where we  
7 left off with recommendations of the technical  
8 subcommittee.

9           Recommendation B, I believe, Hal, if you want to  
10 continue.

11           MR. GILL: We are going to try rewording B.  
12 And we need the Commission members to let me know if the  
13 rewording is too difficult for them to understand without  
14 having seen it written.

15           Basically, the problem starting with "SAF  
16 section has inherited," take that down to the end of  
17 "applications," which is the fourth line down and a  
18 period. Then the next paragraph, bring up the last  
19 sentence with these -- this addition -- so the second --  
20 or actually the third sentence in the problem statement  
21 would be, "In the recent past, this has resulted in an  
22 unprecedented number of technical appeals from ADEQ's  
23 denial of claimed costs." Did everybody understand that?

24           CHAIRMAN O'HARA: You are saying there the  
25 backlog had to do with technical experience, and that

1 there is now -- What was that last part?

2 MR. GILL: Take the last sentence in the  
3 second bolded paragraph and take out "this has" and put  
4 in, "In the recent past, this has resulted in an  
5 unprecedented number of..." So you have a three-sentence  
6 problem. Everybody understand that? Okay.

7 Second sentence, "The backlog developed due  
8 primarily to," take that to the next sentence, to the end  
9 of "applications" on the fourth line down. That's a  
10 period. Everybody got that?

11 Now take the last sentence of the second  
12 paragraph, which starts, "This has resulted in" and right  
13 in front of "this has" put, "In the recent past, this has  
14 resulted in an unprecedented number of technical appeals."  
15 Move that under as the third sentence in the problem.  
16 Even though the regulated public felt that these were  
17 documented issues in that second paragraph, we'll remove  
18 that to move the process along.

19 Everybody understand the problem? Can you see  
20 the language?

21 CHAIRMAN O'HARA: And the recommendations,  
22 Hal?

23 MR. GILL: Again, the first recommendation  
24 is, "Recommend that all future personnel hired for the  
25 technical review unit have appropriate qualifications with

1 both field experience and an earth science education" --  
2 "earth science degree."

3 MR. SMITH: Say that again, Hal.

4 MR. GILL: "Recommend that all future  
5 personnel hired for the technical review unit, TRU, have  
6 appropriate qualifications. They include both field  
7 experience and an earth science degree." And an earth  
8 science degree is a wide range of degrees. "At least an  
9 earth science degree," I guess. Everybody need it again?

10 Second recommendation, "Recommend that the SAF  
11 section have the philosophy that goes" -- "recommend SAF,"  
12 then right after "SAF section have the philosophy," take  
13 out the sentence all the way through the second line,  
14 "which was" -- through "which was." Do you see that?  
15 Strike out from the "return after SAF" to the second line  
16 "philosophy which was," so it reads "recommend that the  
17 SAF section have the philosophy to find the legal means to  
18 pay for corrective action work" all the way through  
19 "eligible," period. Any questions on that one?

20 Three remains the same.

21 Four, the only change is the second bullet,  
22 "develop a technical competency evaluation." Take out  
23 "test," put in "evaluation."

24 I left out one thing in the field experience.  
25 The way it reads, "field experience in soil and

1 groundwater corrective action." "Field experience in soil  
2 and groundwater corrective action and at least an earth  
3 science degree." That language was already there.

4           So let me read these through again from the  
5 problem. "The new SAF has inherited a backlog in excess  
6 of 1100 direct pay, reimbursement, and pre-approval  
7 applications. The backlog developed due primarily to a  
8 lack of technical expertise in the sections tasked with  
9 review and approval of the applications," period. "In the  
10 recent past, this has resulted in an unprecedented number  
11 of technical appeals from DEQ's denial of claimed costs."  
12 That's the total problem.

13           Recommendation 1, "Recommend that all future  
14 personnel hired for the technical review unit, TRU, have  
15 appropriate qualifications including both field experience  
16 in soil and groundwater corrective action and at least an  
17 earth science degree." Recommendation 2, "Recommend that  
18 the SAF section have the philosophy to find the legal  
19 means to pay for the corrective action work that was  
20 reasonable, necessary, actually performed, and eligible."  
21 Recommendation 3, no change. Recommendation 4, no change  
22 except for the last bullet, "Develop a technical  
23 competency evaluation for prospective employees at SAF,  
24 TRU, and USTCAS to be administered during the interview  
25 process."

1                   CHAIRMAN O'HARA: Make a motion, Hal.

2                   Before we do that, is there any discussion on  
3 the changes? Comments?

4                   MS. JAMISON: Mr. Chairman, I guess I still  
5 have a little trouble with No. 2 because it sounds as  
6 though we want the SAF section to do something other than  
7 the law requires it to do. What we want it to do is  
8 implement that program and to evaluate the costs claimed  
9 and to pay those costs that are warranted. I'm not sure  
10 why we should have a recommendation that the SAF section  
11 adhere to the law. It just seems unnecessary.

12                  MR. GILL: Except that the feeling in the  
13 regulated community is the SAF section has not been doing  
14 the job according to the law in the past. That's why  
15 we -- the regulated community would like it in a  
16 recommendation so that it is in writing and a  
17 recommendation of this Policy Commission just so as you  
18 said, the SAF program do their job according to the law.

19                  CHAIRMAN O'HARA: Any other comments?

20                  Motion, Hal.

21                  MR. GILL: I make a motion that the Policy  
22 Commission vote on the problem 1B dealing with the backlog  
23 and the denial of technical appeals and technical  
24 expertise as rewritten.

25                  MR. CARDON: I second that motion.

1           CHAIRMAN O'HARA: There is a motion made and  
2 seconded to accept the recommendations in B, both the  
3 problem and the recommendations as rewritten. All those  
4 in favor please say aye. All those opposed say nay.

5           MS. FOSTER: Opposed.

6           CHAIRMAN O'HARA: Anyone abstain?

7           MS. DAVIS: Abstain.

8           MS. JAMISON: Abstain.

9           CHAIRMAN O'HARA: Two abstentions. Five  
10 ayes, two abstentions, one nay. Okay. The recommendation  
11 passes.

12           Hal, did you want to go on to C or did you --

13           MR. GILL: I think we can get through C real  
14 rapidly because...

15           CHAIRMAN O'HARA: Hal, do you want to go  
16 forward with Recommendation C?

17           MR. GILL: C, I do because we -- this one is  
18 basically, as Judy Navarrete said, already being done for  
19 at least two of the applications.

20           Again, as I stated in my opening to the  
21 recommendations is that there are still a number of  
22 stakeholders that need to see proof from DEQ that they  
23 are, indeed, adhering to what we've heard in a number of  
24 our discussions in these meetings and that they are,  
25 indeed, doing what they said they were doing.

1           And basically C is just one format to show that.  
2       There was basically three forms that were provided by the  
3       technical subcommittee as a format to report on the status  
4       of the different applications -- three different  
5       applications. And as I stated -- And actually, Judy, I  
6       need you to kind of tell them which ones are which. The  
7       data that were provided in these two forms, one of them is  
8       referred to as No. 1, which is the proposed SAF Active  
9       Application update form.

10           MS. NAVARRETE: I believe the No. 1 is the  
11       second form there, the one with all the -- Yeah. Which  
12       you have the days wrong on here, I think. No, you don't.  
13       Ninety days. The second one should be 180 days.

14           MR. KELLEY: This is the form she's talking  
15       about, not the one --

16           MS. NAVARRETE: No, this one. Did you get  
17       this one?

18           MR. KELLEY: I got that one. I'm asking is  
19       C1 this form or C1 that form?

20           MR. BEAL: This form.

21           MS. NAVARRETE: The one with the days and  
22       the breakdown.

23           MR. GILL: I'll note the change on the third  
24       bullet to 180 days from the original that we had in there.

25           MS. NAVARRETE: Dan, you are right.

1                   MR. KELLEY: This is the one that came out  
2 of the technical subcommittee. The one that Hal has in  
3 his hands is the one that DEQ has always been providing.

4                   MS. NAVARRETE: The one -- That's No. 3.  
5 The other one is No. 1.

6                   MR. GILL: This one is No. 1?

7                   MS. ROSIE: Correct.

8                   MR. GILL: There is the one. Again, the  
9 change is the same, the 180.

10                  MS. NAVARRETE: Right. Number 1 breaks it  
11 down by days. Number 3 breaks it down by statuses. And  
12 then No. 2 we're still working on.

13                  MR. GILL: Basically, what was agreed on in  
14 the technical subcommittee is that at that time, Judy was  
15 trying to find someone to hire. And she has let me know  
16 they have hired someone that will be on in a couple weeks  
17 that will help them correct the problems that they are  
18 having with their database.

19                  And the reason that No. 3, I think, has -- yeah,  
20 has a bullet at the bottom, or an asterisk, "all numbers  
21 are approximate," is because they have concerns as to what  
22 is coming out of their database. They're not necessarily  
23 accurate. The numbers are not checking across  
24 different --

25                  MS. NAVARRETE: Multiple reports.

1           MR. GILL:  -- multiple reports.  And so she  
2 would be providing something.  She went ahead and provided  
3 this form, but she put an asterisk "all numbers are  
4 approximate."  And the new individual, when he comes on  
5 board, will be able to find the problem and correct that.  
6 And then they will provide the data asked for in Item  
7 No. C2 when the programmer has a chance to reprogram the  
8 database with the new corrections made to provide all of  
9 these.  So with the change of the 120 to 180 days and C1,  
10 third bullet, that's really all I have on it.

11           CHAIRMAN O'HARA:  Any comments on the  
12 proposed reports, recommendations?

13           MS. FOSTER:  Mr. Chairman, don't we also  
14 need to change that last bullet?  If we are changing the  
15 third bullet to the 180 days, don't we want to change the  
16 fourth bullet to say more than 180 days to 365?

17           MR. GILL:  Oh, I see.  Yeah, you're right.  
18 Actually, no, because the original form had 60, 90, and  
19 120.  This changes from what was originally presented in  
20 the technical subcommittee as the provided format.

21           MS. FOSTER:  I'm real curious on those that  
22 are over 365 days, and you are not asking for that  
23 information.

24           MR. GILL:  It says "Change the number of  
25 documents pending approval to more than 180 to more than

1 365." It is just the original form that we provided in  
2 the technical subcommittee, the Department said change --  
3 I see what you are saying. The original form asked for  
4 the number over 365 days. This doesn't really say that.  
5 It is just saying to change it to over 120. It says  
6 "change it to over 365." It doesn't really say that. It  
7 is just making a change.

8 MS. NAVARRETE: Actually --

9 MR. GILL: The actual form does say "over  
10 365," the SAF backlog assessment.

11 MS. NAVARRETE: Right, they both do.

12 MR. GILL: It is just in my --

13 MS. NAVARRETE: On your original one, you  
14 wanted it broken out in days. But I'm just using the form  
15 that we have. And if you want it that way, we can do it  
16 that way. I believe people do want to see if there is  
17 anything over 365 days and how we are getting rid of that.

18 MR. GILL: Yeah. We just originally  
19 requested 60, 90, and 120 and changed them all to that.

20 CHAIRMAN O'HARA: Do you want to add a fifth  
21 bullet to your recommendation? Do we need another?

22 MR. GILL: No.

23 CHAIRMAN O'HARA: Okay. This form -- this  
24 is the form we are recommending, correct?

25 MR. GILL: Well, see, what the original

1 recommendation was, was recommend that the SAF section  
2 provide monthly reports to the UST Policy Commission using  
3 the provided format. The provided format was the forms  
4 that I handed out at the last meeting.

5 And I think, Judy, what you are saying is this  
6 is the information we were asking for.

7 MS. NAVARRETE: But you want me to display  
8 it in a different way, that's fine.

9 MR. GILL: The main issue -- Well, actually,  
10 let me read the problem. "A consistent format to measure  
11 progress in reduction of the backlog (direct pay,  
12 reimbursement, pre-approval applications) understood and  
13 agreed upon by both the Department and the stakeholders  
14 must be developed." And that's the key thing, is that in  
15 the past there was continued disagreement on what we were  
16 asking for and what was being sent. So we wanted -- that  
17 was the whole point of this, was to provide a format that  
18 had exactly what we were asking for so there was no  
19 frustration. So that was really the point.

20 And so my C1, 2, and 3 just referred to what was  
21 basically the findings of the technical subcommittee. But  
22 we were assuming that, ultimately, that format would be  
23 used once the programmer had a chance to be able to query  
24 the way -- because at the bottom of the format, it  
25 actually had how you were to query that information. And

1 that was really the point. So there was no frustration,  
2 we were -- both the Department and the stakeholders were  
3 on the same page. So I guess really the recommendation is  
4 just the section use the provided format which will answer  
5 that, understood and agreed upon by both the Department  
6 and the stakeholders.

7 CHAIRMAN O'HARA: We can cut the bullets  
8 then?

9 MR. GILL: The bullets were there primarily  
10 to explain what the findings were in that last  
11 subcommittee meeting, which primarily had to do with the  
12 new program that was being brought on.

13 CHAIRMAN O'HARA: You're on the same page.  
14 There is agreement as to what the form is going to be.

15 MR. GILL: If Judy is agreeing that once the  
16 programmer is on, they can use --

17 MS. NAVARRETE: We will try to get you the  
18 reports you are asking for, sure will.

19 MR. GILL: Okay.

20 CHAIRMAN O'HARA: Any discussion on this  
21 agenda item -- this recommendation, excuse me, from  
22 Commission members? Any more? Looks like a consensus  
23 report.

24 Members of the public who want to speak.  
25 Mr. Kelley.

1                   MR. KELLEY: Dan Kelley. Mr. Chairman, I  
2 was one of the biggest proponents for wanting to  
3 standardize this. So if I could ask a question of Judy.  
4 Judy, we got two forms here. One of them is in landscape,  
5 and one of them is in portrait for ease of negotiating.  
6 And this portrait form is a form the Department came  
7 forward with, I think you did actually, a couple -- you  
8 personally started breaking it out like this a couple  
9 months ago.

10                   MS. NAVARRETE: No. That's an old form  
11 that --

12                   MR. KELLEY: Regardless. I think the  
13 question is: Is this a lot of work for you because we  
14 were offering this up as the cheap and easy way to get  
15 past this. But we like this. So -- You get what I'm  
16 asking you?

17                   MS. NAVARRETE: Right now, that has to be  
18 ran by -- all those numbers of reports and then they have  
19 to be counted until we're able to program that into our  
20 database. Yeah, it took somebody half a day to do that  
21 yesterday, just to get those numbers. And then I finished  
22 it last night.

23                   MR. KELLEY: That's why we were going with  
24 just give us the quick and dirty. So I think that's where  
25 the confusion is. This is almost like C3. It is very

1 analogous to C3 that we discussed in the stakeholder  
2 meeting.

3 MS. NAVARRETE: Right, right. There had  
4 been some discussion in our last technical subcommittee  
5 meeting that people really wanted to see this.

6 MR. KELLEY: Absolutely.

7 MS. NAVARRETE: So that's why I went ahead  
8 and did it yesterday as best we could.

9 MR. GILL: I don't think any of the  
10 stakeholders want anyone to spend half a day to do it.

11 MR. KELLEY: That's what I'm getting at.

12 MR. GILL: I think the recommendation -- the  
13 problem and recommendation can stand because we are  
14 recommending to use the format. When your new programmer  
15 comes on, he can look and see if these queries still work.  
16 That's really the point, is the format that was provided  
17 had queries on there to provide the data real quick so no  
18 one has to do an accounting.

19 Away from voting on this, I would recommend that  
20 until the programmer come on board and get up to speed and  
21 get that report, I really wouldn't want people spending  
22 half a day reporting on this until that point. So for  
23 previous -- future meetings, as long as it doesn't go on  
24 month after month -- Like to keep updates as far as how  
25 the programmer is doing. I would recommend you cease and

1 desist spending half a day to do it until we can do it.  
2 Again, I'm taking your word for it that the programmer is  
3 going to be able to get this up and going as soon as  
4 possible.

5 MS. NAVARRETE: I certainly hope so.

6 MR. GILL: So basically my -- it's the  
7 problem and recommendation as they stand. And I will  
8 remove the 1, 2, and 3 because they are not really...

9 CHAIRMAN O'HARA: Nancy, you had a comment.

10 MS. JAMISON: Would somebody like to second  
11 that before I comment?

12 CHAIRMAN O'HARA: Was there any other public  
13 discussion? We were in the middle of that. Any other  
14 comments?

15 Did you make a motion?

16 MR. GILL: Hadn't yet.

17 MS. JAMISON: Okay, good.

18 CHAIRMAN O'HARA: You can now.

19 MS. JAMISON: Mr. Chairman, are we being  
20 asked to approve the actual forms that we have labeled 1  
21 and 3 and in a conceptual form that is described in  
22 paragraph 2 under C?

23 MR. KELLEY: All of them were handed out.

24 MS. JAMISON: Or are we simply voting to  
25 recommend that the Department continue to provide the UST

1 Policy Commission with these types of information in an  
2 acceptable format?

3 MR. GILL: Last Policy Commission and in the  
4 last two technical subcommittee meetings, I presented  
5 three forms that we were recommending using -- the  
6 Department use. So we are actually recommending a  
7 provided format. We provided three forms. And  
8 unfortunately, I didn't copy them again for this meeting.  
9 But we did go through them in the technical subcommittee.  
10 And I think Judy can testify she did not have a problem  
11 what was being asked for. It was a problem of being able  
12 to query the information right now with the database in  
13 the shape that it's in because they are getting  
14 conflicting data. That's what she put on her second form.

15 MS. JAMISON: Again, Mr. Chairman and  
16 Mr. Gill, if I may, it is not this Commission's  
17 responsibility or within our authority to tell DEQ how to  
18 report, to develop forms for DEQ, and to run the agency.  
19 I do not find this sort of thing in any of the statutory  
20 authority under the UST Policy Commission. I certainly  
21 approve the concepts of having that information provided.  
22 But as far as voting to ask DEQ to adopt a certain format,  
23 it seems to me that's within the prerogative of the agency  
24 to use the computer software that they have to provide us  
25 with the kind of information that we're looking for.

1           MR. GILL: First off, our mandate, I am  
2 paraphrasing, is to look at the program's efficiency. And  
3 this is, indeed, an efficiency question. And it is in  
4 their software. In other words, the forms were developed  
5 by personnel that had worked in the Department before  
6 using that software. And the queries were put down at the  
7 bottom, exactly how to query that software. And so it is  
8 what they have already. It's just -- and as was stated,  
9 the purpose of it was to make something that -- make a  
10 form -- report a form that we could all agree, both DEQ  
11 and the stakeholders, that this is, indeed, what we are  
12 asking for and put it in a format that they wouldn't have  
13 to spend half a day to do it.

14           MS. JAMISON: I certainly see the point.

15           MR. GILL: Again, it is just a  
16 recommendation. We recommend they use the provided  
17 format. We tried to make it very, very easy for them to  
18 use that. Unfortunately, they ran into a problem with the  
19 database being kind of messed up. And so that's been the  
20 issue now. But unless -- And we didn't hear this in the  
21 meetings. Unless DEQ had just real problems with using  
22 those forms, we need to hear that.

23           CHAIRMAN O'HARA: Any other comments?

24           MR. GILL: Okay. I make a motion that the  
25 Problem and Recommendation C be approved by the Policy

1 Commission for the monthly reporting of the SAF section.

2 MR. CARDON: I'll second that.

3 CHAIRMAN O'HARA: Okay. We have a motion  
4 and a second. Discussion?

5 MS. JAMISON: Again, Mr. Chairman, how well  
6 do the minutes reflect what we did unless we attach these  
7 forms as exhibits? Because No. 1 simply -- it doesn't  
8 refer to any identifiable form.

9 MR. GILL: Actually, they are -- 1, 2, and 3  
10 are the name of the forms. I would attach them.

11 CHAIRMAN O'HARA: Can we prepare -- label  
12 them Exhibits 1, 2, and 3 and attach them to the minutes?

13 MR. GILL: I think -- I think in the first  
14 Policy Commission they were actually labeled that way.  
15 This is the name of the form. One, 2, and 3 are the names  
16 of the form. And I will attach it -- when I make the  
17 changes, I will attach all three when I make the changes.

18 MS. JAMISON: Excuse me, Mr. Chairman. I  
19 don't think we can vote to approve something that we don't  
20 have in front of us.

21 MR. GILL: Does DEQ have any problems with  
22 the forms? They have seen the forms. They -- do they  
23 have a huge problem with providing the data on the  
24 provided forms as mentioned in the --

25 MS. ROSIE: Hal, there may be a

1 misconception. Those forms aren't generated from the  
2 database. Whatever forms we end up using are forms that  
3 we are going to have to develop separately from the  
4 database and put the data in. So, yeah, this is the  
5 information. And I don't think the Department has an  
6 issue on how we report the information. I think we were  
7 just trying to get agreement with you that this is, in  
8 fact, the information you were asking for.

9 MR. GILL: Is there a way we want to reword  
10 that?

11 MS. NAVARRETE: The actual forms, we would  
12 have to recreate them. There is no way we could use --

13 MS. NOWACK: The information is what they  
14 are after.

15 MS. NAVARRETE: The information is what you  
16 want. The form is not a -- shouldn't be an issue.

17 MR. CARDON: Mr. Chairman.

18 CHAIRMAN O'HARA: Mr. Cardon.

19 MR. CARDON: Mr. Chairman and Hal, under  
20 Item No. 1, Bullet No. 1, when it says "using this form  
21 immediately," that word "form" in this context is a  
22 generic term and refers to a presentation of data that is  
23 listed below in the underlying bullets. I see no problem  
24 with that. They are completely free to put it on yellow  
25 paper, red paper, or upside down as far as they're

1 concerned.

2 MS. DAVIS: Mr. Chairman, could I call for  
3 the question to vote on, I believe, what Mr. Gill  
4 forwarded, which is the bold Problem under C and then  
5 recommend that the SAF section provide monthly reports to  
6 the UST Policy Commission. It says using the provided  
7 format. I'm not sure we have a provided format. We'll  
8 just strike that.

9 Would the maker of the motion be open to that  
10 amendment?

11 MR. GILL: Yeah. As we were just  
12 discussing, it is really the data. And now that we -- the  
13 bold Problem -- The real issue is the understanding agreed  
14 upon between the two parties. And we provided this in the  
15 stakeholders meetings as an easy way to do it. But the  
16 main thing is that the DEQ agrees that the data asked for  
17 in these forms is what is important. As long as we have  
18 that --

19 MS. DAVIS: Good, good.

20 MR. GILL: End it up "Policy Commission,"  
21 period. And the points below, I could keep in 1, 2 --  
22 I'll just take those out because they just dealt with  
23 issues. They were findings of the meeting. So I'll  
24 change my motion to for Policy Commission to vote on  
25 Problem C and the recommendation changed to "recommend

1 that the SAF section provide monthly reports to the UST  
2 Policy Commission" with the caveat that we all understand  
3 based on the forms that were provided previously what the  
4 data requested is.

5 MS. DAVIS: Second.

6 CHAIRMAN O'HARA: All those in favor say  
7 aye. Opposed. Abstain? It's passed unanimously.

8 Hal, at this point, did you want to table the  
9 remaining recommendations?

10 MR. GILL: Yeah. I'm tabling problems D, E,  
11 F, and G and H basically until we can -- for the next  
12 meeting. In the meantime, we'll have been provided the  
13 action plan that the SAF section is moving forward with to  
14 get rid of the backlog. A lot of these deal with the  
15 backlog. So that basically tables the rest of the  
16 recommendations at this time until the next meeting.

17 And No. 2, which dealt with the Underground  
18 Storage Tank Corrective Action section, my recommendation  
19 there was -- This doesn't need to go forward as a vote,  
20 was just to meet with the -- begin meetings with the  
21 corrective action section as soon as possible to address  
22 the issues that were on the original agenda. And I have  
23 already talked with Shannon. We are going to set up  
24 meetings right away.

25 CHAIRMAN O'HARA: Okay. We'll come back to

1 that issue at the next Policy Commission meeting.

2 Let's move on to Item 5. Discussion and vote on  
3 DEQ policy regarding volunteers not being eligible for  
4 reimbursement of the application preparation costs. This  
5 item has been on the agenda for several meetings. Before  
6 getting into this item, does the Commission feel we have  
7 appropriate time to spend to discuss and vote? Or do you  
8 want to table this issue until next meeting? I think we  
9 have about eight minutes. Is there significant  
10 disagreement because I know we've gone over it. It sounds  
11 like there was consensus in prior meetings. Ms. Foster.

12 MS. FOSTER: Mr. Chairman, didn't we have a  
13 discussion previously that this determination was based on  
14 state statute. So I don't understand how we can vote for  
15 or against state statute when it's already there. To me  
16 it's not something that we need to decide. If the statute  
17 needs to be changed, then that's the way to go.

18 CHAIRMAN O'HARA: Correct. But do we not  
19 also make recommendations to the legislature to change  
20 statutes?

21 MR. GILL: That's what the question was at  
22 the end of the last meeting.

23 CHAIRMAN O'HARA: I sent around a proposed  
24 recommendation. I don't know if you received an e-mail.  
25 It essentially says that if it's a conflict of statute,

1 that we recommend that would be resolved so the statutes  
2 don't conflict.

3 MR. GILL: Because the point of this was  
4 that this was one more -- the original statute was written  
5 so that the volunteers had the incentive to clean up their  
6 sites, which they didn't have to clean up. And this was  
7 just one more thing that was missed in the original  
8 statute that should have been taken care of -- or don't  
9 take away any incentives.

10 CHAIRMAN O'HARA: Mr. Cardon.

11 MR. CARDON: Is it a correct recollection  
12 that there was basic consensus on this particular point,  
13 that there was no broadly held feeling that this should be  
14 denied to the volunteer?

15 CHAIRMAN O'HARA: I have not heard that  
16 opinion expressed. I think the opinion of the Department  
17 is the statute did not allow them to pay it.

18 MR. CARDON: So it would be totally  
19 appropriate for this board to make a recommendation that  
20 that be changed.

21 MS. JAMISON: Mr. Chairman, I would hope  
22 that this might be tabled until next meeting and that the  
23 discussion and vote would be preceded by a legal  
24 presentation, perhaps by Ms. Woodall who could do a  
25 presentation on what the statute actually does state.

1                   CHAIRMAN O'HARA: I don't know if  
2 Ms. Woodall is going to give us interpretation of the UST  
3 statute. She is our counsel on how we proceed at the  
4 Commission. So I think we did request of the Department a  
5 couple meetings ago, if there was a legal interpretation,  
6 if we could get that; or if this is a policy, we get that.  
7 I would agree with your recommendation to table it and  
8 then say if we get additional information from the  
9 Department -- It sounds like they are saying it is a legal  
10 interpretation. If it is legal, can we get some legal  
11 advice from somebody at DEQ?

12                   At any rate, let's table that. It looks like  
13 there is far more issues to discuss than we have time for.  
14 And in the meantime, I did send around a recommendation.  
15 I will resend it. It kind of capsulated that issue. So  
16 we are going to table 6 -- table 5.

17                   Item 6 has been on the agenda a couple times,  
18 and we'll table that. It is the issue on UST inspection  
19 of the compliance program funding options going forward.

20                   Seven has been cancelled.

21                   Eight is discussion of agenda items for next  
22 month's UST Policy Commission meeting. I know there is  
23 two specifically to be put on the agenda. Would  
24 Commission members like to see those issues discussed at  
25 the next meeting? First is the UST release and reporting

1 and corrective action rules and guidance - frequently  
2 asked questions currently on the ADEQ Web site. Do you  
3 want to discuss that at the next meeting?

4 MR. SMITH: Who brought that up?

5 MR. GILL: I did. This is what we have been  
6 asking for for a long time. They are basically writing  
7 down determinations, decisions. This is what they are  
8 saying how to move forward on these particular issues. I  
9 wanted to look at those and see if there is any discussion  
10 on them.

11 CHAIRMAN O'HARA: Item B is a review and  
12 discussion of the DEQ Sunset Report, Sections 6, 7, 8, and  
13 9.

14 MR. SMITH: That was mine.

15 CHAIRMAN O'HARA: You want to talk about  
16 that next meeting?

17 MR. SMITH: Mm-hmm.

18 CHAIRMAN O'HARA: Any other matters that the  
19 Commission members feel like are appropriate they want to  
20 talk about?

21 MR. CARDON: In the process of the technical  
22 subcommittee hearings and meetings that were recently  
23 held, there was specific conversation with respect to the  
24 spending of the 21 percent of the revenues. And as a  
25 member of the Commission, I would like to recommend that

1 we go through whatever process is necessary to go through  
2 to activate the financial subcommittee with the specific  
3 idea in mind of addressing that specific issue as well as  
4 any other issues. And I would like to see that done in  
5 the not-too-distant future. This coming month would  
6 perhaps not be too soon.

7 MR. SMITH: Along with Mr. Cardon's request,  
8 I think what he's getting at is where the SAF money goes.  
9 And in that financial subcommittee meeting that will  
10 eventually report up to the Policy Commission, for the  
11 November meeting, I'd like to know a little more about the  
12 indirect fund and how much monies from the SAF go into the  
13 indirect fund, which positions the indirect fund supports,  
14 and a description of what those positions do that get SAF  
15 monies into the indirect fund.

16 CHAIRMAN O'HARA: Shannon or someone else at  
17 DEQ, could you answer that? Who would be the best person  
18 for me to contact to get that information?

19 MS. DAVIS: That would be Bob Rocha.

20 CHAIRMAN O'HARA: Any other issues for next  
21 meeting?

22 MR. CARDON: Just by way of information,  
23 Mr. Chairman, so what process, then, would we go through;  
24 or in your view, will the financial subcommittee be  
25 holding a meeting?

1                   CHAIRMAN O'HARA: I am the financial  
2 subcommittee chairman. I will hold the meeting between  
3 now and the next Policy Commission meeting. And I'll send  
4 out a notice.

5                   Okay. General call to the public. Any members  
6 of the public have any discussion on the above topics?  
7 Any comments?

8                   MS. KELLEY: Ona Kelley. I have something  
9 to put on the agenda next month. I queried somebody in  
10 the SAF in regards to why we were so late on getting  
11 ranking points up. They indicated to me that they have  
12 problems getting their money from --

13                   MR. KELLEY: ADOT.

14                   MS. KELLEY: -- ADOT. And there was a  
15 question they were arguing with ADOT. I would like to  
16 know if that's been resolved.

17                   MS. NAVARRETE: That's been resolved.

18                   CHAIRMAN O'HARA: No agenda item necessary.

19                   Any other comments?

20                   MR. GILL: What did you say we were doing  
21 with 6? Are we tabling that one?

22                   CHAIRMAN O'HARA: Yes.

23                   MR. KELLEY: Has it been resolved  
24 satisfactorily, Judy?

25                   MS. NAVARRETE: Yes, it has.

1                   CHAIRMAN O'HARA: Okay, great.

2                   The next meeting is scheduled for November 20th,  
3 2002.

4                   Did you have a comment, Roger?

5                   MR. BEAL: What happened to the groundwater  
6 study? And can we have an update at the next meeting?

7                   CHAIRMAN O'HARA: Yeah, we'll put that on  
8 the schedule.

9                   Next meeting, November 20th, 2002. Thank you  
10 for coming. This meeting is adjourned. Thank you.

11                   (Whereupon, the proceedings adjourned at  
12 12:01 o'clock p.m.)

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