

UST POLICY COMMISSION MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona
November 20, 2002
9:12 a.m.

UST Policy Commission

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

1 THE MEETING OF THE UST POLICY COMMISSION held
2 on Wednesday, November 20, 2002, at 9:12 a.m., at the
3 Industrial Commission of Arizona, 800 West Washington,
4 ICA Auditorium, Phoenix, Arizona, in the presence of:

- 5
- 6 Michael O'Hara, Chairman
 - 7 Roger Beal
 - 8 Shannon Davis
 - 9 Elijah Cardon
 - 10 Harold Gill
 - 11 Myron Smith
 - 12 Tamara Huddleston

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ABSENT MEMBERS:

- 26 Karen Holloway
- 27 Michael Denby
- 28 Theresa Foster

1 Phoenix, Arizona
November 20, 2002
2 9:12 a.m.

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P R O C E E D I N G S

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6 CHAIRMAN O'HARA: I'd like to call this
7 meeting to order and thank everyone for being here at the
8 November meeting of the UST Policy Commission. I'd like
9 to begin by asking for a roll call starting on my
10 left-hand side with a new member.

11 MS. HUDDLESTON: Tamara Huddleston, the
12 Attorney General's office.

13 MS. DAVIS: Shannon Davis, ADEQ.

14 MR. BEAL: Roger Beal.

15 CHAIRMAN O'HARA: Mike O'Hara.

16 MR. SMITH: Myron Smith.

17 MR. GILL: Hal Gill.

18 CHAIRMAN O'HARA: Let me note that Nancy
19 Jamison has retired and the Attorney General has
20 appointed Tamara Huddleston as her representative. I
21 think the back-up representative is Mitchel Klein, and I
22 want to publicly thank Nancy for her participation and
23 also welcome Tamara and look forward to working with you.

24 MS. HUDDLESTON: Thank you.

25 CHAIRMAN O'HARA: Moving on to Item Number

1 Two, administrative issues. It does not appear at this
2 time that we have a quorum. So I'm going to postpone the
3 approval of minutes and go to Item B, which is the
4 rescheduling of the December UST Policy Commission
5 meeting to -- it says to December 10th. Has that date
6 been set?

7 MR. GILL: I think it was set because there
8 was a room available. There isn't any other possibility
9 because Mike can't make it on that date. We need to find
10 out who can be there to make sure we have a quorum
11 because it's voting on the Policy Commission -- I mean,
12 on the costs.

13 CHAIRMAN O'HARA: It's being moved to vote
14 on the costs, is that correct? We need to do that before
15 the 15th?

16 MR. JOHNSON: Right. We need to do it that
17 week sometime.

18 CHAIRMAN O'HARA: Maybe we can just have a
19 conference call or special meeting. Is that the only
20 date we have a room available?

21 MR. JOHNSON: Well, I don't know. We'll
22 have to look and see if there are other rooms available.

23 CHAIRMAN O'HARA: Myron can't make it on
24 the 10th either.

25 MR. JOHNSON: Okay. We'll check to see if

1 we can find another room or another date.

2 CHAIRMAN O'HARA: Was the intention of that
3 meeting to replace the normal meeting?

4 MR. JOHNSON: Yes.

5 CHAIRMAN O'HARA: Okay. We'll -- get back
6 with us and we'll try to make an announcement, if not
7 this meeting, we'll get something out in the e-mail
8 fairly quickly.

9 Okay. Moving on to Item Three, the ADEQ
10 updates. I would like to begin with Item A, which is
11 presentation and discussion of the new SAF section action
12 plan introducing the backlog of SAF claims. Who would
13 like to make that presentation?

14 MR. McNEELY: For the record, my name is
15 Philip McNeely. I work at DEQ. We have a copy of the
16 letter from Rick Tobin of the backlog reduction plan.
17 It's on the back table, and I think all the panel members
18 should have a copy in front of them.

19 The cover letter basically from Rick Tobin just
20 states that this is a high priority for the Department.
21 Rick Tobin is very much aware of it, and he's pretty much
22 dedicated resources to take care of his backlog problems.
23 So you can be assured that it's an urgent issue for DEQ
24 and we're taking appropriate action.

25 The backlog reduction plan. The attachment,

1 just to go through it. We listened to all your concerns
2 talking about philosophy and goals and performance
3 measures; and we've included that all in the plan. So
4 I'll just walk through it and basically just read through
5 it, and then you can ask me questions, I guess, when I'm
6 done because a lot of the questions you'll probably ask
7 I'll cover as we go through.

8 The philosophy. I'll just very clearly state
9 our philosophy. We're going to be product and goal
10 oriented, and we're still going to meet requirements of
11 statute and rule as efficiently as possible.

12 Goals. What are our goals? We're going to
13 reduce the backlog of SAF claims. We have reduced the
14 appeal rate. And how are we going to reduce the appeal
15 rate? We're going to have consistent reporting and
16 clearly defined expectations of the applicants. We're
17 also -- the goal is to streamline the process.
18 Currently, it's taking -- actually, I don't know the
19 exact hour, but we're going to try to reduce the hours it
20 takes to review these claims by increasing the efficiency
21 of the process.

22 (Whereupon, Mr. Cardon enters.)

23 MR. McNEELY: Another goal is we're going
24 to use available resources within the Department's SAF
25 administrative cap. Right now we have a 21 percent cap,

1 so we can't go out and hire a bunch of new people. We
2 can't hire a contractor because right now we're about at
3 the 21 percent cap. So the plan is to use currently
4 funded SAF people from the UST corrective action section
5 to report to Judy and use them to review claims.

6 At the same time, we're going to have to make
7 sure that we don't cause a backlog in that section, too.
8 We want to make sure -- we're going to prioritize all the
9 work that we do and make sure that there's no backlogs
10 created by getting rid of the SAF backlog.

11 The last goal is increase communication with
12 stakeholders. I think that's a big -- what I've heard
13 talking to people, that's a big concern, that we're not
14 communicating well. So we're going to open
15 communications. I think that started a couple months
16 ago, and we're going to continue doing that.

17 On resource allocation. So where are these
18 people coming from? As I mentioned, we've already taken
19 this action. We moved four people from the UST
20 corrective action section, case managers, and moved them
21 up to the sixth floor. The computer is there. Their
22 office is there. Their phone is there, and they're
23 reporting to Judy. Those four people are technical
24 people that are going to be working with the technical
25 reviewers. They're going to be an extra resource. We

1 also have two additional people that are going to be
2 trained and be as an alternate.

3 In addition to that, we also have one full-time
4 person that's been moved up to the sixth floor to work
5 with Judy and two part-time people that are going to help
6 Judy do QA/QC. And I'll talk more about that as we go
7 down the process.

8 Resource allocation, the second bullet.
9 Temporary assigned staff not paid by SAF to do SAF claims
10 review. Right now we haven't done that because we're
11 right at the 21 percent cap. If a couple months down the
12 road it looks like we may have a couple extra \$100,000 in
13 the cap, then we can start having -- we have people that
14 have worked in UST in the DEQ before. We have -- I mean,
15 we have people in DEQ that have worked in SAF and UST
16 that are in different sections. We can tap that
17 resource, have them help review, if we need to; or we can
18 actually hire someone from the outside if we have
19 available resources. But right now we're not doing that
20 because of the 21 percent cap. We're right at the
21 21 percent cap.

22 What are the roles and responsibilities? UST
23 corrective action section. They're going to do technical
24 reviews. They're going to do technical reviews of
25 preapproval work plans. They're going to continue

1 corrective -- doing corrective action documents, site
2 characterization reports, correction action plans,
3 closure requests. That's what they -- that's their
4 responsibility.

5 What is the SAF section going to do? They're
6 going to do the administrative, technical and cost review
7 of SAF direct payments, reimbursement applications and
8 preapproval applications. And there's going to have to
9 be a hand-off between the two sections, but the intent is
10 Judy is the final decision maker on SAF claims, all of
11 them, direct pays, reimbursements, preapproval
12 applications. We have one person making the decisions.
13 She's going to have the technical resources to advise her
14 and make the decisions and to handle the appeals.

15 Process streamlining. How are we going to
16 streamline the process? A couple of these you already
17 know about. Actually, all of them we've talked about in
18 a couple presentations today. The electronic
19 reimbursement, I think you'll have a presentation later
20 on today.

21 Substitution requests and labor form, decision
22 log, we're going to work on that with the Policy
23 Commission exactly how -- the format of that and how
24 we're going to do that.

25 We're revising the SAF application review

1 process; and to give you a couple examples, what we're
2 doing with that is right now we have approximately 1,000
3 backlog claims. If we're having claims from the same
4 owner/operator from the same facility, let's say, three,
5 four, five claims, we're going to try to do groupings,
6 put the same person -- maybe a team of people on that
7 owner/operator or the consultant, try to whip through
8 that in a day, ask questions right there, open
9 communication. So there's no -- we'll try to streamline
10 it where we don't have letters back and forth and
11 appeals. We're just trying to get all the information up
12 front, and the benefit of that is having one person do
13 the whole site. You don't have to have five people do
14 the same background investigation. Just streamline the
15 process, and I think we can do it a lot quicker.

16 There's other things we're doing. The people
17 from the corrective action section, the technical people,
18 we feel right now that training them on how to do the
19 review all by themselves, looking at a form, will be a
20 really high learning curve. So we're sort of teaming
21 them up. They're a resource for the claims reviewers
22 right now. The claims reviewers now know all the forms
23 and how everything is supposed to look. So what these
24 technical people are, they're a resource to go -- the
25 claims review people say, I need this report, this

1 report, this report reviewed for me, they can go do that
2 and report back to them. That way they can have a whole
3 bunch of claims going without having to go and get the
4 files and look at reports and look for information. The
5 technical people can tell them what's missing, what needs
6 to be requested, and we're looking at open communication,
7 phone calls to the applicant, meetings with them and
8 we'll still do the letters and all, but we're just really
9 going to try to streamline the process, be very open.
10 And hopefully the consultants, owner/operators will be
11 willing to help, fax us information, so that we can
12 process these claims without denying costs.

13 Corrective Action work contract eight form.
14 That's just another form. I think we already have that
15 and we've already discussed. That's the type of stuff,
16 and this is a dynamic process. These are the types of
17 things we're doing. And we're looking at any other way.
18 And once the team gets together and they're starting to
19 work, and they are together now, I'm sure they can come
20 up with more ways to streamline it. And we're more than
21 willing to listen, and you guys have already made some
22 suggestions. We're going to keep working this plan so
23 it's more and more efficient.

24 Senior review team. What's the purpose of the
25 senior review team? Right now we have one full-time

1 person under Judy, and we have two part-time people. The
2 purpose of the team is to make sure there's consistency
3 in the review process. And when you have five or six
4 claims reviewers and you have four to six technical
5 people helping the claims reviewers, you can have a
6 problem where people go off in different paths in terms
7 of the reviews. So the senior person -- or actually, the
8 QA/QC person, they're going to go and just look at all
9 these things. They're going to be available to walk
10 around, sort of be a roamer, making sure that if they
11 have any questions, he'll see what this person next to
12 him did and what the other person did; and they can just
13 make consistent decisions. And the senior review team
14 will be responsible for going to appeals and handling
15 appeals because really it's going to be up to them to
16 make sure that all decisions are consistent and that we
17 don't have one or two outliers making decisions that the
18 rest of them aren't making.

19 So it's almost a training process, consistency
20 issue, and then they'll handle the appeals. And another
21 thing is it frees the claims reviewer not to have to go
22 to appeals because appeals take a lot of time. We want
23 these guys to be knocking these claims out without being
24 distracted by having to do research and really get pulled
25 into a lot of different meetings. We want them to be

1 consistently reviewing claims, 40 hours a week reviewing
2 claims, no distractions.

3 We're going to prioritize our SAF claims.

4 We're talking about -- I think we've already done this --
5 direct pay. The money is already incumbered and people
6 are waiting for a paycheck. Those should be top
7 priority, reimbursement claims next, preapproval, not
8 necessarily that that's the order, but we'll have certain
9 claims. I think if one is already incumbered and people
10 are waiting for a check, interests, those types of
11 claims, get those out the door very quickly. It's not
12 necessarily first in, first out, though, because if you
13 have five claims on one site, we want to pull all five of
14 them. Some of them may be first in but some of the other
15 four, five, six may not be. So we need to make the
16 process -- improve the process you really can't be first
17 in, first out. But the goal is to get all of them out
18 the door.

19 Date received is the other thing. Performance
20 measures. How are we going to report this, or how are we
21 going to know we're working? You already gave us some
22 forms. We're going to be reporting those forms to you
23 every month, but also internally, we're going to be
24 checking. And the main thing I want to look at -- two
25 main things in my head, claims going out the door, claims

1 coming in the door. There's got to be a curve where
2 we're actually reviewing more claims than are coming in.
3 And once we do that, which actually this month we've
4 actually done that, I think it's 65 and 60. So we've
5 actually reviewed five more claims than came in. Hey,
6 we're on our way; but if you think that way, you've got
7 five claims times 1,000, it's going to take us 200 months
8 to do that. That's probably not acceptable for anybody
9 here or for us. So that's without the extra resources.
10 We want to see that curve go up in the next couple of
11 months, we'll probably try to streamline the process.
12 And if we're reviewing 100, 120, 150 claims, we'll sort
13 of tell you how long it's going to take to get rid of
14 that backlog. And we're going to work to improve the
15 process and really streamline it.

16 So that's one thing we're looking at. Also,
17 I'd like to look at the appeals rate. We'll probably get
18 more appeals if we review three and four times more
19 claims than we have in the past, but I want to make sure
20 the percentage goes down. So we want the percentage to
21 go down, and hopefully that will be a result of the
22 assistant reviews, technical -- the senior review team, I
23 guess. So those two main ones I want to look at, and
24 we're going to keep on working this, and we're going to
25 streamline the process.

1 The dynamic plan will change as we find out
2 what's causing problems, and we want these resources to
3 be able to move around. If we do all the technical
4 review, maybe the cost review people can't keep up, and
5 we want to move and shift people over there. So that's
6 the plan. It will take continued monitoring, and I think
7 it's going to work.

8 Any questions?

9 MS. DAVIS: Mr. Chairman, I just wanted to
10 point out for the rest of the Policy Commission members,
11 the backlog reduction that Philip just presented is a
12 part of Bob Rocha's division; and he would have been here
13 today if not helping do the agency work to respond to
14 JOBC budget cuts that came down last night. So that's
15 why he's not here today.

16 CHAIRMAN O'HARA: Any questions from the
17 committee members? Hal.

18 MR. GILL: I guess it's not necessarily a
19 question. I guess the only comment I had, and I
20 mentioned it before, Phil, when I first saw your plan, I
21 think it's -- you know, it's a good plan. Obviously, the
22 proof is in the pudding, which basically is the appeals.
23 And what I would -- and I think what more will probably
24 be reported to me, as the one that seems to get all the
25 good news, is how -- what the appeals are like; and

1 that's really what the issue is. We need to see the
2 philosophy change that you've touched on earlier at the
3 very beginning, is what the regulated public really feels
4 is the key issue here. And the only way we'll see that
5 the philosophy has changed or that the nitpicking is not
6 occurring is basically the kind of appeals that come in.
7 And that's why -- we'll have to watch that very carefully
8 to see that there is indeed a change in the appeals. If
9 it's a true technical issue that -- you know, that the
10 appeal is on rather than, you know, picking in detail on
11 the issues and costs, then we'll know that it is indeed
12 working. And I think the proof of that will be that you
13 will actually turn around the number of applications that
14 go out rather than come in.

15 MR. McNEELY: And what we're thinking about
16 also is maybe having a weekly meeting with everybody in
17 the room saying these are the types of issues that have
18 come up this week. This is the type of appeals that
19 we've had this week. You know, how are we going to
20 handle this. So I think you're right. We'll be
21 monitoring that and talking to everybody. And I think if
22 you do that, we should get fairly consistent relatively
23 quickly.

24 MR. SMITH: Mr. Chairman, Phil, with
25 putting this plan into effect, what are your goals?

1 What's the goal down the road to have the backlog taken
2 care of? What were you looking at?

3 MR. McNEELY: You're asking the time frame?

4 MR. SMITH: Yeah, a date what out there, do
5 you think?

6 MR. McNEELY: Well, just to give you some
7 numbers off the top of my head, we had 1,000 backlog
8 claims. Let's say we get the review time down to six
9 hours a claim, 6,000 hours, a state worker, I think, is
10 about 1,500 hours of working with vacation, sick time,
11 training. So that's four full-time people working a year
12 to get rid of those. I'm hoping it will be less than a
13 year. We've added four -- I mean, Judy's group already
14 has -- she already has five more without the help. We've
15 added four more people. Once we start streamlining and
16 start grouping, I think it will be quicker then. So I'm
17 thinking a year is just a rough number, but I think it's
18 going to be much quicker than that once we start the
19 streamlining process.

20 CHAIRMAN O'HARA: Elijah.

21 MR. CARDON: Thank you very much for this
22 presentation. And it would seem that there is a great
23 wind blowing in the Department, and it's going to be
24 exciting to look at the result of the work that is
25 currently being done in the plan.

1 CHAIRMAN O'HARA: Any other comments or
2 questions for Phil on the presentation of the SAF plan?
3 I'll open it up to members of the public. Anyone from
4 the public have a comment on this issue?

5 State your name for the record, please.

6 MR. MERRILL: Fred Merrill. Mr. Chairman,
7 Phil, on the second bullet under resource allocation
8 talking about the temporary assignment, now, it has been
9 said that there are a number of people who are currently
10 being paid through SAF funds that are not involved in the
11 claims review process. It would appear to me just by
12 reading this that these newly assigned staff or the
13 transferred staff into the SAF section, that they will be
14 paid by SAF money that will cause a further impact upon
15 the fund.

16 Now, is it possible that there are people
17 currently being paid by SAF funds that are not doing
18 claims review that have some UST background that can be
19 transferred rather than have people that are not being
20 currently paid by SAF funds?

21 MR. McNEELY: Mr. Chairman, that's what
22 we've done. We've taken five people from the SAF
23 corrective action section, which is currently being
24 funded by SAF. We have not moved anybody that is not
25 funded by SAF because we don't have the available budget.

1 I said down the road that could be a possibility if it
2 looks like we have -- we're below the 21 percent cap as
3 the year goes on.

4 CHAIRMAN O'HARA: John.

5 MR. KENNEDY: Mr. Chairman, John Kennedy,
6 for the record. Phil, you mentioned that Judy was going
7 to be in charge of preapproval applications when they go
8 over to the corrective action section for review, and
9 that you were also going to be doing technical -- you
10 would be requesting technical reviews from the corrective
11 action section on, say, several reports. Is there going
12 to be a time frame put on that because of the statutory
13 time frame for the preapproval to be reviewed? For
14 example, if it goes over, are you going to say within 30
15 days, the technical review is going to be completed and
16 back within the SAF office so they can complete that so
17 that we just don't have deadlines being missed?

18 MR. McNEELY: Yeah. We'll make the 120
19 days -- is it 120 days or 90? There will be time frames.

20 MR. KENNEDY: I mean, do you have a time
21 frame? You said already in your plan here that if it
22 goes over, it's going to be done within 30 days and back.

23 MR. McNEELY: There is a time frame. I'm
24 not sure which one it is.

25 MR. KENNEDY: No, no. I mean internal.

1 MR. McNEELY: There is a time frame.

2 MR. KENNEDY: Okay. That's good enough.

3 Thank you.

4 CHAIRMAN O'HARA: Mr. Merrill.

5 MR. MERRILL: I'm sorry, Fred Merrill
6 again. And if I didn't say this before, which I didn't,
7 I think this is a great attack plan and it answers a
8 whole lot of things. Under the senior review team, do
9 you know who those people are currently?

10 MR. McNEELY: Yeah. It's Joe Drosendahl,
11 Chris Henninger and Mike Zypan.

12 MR. MERRILL: What is going to be the
13 accessibility to these people by the stakeholders? Do
14 you know that yet?

15 MR. McNEELY: I don't know that. It's
16 probably up to Judy. I want them reviewing claims and
17 working. I don't really want them out meeting with
18 stakeholders necessarily. That's sort of what, I think,
19 she will do.

20 MR. MERRILL: I don't necessarily mean
21 meeting, but you said when they had these various claims
22 that you're going to attempt to group. Will it be
23 necessarily the senior review team member that will have
24 the communication and the interaction with the
25 stakeholder on that, or will it just be whoever is

1 assigned to it?

2 MR. McNEELY: It will probably be the
3 claims reviewer.

4 CHAIRMAN O'HARA: Any other comments from
5 members of the public?

6 State your name for the record, please.

7 MR. JONES: Greg Jones. I have one
8 question in regards to the reduction plan. When we
9 reduce the number of these claims, then naturally there's
10 going to be an expense to the State or still waiting on
11 paying -- claim payment. You might have a claim review
12 being completed, but actual payment is not going to come
13 any quicker unless the debt of the State's liability
14 increases from whatever it is now or borrow money or pay
15 these claims. So, in essence, you might get all the
16 stuff kicked out but all the service providers,
17 et cetera, are still going to be waiting to get paid; is
18 that correct?

19 MR. McNEELY: Unless there's incumbered
20 money for it, but yes, that's correct.

21 MR. JONES: Well, you say incumbered, but
22 it's truly not incumbered if there's no money.

23 MR. McNEELY: I'm saying on direct-pay
24 money that's available.

25 MR. JONES: Right. But you used the word

1 "incumbered" when it's not true. Incumbrance -- because
2 there's no money in the fund to pay it. Incumbrance
3 means there's money somewhere, and it's not there. So
4 there's still a huge risk to service providers or anybody
5 who is working on the program to be paid, even though
6 you've reviewed the claim in a prompt manner. So there's
7 still a risk. And I know there's many small consultants
8 out here, you know, that getting paid is the biggest
9 thing. You know, if it's just naturally going to take
10 forever to get paid, then why not wait forever to get
11 claims reviewed, really, because you're going to do the
12 work up front and pay money to your subcontractors, and
13 yet you're going to have to still wait forever to get
14 paid. So it's just a longer liability for these service
15 providers to finally get paid, and still the State can
16 hide behind if there's no money, we don't pay, which puts
17 all these people at risk.

18 And the only people that aren't at risk right
19 now, the way the law is written, are owner/operators and
20 RFPs. You need to shift some more liability back to
21 those people, namely, the interest that's paid,
22 et cetera. They're escaping this interest. They have
23 the work done, but they put the onus on the consultant to
24 wait on payment; and, in turn, the consultant puts that
25 on the State by inflating unit rates, et cetera.

1 I don't know what the State wants to do, if
2 they want to come -- you know, this huge insurance
3 company that owes 100 million bucks or what, but it's
4 beyond the subcontractor. And it's a huge risk to me
5 because I don't see any prime contracts or anything of
6 the sort. We're forced to sign contracts with
7 consultants that are ridiculous on us waiting for payment
8 when the State pays. Thank you.

9 CHAIRMAN O'HARA: Thank you. Any other
10 comments, questions for Phil?

11 State your name, please.

12 MS. NOWACK: Mr. Chairman, Phil, members of
13 the Commission, for the record, my name is Patricia
14 Nowack. I'd like a little more detail about how you're
15 prioritizing the claims.

16 MR. McNEELY: I don't have all the details,
17 but direct pays, when the money is incumbered, would be
18 the top priority, claims being paid. Interest would be a
19 top priority, preapproval, direct-pay claims where money
20 is probably not incumbered to be a top priority. Then it
21 goes down to reimbursement.

22 MS. NOWACK: So when will this be
23 effective?

24 MR. McNEELY: We're starting right now
25 doing that this week.

1 CHAIRMAN O'HARA: Any other questions,
2 members of the public, for Phil?

3 Okay. Great. Thank you, Phil. That's a great
4 presentation.

5 MR. McNEELY: Thank you.

6 CHAIRMAN O'HARA: We're going to make one
7 slight change in the agenda. Since we're on the topic of
8 State Assurance Fund, I'd just like to move Item D, which
9 is more technical in nature, down to the end of Agenda
10 Item Number Three and to move up Item C, if there's
11 people here to discuss that at this point. The
12 presentation and discussion of the substitution waiver
13 and electronic reimbursement process. Would you like to
14 discuss that?

15 MS. ROSIE: Tara Rosie, State Assurance
16 Fund. We had a technical subcommittee meeting last week,
17 and we had some really great input from stakeholders. I
18 think if you review this updated form that's got draft on
19 it, you'll notice that the changes that were discussed in
20 the subcommittee meeting have been made. I don't know
21 how much detail the Policy Commission wants on this, Hal,
22 because I notice that you have it as an item for
23 discussion later. I didn't want to step on your toes or
24 anything.

25 MR. GILL: I was just to basically go

1 through and summarize what our discussions were at the
2 technical subcommittee.

3 MS. ROSIE: So that may be appropriate.
4 What this is is we've had many appeals, and in trying to
5 streamline the process and reduce appeals, we've also
6 tried to address the issue of conformance with the
7 preapproval work plan and direct-pay applications. This
8 document is only to be used with direct-pay applications.
9 It's not appropriate for reimbursements, and what it does
10 is it hopefully codifies what everybody understands with
11 the implementation of Senate Bill 1338. It goes through
12 and describes how the costs and activities that are lined
13 out in the preapproval can be accessed through direct-pay
14 application. We've included definitions of the
15 substitution of work item, work item and work objectives
16 of preapproval. We've got tables. The table -- the
17 first table allows you to take an item or activity from
18 the preapproval and associate it with something on the
19 direct pay that you're claiming.

20 The main issue here is that we need to make
21 sure that the objectives of the preapproval are met and
22 that the costs stay within that preapproved amount as
23 applicable. So what the waiver -- the first part of
24 this, which is the substitution waiver, does is it allows
25 you to take an item or activity from the preapproval and

1 use those costs to reimburse for an activity or item that
2 you do in the direct pay as long as it's within the work
3 objectives of the preapproval.

4 What you're doing is as the owner/operator or
5 the applicant, you're signing off that you're not going
6 to access those funds again and that you do want to take
7 the money from one place and apply it to another. The
8 first page gives you a little bit of a description in the
9 bulleted items on how you can make the substitutions.
10 One of the things that came up recently was completed
11 work activity. For example, if you're doing system
12 installation, you install the system and you have \$10,000
13 left over. You can then access that \$10,000 to reimburse
14 for any other activity that you're doing that's within
15 the objectives of that preapproval, but we need to know
16 that that activity is completed and where you're taking
17 the money from. And so that's really the purpose of the
18 table.

19 There's also a second part of this which is for
20 the electronic reimbursement. The electronic
21 reimbursement is something that's used to help hold costs
22 for work that's done that's within the objectives of the
23 preapproval but can't be paid off the incumbrance because
24 there isn't any money there. Or at the time the work is
25 performed, you don't know if there's going to be money

1 available or not.

2 If you notice on page 5, we changed the check
3 box for stakeholder suggestions so that if you're
4 checking this, you do not elect to have any funds or any
5 activities and costs that don't meet the substitution
6 requirements put on electronic reimbursement. If you do
7 not check this box, then the Department will create an
8 electronic reimbursement to hold those costs that cannot
9 be substituted as part of the waiver.

10 With the electronic reimbursement, we've talked
11 about it before, it gets -- it's for work that's within
12 the objectives of the preapproval, and it gets the risk
13 and financial need points from that preapproval and
14 deferral points from the submittal date of the associated
15 direct pay. So it's as if you submitted both of those
16 applications at the same time. It's held in ranking
17 until either the last direct pay is submitted and
18 processed so we know how much money is going to be
19 available to pay anything that's on there or it comes up
20 in ranking. And I think so far all the electronic
21 reimbursements that we've processed have come up in
22 ranking before the last direct pay. So this is an effort
23 by the Department to make payment as soon as possible for
24 that work which it recognizes is reasonable and necessary
25 to complete the objectives of the preapproval but was not

1 accounted for in the preapproval.

2 Anyway, please look through it. If you have
3 any comments or suggestions, I suppose I'm probably the
4 person to contact. There is "draft" on this per
5 suggestion of Hal. And if you have any questions, let me
6 know.

7 CHAIRMAN O'HARA: Any comments or questions
8 from members of the Commission?

9 MR. GILL: The only comment I had is on
10 the -- I guess, the determination letter that comes out
11 saying that this is a reimbursement or went over into
12 electronic application or whatever you call that, is to
13 make it real clear that that's what that was because in
14 ones that I've gotten in the past, I see that everybody
15 is denied. And it isn't until I go back and look at the
16 last sheet that has the code and read the code that I
17 know that this was the process.

18 MS. ROSIE: We have a new database person
19 on staff that Judy hired, and that's something that he's
20 working on right now. It's just as difficult for us as
21 it is for you guys to tie up where that electronic
22 reimbursement is coming from when you get a determination
23 letter that this is reimbursement and it's an amount of
24 money that you know you didn't submit. So we recognize
25 that.

1 It's a twofold process we're working on right
2 now. One is to link -- as far as the letters and numbers
3 for that electronic reimbursement, link that back to that
4 direct pay. The other is that in the text of the letter
5 that you get from the electronic reimbursement, there
6 will be something that you get when we create the
7 electronic reimbursement saying what it is, where it came
8 from and what's included on it. And there will also be
9 something when you get your determination letter on it
10 after it's been reviewed that indicates that, in fact, it
11 is an electronic reimbursement. So that's something that
12 the database guy is working on right now.

13 MR. GILL: Okay. I'd just ask that if the
14 public has questions of Tara, if they could hold any of
15 the technical issues because we're going to discuss it
16 again in my subcommittee. But if they want to ask her
17 questions about the specific form or something like that,
18 that's fine because we're not really going to get into
19 that; but we are going to discuss the issues that were
20 discussed in the technical subcommittee in a few minutes.

21 CHAIRMAN O'HARA: Any other comments or
22 questions from the Commission members? Any comments from
23 the members of the public?

24 MR. BECK: Brian Beck. When do you think
25 this new form will actually be effective or available to

1 be effective?

2 MS. ROSIE: I think that's up to Hal and
3 the Policy Commission. I know I've met with all my staff
4 and we've been trying to implement this type of review.
5 What we've got right now, it's very difficult with the
6 form we've got, though, in order to make those analyses.

7 MR. GILL: Yeah. It was discussed at the
8 technical subcommittee meeting that there may still be
9 comments that people want to make, but that we would
10 propose after we've gone through the discussion that the
11 Policy Commission vote to go ahead and put this in place
12 in a draft format, but -- that way they can start using
13 it right now rather than trying to work with two
14 different forms. So that should be done today unless
15 there's real problems with the discussion.

16 CHAIRMAN O'HARA: Any other comments or
17 questions for Tara? Great. Thank you, Tara.

18 Moving on to item listed as D on your agenda.
19 It would be the 2003 cost ceilings. I think we just want
20 to get an update of the 2003 costs. Is anyone from DEQ
21 prepared to give an update?

22 MS. ROSIE: What are we doing?

23 CHAIRMAN O'HARA: Just trying to get an
24 update on the 2003 cost ceilings.

25 MS. ROSIE: I believe that Hal is

1 scheduling a technical subcommittee meeting to go over
2 our last version of the cost ceilings. I think there was
3 some stakeholder comments about the general comment
4 section on that that we needed to address, and then I
5 think Hal has got the lead on that more than I do right
6 now. I'm just playing along.

7 CHAIRMAN O'HARA: Hal.

8 MR. GILL: Yeah. We -- because we have --
9 the Policy Commission has to vote on it by the 15th and
10 our next meeting was the 18th, that was the reason for
11 moving it. And, also, I scheduled a technical
12 subcommittee meeting to go over the cost ceilings for the
13 3rd of December, and I think I've got that information
14 when we get there.

15 CHAIRMAN O'HARA: Okay. Any comments?
16 Questions? Okay. Great.

17 Moving on to Item B, which is the presentation,
18 discussion of the new LUST assignment policy.

19 MS. DAVIS: Mr. Chairman, there's a draft
20 policy that was distributed today. And in talking with
21 Mr. Gill, what we'd like to do is go ahead and take that
22 draft through the technical subcommittee and then bring
23 that up through the Policy Commission. The most
24 important note to make is it's here.

25 CHAIRMAN O'HARA: Okay. Great. Thank you

1 for bringing that to us.

2 And, Hal, you're going to include that in your
3 December 3rd or schedule another meeting?

4 MR. GILL: Actually, I think we'll probably
5 get through the cost ceilings relatively quickly, so I'm
6 going to put it on the agenda for discussion at the
7 December 3rd meeting and hopefully we'll be able to get
8 to it. And I really do appreciate the DEQ and Shannon
9 getting these to me, and I've already reviewed it
10 previously. So we should be able to discuss it in two
11 weeks.

12 CHAIRMAN O'HARA: Okay. Are there any
13 other comments from members of the Commission? Okay. I
14 would like to move on to Item E, call to the public. Is
15 there any items that we discussed that members of the
16 public would like to make a comment on? Okay. Great.
17 Thank you.

18 Moving on to Item Four, technical committee
19 update. Hal, I'll turn this over to you.

20 MR. GILL: Okay. Thank you. A was
21 basically to look at the technical subcommittee
22 recommendations to the Policy Commission that came out to
23 be voted on by the Policy Commission that go to the
24 director that came out from the October 8th and 17th
25 meetings. Last meeting we got through and voted on

1 Items 1(a), (b) and (c). I don't suppose you happen to
2 have the language that we finally came up with on C, by
3 any chance? Because I had a problem with C, and I wanted
4 to raise that again.

5 And if we don't have the -- well, I'll
6 bring -- C was the issue of DEQ corrective actions and
7 the SAF sections reporting to the Policy Commission. And
8 the issue that was brought up from the AG was that our
9 recommendation was for DEQ to use the provided format,
10 and the AG had a problem with us providing the format for
11 DEQ to use. As we discussed at that last meeting, the
12 DEQ didn't have a problem with the data that they were
13 being asked to provide. And so I guess the problem I
14 have is the final language of what we submitted as a
15 recommendation is what I have a problem with because when
16 I read it after the meeting, it didn't make any sense at
17 all. Basically, it was a totally useless recommendation.

18 And so I've added some language to it, and
19 basically what I wanted to add was not -- not that the
20 DEQ would use the provided format but we can come up with
21 our own format but provide the data that was asked for in
22 the provided form, or however you wanted to word that.
23 That's what I wanted to make a change to and see if there
24 was any problems DEQ and the AG had with that. Not using
25 the provided format but at least providing the data that

1 was asked for in the provided format.

2 CHAIRMAN O'HARA: Is the data that was
3 presented today in these reports? Is this the
4 data -- does this meet the objectives of the data you
5 were looking for?

6 MR. GILL: I haven't really had a chance to
7 look at it yet.

8 CHAIRMAN O'HARA: It didn't seem to me
9 there was any real disagreement on the data being
10 presented.

11 MR. GILL: It wasn't. It was just that
12 when I looked at the language that finally came forward,
13 it made no sense at all. We weren't recommending
14 anything. And so --

15 MS. DAVIS: We like that.

16 MR. GILL: And so I don't think there was
17 really an issue of what the data -- this really was what
18 all the discussion was all about, is that we wanted
19 agreement between the stakeholders and DEQ on the data
20 that we were asking for so we were on the same page. And
21 unfortunately I have -- I really haven't had a chance to
22 look at it to look at what was provided here to see if it
23 has all that information.

24 But, again, the recommendation was just that --
25 not that -- because the recommendation that we had worded

1 was this is the format that was recommended to the SAF
2 section to provide monthly reports to this Policy
3 Commission using the provided format. And rather than
4 using the provided format, we'd just like to change that
5 to correct that, that the SAF section provide monthly
6 reports to the UST Policy Commission using the format of
7 their -- their choosing but provide the data that was
8 requested in the recommendation and that was in the
9 format that we provided, something like that, and see if
10 the DEQ has a problem or the AG has a problem with that
11 language.

12 MS. DAVIS: Mr. Chairman, Mr. Gill, I just
13 want to refer back to that language; and the language is
14 asking for a format that reports back on direct pay,
15 reimbursement and preapproval applications. So we were
16 just -- I want to be clear that the agency -- is that
17 what you're requesting that we report out on?

18 MR. GILL: Why don't we -- it seems that
19 we're having problems. Why don't we go ahead and
20 postpone this to look at it again at the next meeting
21 because what I want DEQ to do is to look at the format
22 that was provided to see if they have any problems with
23 what's being asked for here. Actually, we went through
24 them last time, and there wasn't really a problem. What
25 we were asking for is just the AG didn't like us

1 recommending a provided format. And as long as there's
2 no -- as long as there's no concern over what we're
3 asking for in that format that's provided, then we
4 can -- and I'll find the language that I used before and
5 pass that on to DEQ and see if they have a problem with
6 that, and maybe we can vote on it next time.

7 The other things were basically continuing on
8 with the recommendations. And when I look at the
9 recommendations, D, which the SAF section must develop
10 internal performance standards, we recommend that DEQ
11 continues using the standards established by the CIU for
12 number of applications. Basically the technical
13 subcommittee meeting we had last week and then
14 actually -- also on the financial subcommittee meeting we
15 had yesterday brought up those points, and I think that
16 the reason we put this on hold is because the DEQ and the
17 SAF is currently looking at their standards and
18 performance standards.

19 And so I think, again, we'll put that on hold
20 until they can -- because that was one thing that was
21 mentioned yesterday in the financial committee, if we
22 wanted to look at performance standards and see -- just
23 as Phil mentioned, see how many applications, how many
24 reports, whatever they feel that they can provide. And
25 the recommendation was basically for DEQ to establish

1 performance standards that they can start going by. And
2 so we had put these on hold last time, not because we
3 couldn't get to them, which was the case also, but
4 because the DEQ was putting processes in place, as we
5 speak, to establish these. And so I've been kind of
6 wanting to see and give DEQ the opportunity to put this
7 new action plan in place. And I know there's an action
8 plan forthcoming for the corrective actions as well, and
9 I want to just give the DEQ the opportunity to put these
10 action plans in place and develop those performance
11 standards to see if they go along with what we're
12 recommending.

13 So I guess I would recommend that DEQ look at
14 these recommendations again in developing their
15 performance standards and see if we can come up, you
16 know, next month with -- to look at these again. That
17 was for D.

18 And E is the backlog -- what did you call it?

19 So E basically is addressed, although, again, E
20 was asking for more performance standards as well. And I
21 know Phil said that they were working on trying to figure
22 out what they can turn out. So if I could ask DEQ to
23 look at Recommendation E again and maybe by next meeting,
24 they'd be prepared to come up with performance standards
25 that they think gives a better understanding of what they

1 think they can turn out as far as the applications.

2 And basically F was the same thing. It dealt
3 with the SAF claims. F was just asking for the plan.
4 And G had to do with DEQ providing experienced personnel
5 for their review, their senior review team and the like.

6 I guess basically from looking at these, I
7 would like to postpone these again until next meeting,
8 but I would ask DEQ to look at Recommendations D through
9 H. And then by next month, we'll have had a month for
10 SAF and their action plan to be worked on, and they can
11 look at some of these and be able to respond to some of
12 these because we had originally postponed these to give
13 them time to put these in place. And they're still in
14 the process of going that. And the main thing I think
15 we're all seeing, that they are, indeed, putting forth a
16 lot of effort trying to put the process forward. But I
17 do want them to look at the recommendations that were put
18 forward so we can discuss some of them next month and
19 respond to some of the criteria.

20 I'll contact DEQ in the interim and just
21 identify which ones I definitely want them -- a response
22 to and see whether we need to vote on any of these or
23 not. So basically for A that's -- we're just postponing
24 it until DEQ and I could have time to look at their new
25 plans and what they're putting in place.

1 B is update on the determination log. We had a
2 technical subcommittee meeting last week, and I think all
3 of you have in your packets the summary of that technical
4 subcommittee meeting. We basically went through three
5 issues. One was the decision log, one was the frequently
6 asked questions document and the third one was the
7 substitution waiver form. And what I'm doing today is
8 just providing a summary for the Commission on these
9 items and primarily a little bit more of what we just
10 discussed. And I guess there was still confusion as to
11 what to call it, but I think just decision log is fine to
12 me unless someone has problems with that. It's easier to
13 say than determination log; so from this point forward,
14 we'll talk about the decision log.

15 The main -- as we've stated in numerous
16 meetings, the main purpose of the decision log was to
17 provide for the regulated public and the DEQ, I guess, a
18 place where they could look at decisions that have been
19 made in the past that affect all owner/operators, not on
20 a site-specific basis, a decision that is specific to a
21 site but a decision that is going to from that point
22 forward affect all owner/operators and stakeholders. And
23 the one thing that came out in their discussion was --
24 and this has been brought up numerous months in the
25 past -- was whether or not we want to call these

1 substantive policies or not.

2 The one thing we didn't want to do in coming up
3 with this decision log and the decisions that are going
4 into it, we didn't want to delay the process; and DEQ is
5 looking into this right now, calling it substantive
6 policy is going to put us into a loop of having to go
7 through review by umpteen people at DEQ and all the way
8 up the chain. And it's going to take a long time before
9 it gets in place. We're really not looking for that.

10 All the stakeholders really wanted was a place
11 where everybody, including DEQ and the stakeholders, can
12 go into and find that this is a decision that has been
13 put in place; and based on this decision log has now gone
14 before the technical subcommittee, has been discussed,
15 has gone to the Policy Commission for a vote to put it
16 ultimately in the decision log, and this is what the
17 process is going to be from this point forward.

18 So there was a discussion of what are we really
19 going to call these? Are they policies? And I know
20 that's been the problem we've had in the past several
21 months, is DEQ did not look at these as necessarily
22 policies because their definition of policies is
23 substantive policies. So that was the discussion. As I
24 said, DEQ is looking into that right now for -- we don't
25 want to create problems by what we're trying to come up

1 with, but everyone agrees that this is something this
2 needs to be in place. So we're moving forward again
3 working on the same page, and this basically is where all
4 the appeals are coming from, or most of the appeals. And
5 that's why we've been trying for months to get something
6 in place to identify these decisions.

7 MS. HUDDLESTON: Excuse me, on that point,
8 if I could. Tamara, again, and I'm new to this so I'm
9 playing catch-up, but I -- I haven't looked at this
10 policy so I don't know if it is a substantive policy; but
11 whether we call it one or not, the definition under the
12 law, it will be. So I'm not certain it matters what you
13 call it.

14 MR. GILL: I understand what you're saying.
15 We've been arguing or discussing for months what a
16 substantive policy was, and our -- when you look through
17 the definition of it, it's real vague. But what I picked
18 out as the key issue is that it has to affect all
19 owner/operators. And that's why we were trying to key in
20 on when a decision is made in the meeting, an appeal,
21 internal discussion with DEQ or however, that we're going
22 to do it this way from this point on. And if it's
23 identified that that, indeed, affects all
24 owner/operators, it does have a substantive policy.

25 The argument of why we were using it as a

1 substantive policy was to get it to come forward so it
2 can be discussed, and all the issues on both sides come
3 out to determine whether or not this is truly the way it
4 should be. And that's what we were ultimately trying to
5 do. When we started these meetings to come forward with
6 these recommendations a couple, two, three months ago, I
7 just off the top of my head came up with this format of
8 some way to get it in front of the Policy Commission.
9 But then we ran into the State problem of what do we call
10 it, but I understand what you're saying. If it's a
11 substantive policy, it's a substantive policy.

12 MS. HUDDLESTON: I don't know today. I'm
13 not prepared today to say whether it is or not.

14 MR. GILL: Well, they're all individual
15 items, though. I don't mean the -- and maybe that's
16 another issue, if this decision log is a substantive
17 policy, that we weren't thinking of that. But we were
18 looking at each individual item as to whether or not this
19 was a substantive policy, but the reason being is to get
20 it in front of the Policy Commission so it could be
21 discussed because there was a disagreement between the
22 stakeholders and DEQ as to whether or not this was
23 correct, and that was the real issue. But the main
24 thing, as we said, is we don't want to hold things up.
25 So that's why DEQ was going to look into that, and if

1 that means coming to you to determine whether or not or
2 how we could do this where we can get these decisions to
3 a point where we can discuss them, you know, that's
4 basically where we are.

5 And I wanted to give a lot of credit. I don't
6 think it's in this packet, but the SAF section came up
7 with a real good format for us to start with as a way to
8 start providing these -- that's right. It is in here.
9 It's the one that has the big SAF on the front. And I
10 just wanted to give them credit for spending a lot of
11 time to come up with the different forms and an idea for
12 a long -- but over and above the issue that we were just
13 discussing about substantive policy is, again, we were
14 trying to figure out a way to get these decisions into a
15 document or at least on the Web -- ultimately on the Web
16 -- and the one thing that came up in discussions is that
17 basically we need to just start receiving from DEQ from
18 owner/operators, from stakeholders, concerns or decisions
19 that they believe needed to go into this.

20 And DEQ provided a format, basically a
21 recommendation, for the decision log, UST and SAF; and
22 this does cover the whole gamut. It isn't just SAF. It
23 may ultimately end up an SAF appeal, but it does cover
24 both programs. And so we were trying to come up with a
25 way for the regular public and DEQ to start bringing

1 forth these decisions for discussion. And as I said, in
2 the packet that you received, there's a suggestion on how
3 to do that. And these will, at this point, in a way, be
4 forwarded to me through e-mail or fax, and I can give
5 that to anybody that needs it. I don't know that we
6 need -- where we need to post that or whatever so people
7 can actually get these comments to me.

8 But basically once their -- our thought and the
9 discussion that we had is that once they come in, we're
10 basically going to be having a monthly technical
11 subcommittee meeting that is held approximately two weeks
12 prior to the Policy Commission meeting. During that
13 meeting, we will discuss any of these items that come in.
14 We'll determine -- and again, our issue was to discuss
15 them, determine whether or not we can reach consensus in
16 that subcommittee meeting that this is a decision that
17 affects all owner/operators. And if we can reach that
18 consensus, bring it to the Policy Commission and just
19 basically pass that on that we've reached consensus on
20 this and vote on it going into the decision log. If we
21 can't, the two sides can be presented or three sides can
22 be presented at the Policy Commission meeting as to
23 where -- what the issues are in this particular decision,
24 and the Policy Commission can discuss it and vote on
25 whether or not they believe. Again, the key thing is

1 whether it affects all owner/operators and it's a process
2 or decision that needs to be put down in the decision
3 log.

4 The other issue that came up is obviously all
5 documents, guidance, decision log, whatever you call it,
6 the rule, the guidance that just came out these last few
7 months, are all designed from this point forward, but the
8 UST program doesn't work that way. It's ongoing,
9 continuous; and that's really where all the problems
10 occur, is that you can sit down and come up with really
11 great guidance and really great rule, but there's always
12 the overlap that causes the concerns.

13 So it was brought up that these decisions, most
14 of them are going to be after the fact. This has already
15 occurred. It's already causing appeals. We discuss it
16 now. It's more up to the DEQ to bring forth the ones
17 that in their internal meetings or internal review of
18 documents decided it looks like we need to make a new --
19 this is a new decision of a way we're going to move
20 forward. Those are the ones that DEQ has to come forth
21 as well bringing forth these decisions that they believe
22 are going to go forward from this point forward. And the
23 point is we don't want it to go to appeal; and that's
24 where all of these are coming primarily out of appeals,
25 whether it's on the corrective action side or SAF. So if

1 DEQ in their internal discussions comes up with a
2 decision that they say, "Well, we want to do it this way
3 from this point on," that needs to come forward before a
4 bunch of appeals are coming in again because that's been
5 the process in the past. Somebody comes forward, all of
6 a sudden the regulated public is saying, "Where did this
7 come from," and there's a bunch of appeals. So the
8 process has to work from both sides.

9 Do you want to do these individually as far as
10 comments and stuff rather than me go through the whole
11 thing?

12 CHAIRMAN O'HARA: It would probably make
13 more sense if you just comment on that by itself.

14 MS. DAVIS: Mr. Chairman, Mr. Gill, members
15 of the Commission, I just want to stress from the agency
16 point of view that we're really focused on consistency
17 and communication. And I think having the decision log,
18 what we can do internally is we can batch those into two
19 separate files, ones that we do believe make a decision
20 log and will affect people, and then also a batch that we
21 don't believe require making the book. And then we can
22 bring those to you and let you see the logic we've used
23 in going through those two and then also work closely
24 with the AG's office to see how substantive policy
25 affects those or not. I just want to let you know that

1 we'll be focused on that.

2 MR. GILL: That sounds great because, as I
3 said, the key thing here is just the communication. If
4 there's something that -- we don't want it to go to
5 appeal, and that's where everything has been identified
6 in the past, and we are just trying to put something in
7 place that identifies potential problems before they get
8 to appeals.

9 CHAIRMAN O'HARA: Any other comments? Open
10 it up to the public on this. Members of the public have
11 comment on the determination log?

12 Okay. Go ahead, Hal.

13 MR. GILL: I guess another, looking back at
14 this, I thank Al Johnson for compiling this for me
15 because Al was helping out on the technical subcommittee
16 and finance subcommittee meetings by keeping notes for us
17 and bringing those forward. So we spent a lot of time
18 putting this together, and I was just looking at the
19 notes that we had. And one point I had here, and this
20 goes along with what, I think, Shannon is saying, is DEQ
21 as part of their training process, this is what this is
22 used for as well, bringing these issues up to all the
23 staff because that's where the -- the inconsistencies
24 we've seen on the other side of the table for years and
25 years is that one case manager is bringing these

1 decisions forward and another one isn't. So this issue
2 was raised in our meeting that this will be a good way --
3 a format to put all these decisions in one book so DEQ
4 can use it for consistency as well.

5 One thing that was brought up is that these
6 decisions -- it was a question on due dates. In other
7 words, if they -- we, again, did not want to hold
8 something up. If there is something that needs to go out
9 to move the process forward, even though it may cause an
10 appeal, the DEQ is going to go ahead and move forward
11 with that rather than wait a month because, again, these
12 are monthly meetings. We can have emergency meetings,
13 but I think that makes sense. DEQ doesn't want to delay
14 the process and we definitely don't want to delay the
15 process as stakeholders and owner/operators. So if it is
16 a new -- looks like this appears to be a new decision but
17 it would hold up a due date on something, DEQ is going to
18 move forward with that anyway. And then we'll address it
19 as rapidly as we can so it doesn't create a bunch of
20 appeals.

21 Did you go to the public on that one?

22 CHAIRMAN O'HARA: Yeah.

23 MR. GILL: Okay. I'll move on to the
24 frequently asked questions. Basically what this was was
25 this was a document that came out on the Web, DEQ, and we

1 saw this as one of the first documents that was coming
2 out that had decisions on it. So we were going to look
3 at it as the first one to look at as far as the
4 decisions. I guess the first problem we ran into was
5 that the frequently asked questions have not been asked,
6 but I didn't really see a problem with that. I mean, if
7 DEQ thinks of questions whether they ask them -- and I
8 ask many of these questions, I may not have asked DEQ.
9 But so the frequently asked questions have not been asked
10 by the public, but I didn't have a problem with that
11 myself.

12 But anyway, I think one of the key things that
13 came out of this is that many stakeholders have a real
14 hard time finding things on the Web. As a matter of
15 fact, this particular document was buried in the
16 development section, so someone sent it to me because I
17 never found it. And so DEQ went into a process of, I
18 think -- actually, the first page of that packet was an
19 example of how you can find things, but they're going to
20 be making it a lot easier to find documents. And I think
21 one of the bullets on the very top is going to be
22 whatever they ultimately end up calling it. It may not
23 be frequently asked questions but it may be new decisions
24 or whatever you want to call it. But there's going to be
25 a bullet that you can go directly to as a link right to

1 these decisions or policies or whatever. But what --
2 basically, we ended up not really discussing any of the
3 issues on there, although I didn't really have a problem
4 that they weren't questions that were asked, but they
5 were still issues. And if DEQ can identify an issue that
6 they're doing business by, to me that's exactly what
7 we're looking for.

8 And so I guess the short version here is that
9 they're going to be coming up with a way for stakeholders
10 to go into their -- and at this point, it's on
11 administrative services Web page, but I think there's
12 going to be a link between -- they're figuring out a way
13 to get all departments' decisions, questions, concerns
14 linked to a central location where you can click on it
15 and bring up all the newest decisions or policies.

16 Any questions on that?

17 CHAIRMAN O'HARA: Any comments?

18 MR. GILL: Okay. We'll move on to the last
19 item of discussion in that technical subcommittee, which
20 was the substitution waiver form. And I guess the number
21 one issue, and Tara alluded to it, is the key thing is
22 the work objective is understood by the party doing the
23 work plan and make sure that it's clear to DEQ and SAF,
24 but generally if the work objective is site
25 characterization, then that's a work objective. Where

1 the issue came up in the discussion is if you're
2 investigating a release and you've got -- and it's in
3 preapproval and you have -- you happen to find another
4 problem, one camp was saying, "Well, that's all part of a
5 site characterization. You should be able to investigate
6 it." I can understand that side.

7 And I guess the concern I have is that -- and
8 this goes along with the new document that was just
9 handed out at this meeting, the LUST assignment number
10 policy or whatever it's called. That's the problem that
11 I see with it, with continuing investigation on a new
12 release that was discovered, is that per the DEQ's
13 policy, it isn't a confirmed release yet. And there's
14 guidance on whether that's a confirmed release or not.
15 So if you investigate it, it may be valid. You may
16 ultimately prove that it was valid, but you're always
17 taking the chance that you may not get reimbursed for it
18 because if it is determined that this was not a confirmed
19 release per the new guidance and policy, then, you know,
20 you're going to be in appeals again.

21 So I guess the easy answer is to follow your
22 preapproval work plan and, you know, I guess discuss
23 calling the DEQ if new releases are found and work it
24 that way before you just run ahead with the
25 investigation.

1 Another example that was brought up is if it
2 goes off site, and I think that all depends on how your
3 work plan is originally proposed. Again, if a confirmed
4 release is being investigated and you confirm that it
5 does, indeed, go off site, that is still -- and if site
6 characterization was the issue, you can still
7 characterize that release. But the issue here becomes
8 funding. If you actually have the budget in your
9 preapproval work plan that would cover that, you may be
10 able to substitute things for that amount; but you have
11 to make sure the budget is there. And I don't believe
12 that DEQ, SAF had a problem with the investigation going
13 off site if the contingencies are in place and the budget
14 is there, but I can let -- that's what I thought I
15 remembered.

16 But the key issue is that if the work objective
17 is site characterization, you need to look real carefully
18 that you have budget to transfer. You have to make sure
19 that you get the work that you originally proposed done.
20 And then if you find other issues to keep from having to
21 go back to a site and incur further expenses, it does
22 make sense to continue that. But you have to look very
23 carefully that you, indeed, have budget remaining if you
24 want to go into that work plan. I mean, you can go
25 outside of that budget and it will go into an electronic

1 reimbursement because it still would be -- they'll look
2 at it as reasonable and necessary. And I think you can
3 argue this is the same release that just went further
4 than I had originally proposed, so you should be able to
5 argue that it's reasonable and necessary. But it would
6 have to go into an electronic reimbursement, which means
7 another time frame.

8 That was one of the big issues that we
9 discussed. So it's real critical that we are all on the
10 same page on what the work objective is and what
11 the -- and I think what I heard Tara say is, I think,
12 pretty much everyone was on the same page as far as the
13 work objective and the work items.

14 I would be very careful on investigating
15 another release, even though it may make sense at the
16 time. You need to look very carefully at the new LUST
17 assignment policy and make sure that it's a confirmed
18 release before you investigate it.

19 Okay. I think those were the major issues in
20 the discussion. I didn't see any real problems with
21 the -- in the discussion that people had with the new
22 forms or anything. And so as I said, we'll open it up to
23 discussion here. And then if we ultimately want to vote
24 on putting this process in place in a draft format so the
25 SAF can start using this new form because at this point

1 they're not using this new form. And there are
2 differences that will make it a lot easier for them
3 getting things done.

4 CHAIRMAN O'HARA: Okay. Any comments from
5 members of the Commission? Discussion?

6 Hal, did you want to make a vote on that today,
7 a motion on that?

8 MR. GILL: Yes. We want to put that in
9 place so they can start using it.

10 CHAIRMAN O'HARA: Any comments from members
11 of the public on the ADEQ substitution waiver and
12 electronic reimbursement process? Ms. Nowack.

13 MS. NOWACK: Thank you, Mr. Chairman. For
14 the record, again, my name is Patricia Nowack. I just
15 want to make sure that the Department is going to
16 continue to accept the old form and not going to reject
17 anything that's in process.

18 MS. ROSIE: We won't reject anything in
19 process, but if we do have some concerns, we will contact
20 you about that. And worst-case scenario, we're going to
21 need a cert statement to address those issues; but the
22 stuff in process will not stop processing.

23 CHAIRMAN O'HARA: Any other questions or
24 comments from members of the public?

25 Okay. Great. Hal, would you like to make a

1 motion on that? We do have a quorum.

2 MR. GILL: Yes. I'd like to make a motion
3 that the Policy Commission accept the substitution
4 request waiver form and table of substitution as a draft
5 document at this time so they can start using it.

6 MS. HUDDLESTON: I'm sorry.

7 MS. DAVIS: Second for purposes of
8 discussion.

9 MS. HUDDLESTON: Could you clarify for me
10 which form we are on?

11 MR. GILL: Okay. It's the substitution
12 request one.

13 MS. HUDDLESTON: The one that's marked
14 "draft"? It's not final.

15 MR. GILL: No. It's draft. And about the
16 fifth page in, you've got the table of substitution; and
17 then the next page is the direct payment applications,
18 substitution requests and waiver. Those are the two
19 things at this point that need to be turned in, and DEQ
20 at this point can't use this new form because it hasn't
21 been voted on and approved. But as I said in our
22 discussion, I didn't see that anyone had any problems
23 with these. It was the issues of making sure they
24 understand work objectives and work items.

25 MS. DAVIS: Mr. Chairman, is staff ready to

1 implement this form?

2 MS. NAVARRETE: Yes.

3 CHAIRMAN O'HARA: We have a motion to
4 approve the form and a second. All those in favor of
5 approving the form say aye. All those opposed say nay.
6 Any abstentions? Okay. Motion passes.

7 Hal, did you have any other comments on the
8 technical subcommittee?

9 MR. GILL: Yeah. I'm at C. Basically C
10 was the UST release reporting and corrective action rules
11 guidance, frequently asked questions. I did that one.
12 D -- I guess the only other thing was, as I mentioned,
13 the next meeting is December 3rd.

14 Al, do you remember the time?

15 MR. JOHNSON: Yeah. It's December 3rd.
16 It's in Room 1475 at DEQ from 9:00 to noon.

17 MR. GILL: And I'll be getting that agenda
18 out, if not this week, the beginning of next week.

19 CHAIRMAN O'HARA: Okay. Thank you, Hal.

20 Before moving on to Item Five, I would like to
21 call for a break. And before going to a break, real
22 quickly, I just want to let everybody know that Item
23 Numbers Seven and Eight are going to be postponed. So if
24 there's anyone that is here for those, I want to let you
25 know that beforehand. If you have any comments or

1 questions on that before you go, you can do that now; but
2 those are going to be postponed.

3 Any comments? Questions? Okay. Thank you.
4 We'll have a break for ten minutes. Thank you.

5 (Whereupon, a nineteen-minute recess ensued
6 at 10:28 a.m.)

7 CHAIRMAN O'HARA: I'd like to call this
8 meeting back to order. I want to point out for the
9 record that Elijah Cardon has joined us and was present
10 almost from the beginning and did participate in the
11 vote, and we did have a quorum.

12 Moving on to Item Five, financial subcommittee
13 update. We had a financial subcommittee meeting
14 yesterday; and at the request of the Commission, we took
15 a look at the issue of the allocation of the 21 percent
16 administrative budget from the State Assurance Fund. And
17 there's been quite a long history with the administrative
18 costs of the State Assurance Fund. I think in the
19 beginning it had some wild fluctuations due to contractor
20 expenses and SAF claims processor. And from my
21 recollection, in, I think, maybe '97 or '98, that amount
22 was fixed in statute, and that statute is 49-1051. And
23 in that statute, the amount of monies from the State
24 Assurance Fund that was eligible to be used for
25 administrative costs was fixed at 21 percent of the

1 revenues of the fund from that year. And I think since
2 that point in time, that 21 percent has been kind of a
3 hard and fast figure. And we as a Commission have never
4 really taken the charge of reviewing that and it
5 certainly falls within our mandates to review the
6 reasonableness and appropriateness of the use of the
7 State Assurance Fund monies that we probably need to look
8 at that and was recognized at that meeting yesterday.

9 And so we did hold an initial subcommittee
10 meeting, and there's a summary that was prepared by ADEQ.
11 And I appreciate the summary. It captured the essence of
12 that meeting very well, and we agree and came to
13 consensus during that subcommittee meeting that we were
14 going to hold several, if not many, additional meetings
15 to study in detail the make-up of that 21 percent
16 administrative cost, and we came up with two objectives.
17 First of which is to look at the manpower needs and the
18 costs associated with processing of SAF claims and
19 technical submittals. And once we've looked at that
20 information, we're going to consider and make
21 recommendations on what the reasonable level of the SAF
22 funding which is necessary to administer that fund. So
23 it may be 21 percent. It may be greater. It may be
24 less, but we don't know until we do the detailed
25 analysis. So I think we had a very productive initial

1 meeting. We've got a lot of work to do, and I encourage
2 anyone on the Commission or in the public that is
3 interested in the issue to attend our future meetings.
4 We don't have any scheduled currently, but we'll have
5 them and we will circulate e-mails and post it on the Web
6 site when we have meetings set up.

7 Any comments from members of the Commission on
8 this issue? Any questions from members of the public?

9 MR. LUGO: Jessie, Automotive Trade
10 Organization. Just a general question as to what the
11 Department's total amount of money that's in arrears on
12 payments prior to that before you consider the 21 percent
13 for administration. Last year it was 73 million. What
14 is that current figure at this time?

15 CHAIRMAN O'HARA: I think he's referring to
16 the amount of claims that have been received and
17 approved, but not -- there's no money available. It's
18 all in the debt. Does anybody know that figure?

19 MS. NAVARRETE: It's in my annual report
20 but I forget the figure right now.

21 MS. DAVIS: It's roughly 80.

22 MR. LUGO: Thank you.

23 CHAIRMAN O'HARA: Any other comments or
24 questions from members of the public?

25 Okay. As I mentioned prior to the break, we're

1 going to postpone Item Seven and Eight. Just to let you
2 know, Item Seven is -- I think the Department is still
3 compiling some data and information regarding the funding
4 options for the UST Compliance Inspection Program. And I
5 think we'll probably take this issue up initially in a
6 financial subcommittee because it may be quite detailed.

7 I'll come back to six. Let me just finish my
8 comments on the postponing of Seven, Eight and Nine.

9 So that issue will be -- we'll look at that in
10 detail when that information is available, and we'll also
11 have that as a part of the financial subcommittee. And
12 then finally I think Eight is just going to be postponed.
13 There's some additional information that's been requested
14 and reviewed.

15 Let me move back to Item Six. I apologize.
16 Item Six is discussion and vote on ADEQ policy regarding
17 volunteers not being eligible for reimbursement of
18 application preparation costs; and this has been on the
19 agenda, I think, three or four meetings now. I think
20 we're -- it's fair to summarize in that the consensus
21 from members of the Commission, it seems DEQ is of
22 at the idea that volunteers should be treated equally as
23 other owner/operators and be eligible for reimbursement
24 of those costs. It seems like there was not much
25 disagreement on that issue. Really the issue was hinged

1 upon the fact that the statutes didn't seem to allow
2 that. One statute said that owner/operators or
3 volunteers were eligible for 100 percent reimbursement.
4 However, application preparation costs are credited
5 towards the deductible and not reimbursed; and therefore,
6 given the fact there's no -- there is no co-pay for
7 volunteers, then there was no amount of money to take the
8 application preparation costs out of.

9 So it seemed like there was almost a little bit
10 of a conflict, but the idea that they should be
11 reimbursed seemed to be a consensus idea. But at the
12 last meeting, I think, when we brought this up to vote on
13 it, there was a question as to what was the legal
14 determination by the Department or whether it was just a
15 policy determination that they couldn't pay it. And I
16 thought we were going to get some kind of guidance from
17 DEQ on that.

18 MS. DAVIS: Mr. Chairman, it's the agency's
19 understanding that it's a legal interpretation, that
20 we're not legally allowed to do that. So I'm going to
21 punt to the AG's office.

22 MR. GILL: Who knows nothing about it.

23 MS. HUDDLESTON: Well, it's our
24 understanding and in discussion with the Department that
25 it would be -- the better course here would be to seek

1 legislative change to make it clearer.

2 CHAIRMAN O'HARA: Okay. And once that's
3 been clarified, it seems like it has been, then our
4 recommendation can be tailored more to the legislature
5 and not to the Department. But I want to make sure that
6 the issue of volunteers being eligible for reimbursement,
7 that concept is a consensus concept. Am I fair in
8 characterizing our discussions in that way?

9 MR. SMITH: Yes.

10 CHAIRMAN O'HARA: Okay. Therefore, would
11 somebody like to make a motion, or I guess I could make a
12 motion, that we ask the legislature to revise the
13 statutes -- I think I wrote it down. Let me just read
14 this. The Policy Commission recommends that the statutes
15 related to the reimbursement of corrective action costs
16 for volunteers be revised to allow for reimbursement of
17 application preparation expenses. I'll make that motion.

18 MR. GILL: I second.

19 CHAIRMAN O'HARA: Okay. We have a motion
20 made and seconded. All those in favor please say aye.
21 All those opposed? Any abstentions? Okay. We have a
22 quorum, and we had seven ayes. The motion passes and
23 approved.

24 MR. GILL: I guess the question is where
25 does it go now?

1 CHAIRMAN O'HARA: I'll make a
2 recommendation and send that both to the director and
3 speaker of the house and president of the Senate and, I
4 believe, the Governor.

5 Okay. Moving on to -- I'm sorry, Mr. Beck.
6 Call to the public.

7 MR. BECK: On this particular item -- Brian
8 Beck, again, for the record -- when we went through this
9 whole thing in development of the UST volunteer, there's
10 actually documents produced by ADEQ on the actual
11 application with the UST volunteer, the information
12 packet and affidavit revised June 6th, 2000. In it, it
13 says, quote, and I'm quoting from the documentation
14 itself, which I handed to you some time ago -- and I have
15 extra copies that I can hand out. It says, "Owner and
16 operators of UST defined by 49-1001.01 and 49-100.19
17 respectively are responsible for a 10 percent co-payment
18 of any cost paid from the SAF."

19 Right there everyone knows that the responsible
20 parties for the actual release is responsible for the
21 10 percent co-payment. The next statement, it says, "The
22 Department will seek reimbursement from the owners and
23 operators for the 10 percent co-payment." ADEQ in its
24 own documentation and as it was discussed in the State
25 legislature in 1998 with Rusty Bowers -- and I'm more

1 than willing to put that forward -- and as in 1052(i),
2 the UST volunteer was supposed to get reimbursed for all
3 eligible costs. The co-payment issue has never been
4 discussed. It was just simply taken by ADEQ.

5 That statement right there and the statement
6 that has been made since 2000 -- or actually, since '99
7 on the whole thing was they were supposed to get full
8 reimbursement, and the ADEQ in their own statement here
9 says that they will take that 10 percent, they'll seek it
10 from the owner/operator.

11 If the co-payment is supposed to be sought by
12 ADEQ, then how can they deny the UST volunteer that's
13 supposed to be 100 percent reimbursable at preparation
14 costs that's required for an application that's required
15 with ADEQ? I mean, ADEQ makes the statement in its own
16 documentation for the UST volunteer that they're to seek
17 the payment, the co-pay from the RFP and not seek it from
18 the UST volunteer. That's the way the program was set
19 up.

20 CHAIRMAN O'HARA: Any other comments?
21 Questions?

22 Okay. Thank you. Any other comments from
23 members of the public on that issue? Elijah.

24 MR. CARDON: Mr. Chairman, it would seem
25 just like a reasonable course of action for such a

1 comment to be forwarded to the Department -- obviously
2 the Department has received it now -- so that they can
3 put that before their legal counsel. And maybe there is
4 some aspect of that that the legal counsel hasn't
5 considered.

6 MS. DAVIS: We'll review that.

7 CHAIRMAN O'HARA: Okay. Great. I think
8 she accepted that proposal. I think they've already said
9 that it's a legal interpretation.

10 MR. BEAL: Well, this might affect that.

11 MS. DAVIS: Mr. Chairman, members of the
12 Commission, we'll take a look at Mr. Beck's -- what he
13 just shared with us and take it back and review it and
14 see what makes sense. I can't speak to it up here at
15 this point, but we'll take a look at it.

16 CHAIRMAN O'HARA: We'll hold the
17 recommendation today until we get further information on
18 whether the co-pay can actually be gotten from the
19 original RP.

20 Okay. Thank you. Any other comments from
21 members of the public?

22 MR. CARDON: Mr. Chairman, would it be
23 reasonable to ask the Department if there could be some
24 response to this by our next meeting?

25 MS. DAVIS: Sure.

1 CHAIRMAN O'HARA: Okay. Thank you. Let's
2 move on to Item Nine, update on the UST groundwater
3 study. And, Hal, I believe you have an update for us.

4 MR. GILL: I guess the main thing that came
5 out of the meeting was that I think Dr. Jonathan said it
6 was due January 16th -- 15th. And I guess the only
7 question I have -- something came up in the meeting that
8 I didn't think of until afterwards. I remember
9 questioning it at the time, but I guess they're trying to
10 limit the size of the 25 pages, which I didn't
11 understand. I mean, I just remember questioning it
12 because I've seen it. I've read the draft, and it's,
13 like, this thick. And I didn't really understand. And I
14 just remember questioning at the time, 25 pages? How are
15 you going to do that? And then I thought about it later,
16 why are we -- where did this come from? Why are we
17 limiting the size of it?

18 CHAIRMAN O'HARA: Ian.

19 MR. BINGHAM: Mr. Chairman, for the record,
20 Ian Bingham. Part of the RFP requires a major report and
21 an executive summary that would be basically a synopsis
22 of the report for the legislature and upper management,
23 understanding that going through the technical details
24 would be, one, overwhelming, and two, time-consuming. So
25 it was asked for a main report and then essentially an

1 executive summary not to exceed 25 pages because
2 something like that you cannot summarize in a few pages,
3 and that is what the purpose of that subset is.

4 MR. GILL: So the executive summary is 25
5 pages?

6 MR. BINGHAM: Exactly. Then you'll have a
7 full report, all the backup information to review.

8 MR. GILL: That makes sense. Thank you. I
9 guess the main thing is that it's due the 15th of
10 January.

11 CHAIRMAN O'HARA: So we'll probably get a
12 draft of that. The 15th of January?

13 MR. SMITH: Is the 15th a draft or a final?

14 MR. BINGHAM: Again, for the record, Ian
15 Bingham. My understanding is it's the final, and I will
16 verify but I believe he's looking to get it to the
17 Commission in December for review and so forth with the
18 final in January.

19 CHAIRMAN O'HARA: Any questions from
20 Commission members on the groundwater study? Any
21 questions from members of the public? Okay. Thank you.

22 Moving on to Item Number Ten, discussion of
23 agenda items for the next Commission meeting. I've got a
24 couple that I'll start out with. I know it's coming up
25 on the end of the year and we probably need to start

1 working on our annual report. Al, the annual report for
2 the Policy Commission.

3 MR. JOHNSON: Say that again?

4 CHAIRMAN O'HARA: Our annual report, when
5 is that due?

6 MR. JOHNSON: Well, it says at least
7 annual, and it doesn't have a specific due date.

8 CHAIRMAN O'HARA: It's usually at the end
9 of the year.

10 MR. JOHNSON: Right. But last year we
11 finalized it sometime after the first of the year, like a
12 couple months.

13 CHAIRMAN O'HARA: Okay. Why don't you and
14 I get together and start working on that. And anybody
15 that would like to participate in the creation of the
16 annual report for this year, I would appreciate your
17 help. And we may have that on the agenda next month.

18 Also, we're going to have the volunteer item
19 again on the agenda for next meeting. And Seven, I
20 believe, is going to be a subcommittee item. It may not
21 make the agenda for the next meeting. And then Eight
22 will be on the agenda for next meeting. That's the
23 review and discussion of the ADEQ sunset report.

24 MS. DAVIS: And Six.

25 CHAIRMAN O'HARA: Volunteers, yeah. I

1 mentioned that, the issue on the volunteers. So Item Six
2 and definitely Eight will be next meeting.

3 Okay. Any other items that you'd like?
4 Elijah.

5 MR. CARDON: With the great work that has
6 begun in the financial subcommittee, the question is
7 would it be appropriate to have that at least for the
8 next little while as a standing item on the agenda?

9 CHAIRMAN O'HARA: Sure. Definitely get to
10 provide an update each meeting until we reach some
11 recommendations to bring forward. Thank you. Anyone
12 else?

13 MR. GILL: I'd just like to recommend --
14 well, I guess we're still on Ten, but on 12, I wonder if
15 Commission members shouldn't notify Al or e-mail Al what
16 their schedules are so he can figure out when everybody
17 is available and see if there's a room for that date.

18 CHAIRMAN O'HARA: Let me get to that when
19 it comes up on the agenda because I want to make sure --
20 we've already discussed that. I think we've got a date
21 set, so I'll come right back to that.

22 Any other items on the agenda for next meeting?
23 I know we have the cost ceilings also.

24 Okay. Call to the public. Are there any
25 agenda items or issues on agenda items that the public

1 would like to speak to? Mr. Beck.

2 MR. BECK: Yes. As we reminded the
3 Commission in the September meeting this year, there were
4 several outstanding items that the Commission had
5 requested along with the public from ADEQ. In fact,
6 going back to the November 2000 meeting as a request from
7 Mr. Cardon, Mr. O'Hara, Ms. Foster, and then again in the
8 April 2002 meeting, O'Hara, Denby and Cardon and Mr. Gill
9 also requested that ADEQ provide a policy guidance or
10 procedure to include examples of what would cause a site
11 to be reopened after it had been closed, also
12 establishing the procedure for SAF eligibility, how a
13 site would be reopened under newly regulated compounds,
14 and also if a new release number would be assigned under
15 what particular conditions involving that. Then again in
16 April 2002, a request was made of the agency to come up
17 with a policy for additional site releases on an existing
18 remediation site where new products suddenly showed up
19 from an undocumented or unknown source.

20 CHAIRMAN O'HARA: Hal, you got the draft
21 LUST assignment policy. It sounds like that's part of
22 that subject matter, correct? It came up during that
23 general discussion on how you assign new LUSTs, how you
24 reopen LUSTs, et cetera.

25 MR. BECK: It wasn't included.

1 MR. GILL: No, I don't think so. I
2 reviewed it once. I'm just trying to think back. I
3 don't believe it really addresses the issues of reopening
4 or opening a site. Well, that's a big issue. If that
5 shows up now, what do we do now? It doesn't really
6 address that.

7 CHAIRMAN O'HARA: Do you want to take on
8 that topic during discussion of that draft assignment
9 policy? It seems like it's a similar subject.

10 MR. GILL: Yeah. I'll put that on the
11 agenda. As I said, we'll try to -- the cost ceiling
12 discussion on the 3rd, the December 3rd meeting, is the
13 first thing on the agenda because we have to get that
14 done so we can vote on it next week or the week after
15 that. But I'll put that assignment policy on there after
16 that and see how far we can get, but I will put this as
17 part of it as well.

18 CHAIRMAN O'HARA: Okay. Shannon.

19 MS. DAVIS: Mr. Chair, Mr. Beck, I just
20 want to be clear on the requests: A policy guidance
21 procedure on reopening of sites on SAF eligibility, the
22 reopening of sites due to new compounds and new
23 assignment numbers, and then also a policy on additional
24 releases on a site and when new products from
25 undocumented sources are discovered; is that correct?

1 MR. BECK: Correct.

2 MS. DAVIS: Thank you very much.

3 CHAIRMAN O'HARA: Thank you. Any other
4 comments from members of the public?

5 MR. CARDON: Mr. Chairman.

6 CHAIRMAN O'HARA: Excuse me, Elijah.

7 MR. CARDON: I'm wondering if we shouldn't
8 consider for some point in the future creating a position
9 of an honorary executive secretary for Mr. Beck.

10 CHAIRMAN O'HARA: Any other comments?

11 MR. BECK: I have nine other people that do
12 that for me.

13 MR. LUGO: Mr. Chairman, members of the
14 Commission, for the record, again, Jessie Lugo, Arizona
15 Automotive Trade Organization. This is a copy of House
16 Bill 2657 which calls for an increase of the UST funds
17 from one penny a gallon to two cents a gallon. It's a
18 one-cent increase for a three-year period of time. We
19 submitted this bill in last year's session in the House.
20 We're unsuccessful at this time, but we're going to be
21 submitting the bill again with support from other
22 petroleum industries. We ask that you review this bill.

23 The only change -- there won't be any changes
24 to the language except for the dates, but we ask that you
25 review it. And we certainly would appreciate your

1 support in this new section in 2003.

2 CHAIRMAN O'HARA: Great. Thank you. Would
3 the Commission members like to at least review the issue
4 of the funding of the State Assurance Fund? I know that
5 we made one comment of reviewing the 21 percent
6 administrative amount and 49-1051. There's also a
7 Section D that states, "On or before December 1st of each
8 year, the director shall submit a report to the
9 legislature." I'm trying to speed through this and say
10 that "shall include the balance of monies in the account
11 at the beginning of the fiscal year minus the deposit in
12 the account by sources during the fiscal year,
13 disbursements." And finally, it says, "Projection of the
14 balance of the account in the current fiscal year, the
15 record shall include in the report a recommendation for
16 any revision of the UST tax rate necessary to maintain an
17 average balance in the assurance account of \$36 million."

18 So it seems by statute there is an amount that
19 has to be created or recommended to the legislature of an
20 increase in that tax to maintain that balance
21 statutorily. I don't know if we want to look at that as
22 a Commission and review this bill at the same time, but
23 it's a similar issue of the one-cent tax. Elijah.

24 MR. CARDON: It certainly would seem,
25 Mr. Chairman, that this is an appropriate subject to

1 which this Commission could and should address itself.

2 I, for one, as a member of the Commission have the same
3 concerns and apprehensions about any new tax that any
4 person may have concerning -- well, will it be
5 controlled, what will be the life of it, and what will be
6 the ultimate application and who will get their hands
7 into it.

8 However, having said that, I would have to say
9 that if you look at the reality of our situation and
10 input, and give me some latitude here of between 25 and
11 30 million dollars from the existing -- annually from the
12 existing tax, and then the overhead that's subtracted
13 from that, and let's round this figure off, and I know
14 it's not accurate, to 20 million, with the backlog of,
15 and I'm rounding this figure, of 80 million, if you had
16 no more claims of any kind, at the current rate, it would
17 take four more years. Because of this general set of
18 circumstances I, for one, would be in favor of
19 recommending to the legislature that tax be increased.

20 CHAIRMAN O'HARA: Okay. Any other comments
21 on this issue?

22 MR. GILL: Would you bring both issues up
23 first in the financial subcommittee for discussion?

24 CHAIRMAN O'HARA: That probably would be an
25 appropriate place, yeah. I think we will look at it. I

1 know we did --

2 MR. CARDON: Mr. Chairman, excuse me.

3 CHAIRMAN O'HARA: Go ahead.

4 MR. CARDON: And in one of the principal
5 justifications for the increase of a tax would be to
6 address the specific need that exists and that it would
7 not be a continuing tax.

8 CHAIRMAN O'HARA: Okay. I'll put that on
9 the subcommittee agenda, and we'll also move that up to
10 the UST Policy Commission. But another point I want to
11 make is we've looked at this in an indirect way last year
12 of an actuarial study. And just once again, according to
13 the study, it did show that the 80 million was going to
14 be reduced over time until, I think, 2013 when that would
15 be paid off. According to the study, it's going to get
16 better. But once again, I think in the future, to make
17 sure that those assumptions are, indeed, valid, we'll
18 look at those issues in the subcommittee.

19 Any other comments from members of the public?
20 I guess that was a general call to the public. This is
21 probably the appropriate time. If there's any other
22 comments in general, I'd like to hear from the public now
23 at this point. Anyone?

24 Okay. Item Number 12 is rescheduling of the
25 December UST Policy Commission meeting. It says December

1 10th but I think due to some scheduling conflicts, we're
2 going to try to do it on the 12th between 9:00 -- same
3 time, 9:00 and 12:00, and that room is 1616 West Adams.
4 If there's any significant conflicts, please let myself
5 and Al know so that we can reschedule that one. We need
6 to have a quorum to vote on the cost ceilings.

7 Okay. Great. I want to thank you all for
8 coming. This meeting is adjourned.

9 (Whereupon, the proceedings were concluded
10 at 11:14 a.m.)

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) SS.

2 STATE OF ARIZONA)

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